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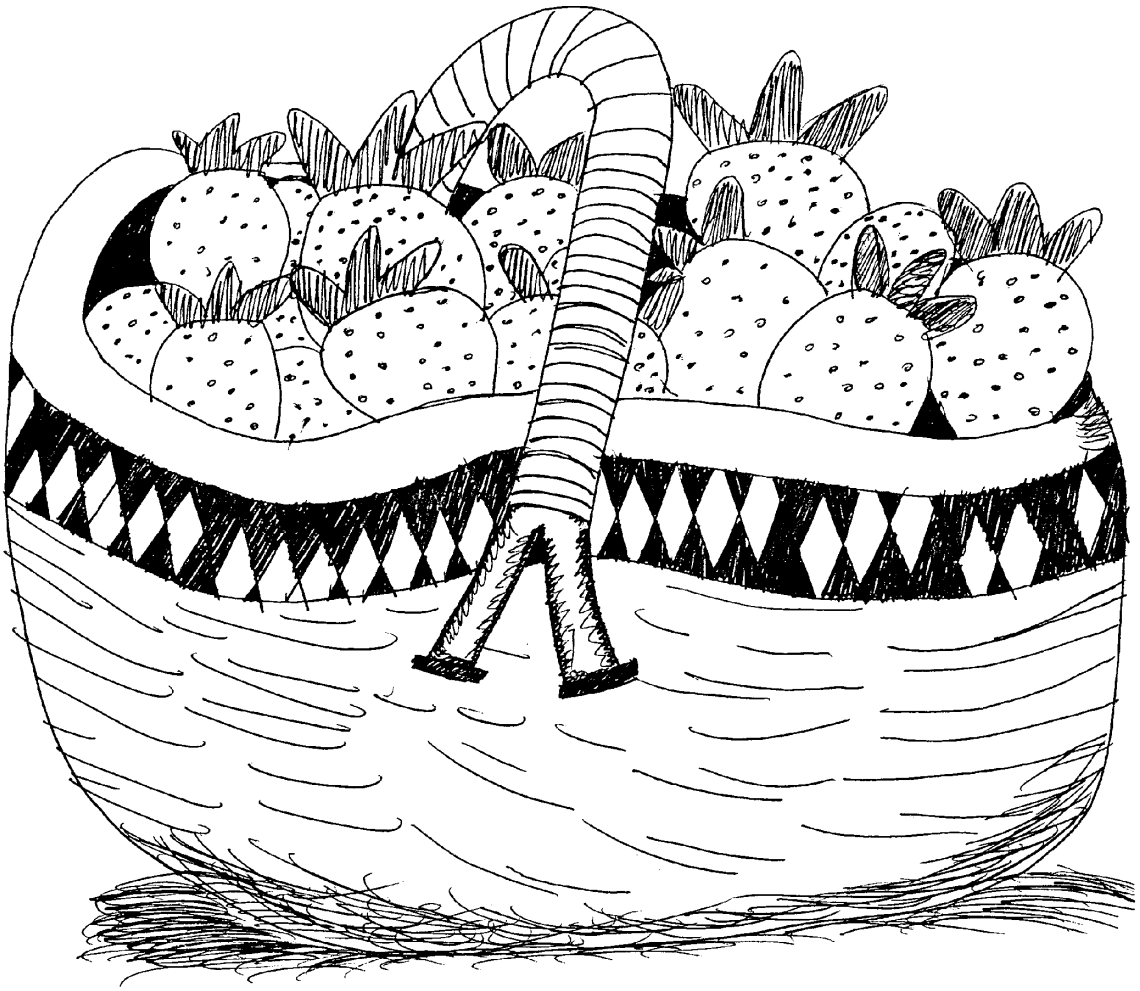

This month's front cover artwork:

Artist: *Holli Moore*
10th grade
Rockwall High School

School children's artwork has decorated the blank filler pages of the *Texas Register* since 1987. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

We will display artwork on the cover of each *Texas Register*. The artwork featured on the front cover is chosen at random.

The artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*. The artwork does not add additional pages to each issue and does not increase the cost of the *Texas Register*.

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Open Meetings

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

Notices are published in the electronic *Texas Register* and available on-line.
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To request a copy of a meeting notice by telephone, please call 463-5561 if calling in Austin. For out-of-town callers our toll-free number is (800) 226-7199. Or fax your request to (512) 463-5569.

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

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

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

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 No. JC-0379

Dr. Cynthia S. Vaughn, D.C., President, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701-3942, regarding whether a licensed acupuncturist may perform "spinal manipulation" (RQ-0308-JC).

Summary

While the technique called Tui Na, which involves some manipulation of the spinal area, may be an energy flow exercise within the meaning of §205.001 of the Texas Occupations Code, the administration of such exercise is not within the statutory definition of the practice of acupuncture.

Opinion No. JC-0380

The Honorable Chris Taylor, Tom Green County Attorney, 112 West Beauregard, San Angelo, Texas 76903, regarding whether a district attorney subject to the Professional Prosecutors Act may serve as a legal officer in the Air Force Reserve and related questions (RQ-0326-JC).

Summary

Service as a legal officer in the United States Air Force Reserve does not violate the Professional Prosecutors Act because it is not the private practice of law.

Opinion No. JC-0381

Ms. Lois Ewald, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942, regarding whether an "optometric glaucoma specialist" may use that designation as his sole professional title (RQ-0329-JC).

Summary

An optometric glaucoma specialist may not use the phrase "optometric glaucoma specialist" exclusively as a professional designation.

Opinion No. JC-0382

Mr. Robert L. Maxwell, Administrator, Texas State Board of Plumbing Examiners, 929 East 41st Street, Austin, Texas 78765, regarding licensed plumbing inspectors and plumbing inspections performed on behalf of cities (RQ-0333-JC).

Summary

A plumbing inspector as defined under the Plumbing License Law must be an employee of the city or other political subdivision in which the plumbing inspector exercises authority. A city or other political subdivision may not contract with an independent contractor or enlist the services of any other non-employee to perform the duties of a local plumbing inspector.

Opinion No. JC-0383

The Honorable Jack M. Skeen, Jr., Smith County Criminal District Attorney, 100 North Broadway, 400, Tyler, Texas 75702, regarding whether, without violating article III, section 53 of the Texas Constitution, a county may pay group-health-insurance premiums for retirees for whom, at the time they retired, the county did not provide such benefits, and related questions (RQ-0334-JC).

Summary

In light of article III, section 53 of the Texas Constitution, a county may not pay group-health-insurance premiums for a retired employee absent additional consideration from the retired employee, if at the time he or she retired, the county did not provide for such coverage nor for the possibility of such coverage. See Tex. Const. art. III, §53. The county may, but is not required to, seek reimbursement from a retired employee for whom the county paid premiums in violation of article III, section 53. With respect to a person who retired on or after January 1, 1994, that person may be entitled to participate in the county's health-insurance program in accordance with chapter 175. See Tex. Loc. Gov't Code Ann. ch. 175 (Vernon 1999). But the county may not permit a person who retired from employment with the county before January 1, 1994 to participate beyond the period required by federal law, even if the retiree pays the premiums.

Opinion No. JC-0384

The Honorable Robert F. Vititow, Rains County Attorney, 113 North Texas, P.O. Box 1075, Emory, Texas 75440, regarding whether a "joint clerk" who performs the duties of both the district clerk and the county clerk is entitled to complete the term of office to which elected when the county's population exceeds eight thousand persons after the release of the 2000 United States Census of Population (RQ-0339-JC)

Summary

The office of "joint clerk" who performs the duties of both the district clerk and the county clerk is to be separated, should census figures require it, at the expiration of the term of office to which the incumbent was elected rather than on the date a United States Census of Population report is recognized. There is no provision in the Texas Constitution or in Texas statutes for the election of a district or county clerk other than at a general election.

For further information, please call (512) 463-2110.

TRD-200103031
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: May 30, 2001

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Request for Opinions

RQ-0383-JC. Mr. C. Tom Clowe, Jr., Chair, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630, regarding authority of the Lottery Commission to regulate non-bingo games included as a component of an electronic bingo device, and related questions (Request No. 0383-JC).

Briefs requested by June 24, 2001.

RQ-0384-JC. The Honorable Virginia K. Treadwell, McCulloch County Attorney, Courthouse, Room 302, Brady, Texas 76825, regarding whether a county commissioners court is required to provide health insurance for a constable (Request No. 0384-JC).

Briefs requested by June 23, 2001.

RQ-0385-JC. The Honorable David Sibley, Chair, Business and Commerce Committee, Texas State Senate, P.O. Box 12068, Austin, Texas 78711-2068, regarding scope of an electric utility property owner's right of access to appraisal information used in establishing the taxable value of his property (Request No. 0385-JC).

Briefs requested by June 25, 2001.

For further information, please call (512) 463-2110.

TRD-200103032
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: May 30, 2001

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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 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 1. GENERAL PROCEDURES
SUBCHAPTER G. INTERAGENCY AGREEMENTS

4 TAC §1.330

The Texas Department of Agriculture (the department) proposes new §1.330 concerning a memorandum of understanding (MOU) between the department, Texas Natural Resource Conservation Commission (TNRCC), and the Texas Parks and Wildlife Department (TPWD) regarding the regulation of aquaculture.

The new section is proposed under the Texas Agriculture Code (the Code) §12.016, which provides the Department with the authority to adopt rules to administer the Code; and the Code, §134.031, which requires the Texas Department of Agriculture to enter into a memorandum of understanding with the Texas Natural Resource Conservation Commission, and the Texas Parks and Wildlife Department regarding the regulation of matters related to aquaculture. Proposed §1.330 defines requirements set out in Senate Bill (SB) 873, 76th Legislature, 1999, for establishment of an Application Review Committee (ARC) to review wastewater discharge authorization applications from aquaculture facilities to ensure that the proposed discharge will not adversely affect a bay, an estuary, or other water in the state. The new MOU delineates each agency's responsibilities under the MOU, outlines coordination procedures for the review of individual permit applications, registration applications, requests for exemption, and notices of intent to be covered under a general permit, sets forth the responsibilities of each agency pertaining to licensing and regulation of aquaculture facilities within the state, and establishes the ARC. The ARC will be comprised of one individual from each of the three agencies and has the authority to review any request by an aquaculture facility for authority to discharge wastewater or for an exemption when disputes among the agencies cannot be resolved at the staff level. The section also sets forth the right of each agency to take any action it deems necessary to protect its legal authority under state law regardless of any provision in the MOU and sets forth general conditions including the term of the MOU and amendment procedures.

Margaret Alvarez, coordinator for aquaculture, has determined that for the first five-year period the MOU is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the MOU.

Ms. Alvarez also has determined that for each year of the first five years the MOU is in effect the public benefit anticipated as a result of enforcing the MOU would be the establishment of a process for interagency coordination of permitting issues related to aquaculture. There will be no effect on microbusinesses, small or large businesses. There is no anticipated economic cost to persons who are required to comply with the MOU as proposed.

Comments on the proposal may be submitted to Margaret Alvarez, Coordinator for Aquaculture, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The section is proposed under the Texas Agriculture Code (the Code), § 134.031, which requires the Texas Department of Agriculture to enter into a memorandum of understanding with the Texas Natural Resource Conservation Commission, and the Texas Parks and Wildlife Department regarding the regulation of matters related to aquaculture; and the Code, §12.016, which provides the Department with the authority to adopt rules to administer the Code.

The code affected by this proposal is the Texas Agriculture Code, Chapter 134.

§1.330. Memorandum of Understanding (MOU) between the Texas Natural Resource Conservation Commission (commission), the Texas Parks and Wildlife Department (TPWD), and the Texas Department of Agriculture (TDA).

(a) Need for agreement.

(1) The commission, TPWD, and TDA seek to ensure that regulation of aquaculture is conducted in a manner that is both collaborative and responsible.

(2) The commission, TPWD, and TDA are concerned about issues relating to the raising of non-native aquatic species and the attendant concern about escape into natural ecosystems, including the introduction of disease into natural ecosystems.

(3) The commission, TPWD, and TDA are concerned about the quality of wastewater discharges from aquaculture facilities and their effects on receiving waters in reservoirs, streams, bays, and estuaries.

(4) The commission, TPWD, and TDA seek to establish an interagency review procedure for applications requesting authorization to discharge wastewater from aquaculture facilities.

(5) The commission, TPWD, and TDA seek to institute an effective system by which coordination and collaboration can be achieved to expedite enforcement actions in response to discharges from aquaculture facilities that are found to contain contagious disease that may impact state waters.

(6) Texas Water Code, §5.104, authorizes the commission to enter into an MOU with any other state agency.

(7) Texas Agriculture Code, §134.031, directs the commission, TPWD, and TDA to enter into an MOU for the regulation of matters relating to aquaculture.

(8) It is the intention of this MOU to provide a formal mechanism by which TPWD and TDA may review and provide feedback on aquaculture issues that are subject to regulation by the commission and that have the potential to affect natural resources and the regulation of aquaculture within the jurisdiction of TPWD or TDA. This exchange of information would assist the commission in making environmentally sound decisions and would improve coordination between the commission, TPWD, and TDA.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise.

(1) Application -- A request submitted by an aquaculture facility to the commission for authorization to discharge under an individual permit or registration; a Notice of Intent (NOI) to seek authorization under a general permit; or a request for an exemption.

(2) Aquaculture -- The business of producing or rearing aquatic species (fish, crustaceans, and other organisms in either fresh or marine waters) utilizing ponds, lakes, fabricated tanks and raceways, or other similar structures.

(3) Memorandum of Understanding (MOU) -- A formal document that clarifies and provides for the respective duties, responsibilities, or functions of the state agencies who are signatories on any matter or matters under their jurisdiction that are not expressly assigned to either one of them.

(c) Responsibilities.

(1) The commission. The responsibilities of the commission relate primarily to its role as the natural resource agency with primary responsibility over conservation of natural resources and the protection of the environment, under Texas Water Code, §5.012.

(A) The commission has general jurisdiction over the state's water quality program including issuance of waste discharge permits, water quality planning, and enforcement of water quality rules, standards, orders, and permits.

(B) The commission seeks to maintain the quality of water in the state consistent with public health and enjoyment, the propagation and protection of terrestrial and aquatic life, the operation of existing industries, and the economic development of the state, and to require the use of all reasonable methods to implement this policy.

(C) The commission is responsible for review of NOIs and requests for exemption, and review of applications and subsequent issuance of waste discharge permits, temporary orders, emergency orders, and registrations.

(2) TPWD. The responsibilities of TPWD relate primarily to its functions as a natural resource agency, including its resource protection functions, as designated by the Parks and Wildlife Code, §12.001.

(A) TPWD is the state agency with primary responsibility for protecting the state's fish and wildlife resources.

(B) TPWD provides recommendations that will protect fish and wildlife resources to local, state, and federal agencies that approve, permit, license, or construct developmental projects.

(C) TPWD provides information on fish and wildlife resources to any local, state, and federal agencies or private organizations that make decisions affecting those resources.

(D) TPWD regulates the taking, possession, and conservation of all kinds of marine life and other aquatic life.

(E) TPWD regulates the introduction of fish, shellfish, and aquatic plants into public water, under Texas Parks and Wildlife Code, §66.015(b).

(F) TPWD regulates the importation, possession, and placing into state water of harmful or potentially harmful exotic species of fish, shellfish, or aquatic plants, under Texas Parks and Wildlife Code, §66.007(a).

(G) TPWD is responsible for review of applications and subsequent issuance of permits relating to the importation, possession, and placing into state water of harmful or potentially harmful exotic species of fish, shellfish, or aquatic plants, under Texas Parks and Wildlife Code, §66.007(a).

(3) TDA. The responsibilities of TDA relate primarily to its functions as a regulatory agency that oversees the licensing and regulation of aquaculture operations under Texas Agriculture Code, Chapter 134.

(A) TDA is responsible for establishing recordkeeping requirements for commercial aquaculture facilities.

(B) TDA is responsible for the review of applications and subsequent issuance of aquaculture licenses under Texas Agriculture Code, Chapter 134, to aquaculture facilities that produce and sell cultured species.

(C) TDA is responsible for the review of applications and subsequent issuance of aquaculture licenses under Texas Agriculture Code, Chapter 134, for fish farm vehicles selling cultured species from the vehicle.

(d) Provisions. This MOU is to facilitate the coordination and collaboration between the commission, TPWD, and TDA with regard to aquaculture facilities.

(1) Coordination procedures for NOIs, applications for registrations, and requests for exemptions.

(A) The executive director will provide copies of all NOIs, registration applications, and requests for exemption to TPWD and TDA within 14 days of the stamped date of receipt.

(i) Within 45 days of the date of receipt of the NOI, registration application, or request for exemption, by TPWD and TDA, each will complete its initial assessment, and by letter shall:

(I) provide the executive director with formal written recommendations designed to protect fish and wildlife resources; or

(II) indicate that it has no comments; or

(III) request additional information from the commission.

(ii) If the commission does not receive formal written comments from TPWD or TDA within 45 days of the date of receipt of the NOI, registration application, or request for exemption, by TPWD and TDA, the executive director will conclude that there are no comments and continue normal processing of the application.

(B) Upon receipt of a request from TPWD or TDA for additional information, the executive director will immediately provide such information if it is contained in the application materials. If additional information is not included in the application materials, and if the information is necessary for TPWD or TDA to make its evaluation, the TPWD or TDA will request such additional information from the applicant, notify the executive director of this request, and ask the applicant to send a copy of its reply to the commission. If the applicant does not provide the additional information to the TPWD or TDA within 30 days of a request, the TPWD or TDA may request that the executive director suspend processing of the application. If the executive director determines that this additional information is essential to complete the technical review, the executive director will determine whether it is appropriate to either suspend processing or deem the application incomplete and return it to the applicant.

(C) Upon receipt of additional information from the executive director or the applicant, the TPWD and TDA will each have 30 days to complete its review and either make final recommendations or indicate by letter that it has no comments. If formal written comments or additional information is not received from the TPWD or TDA within 30 days, the executive director will conclude that there are no comments and will continue normal processing of the application.

(2) Coordination procedures for individual permit applications.

(A) The executive director will provide notification to TPWD and TDA of each application received which requests individual permit authorization for the discharge or disposal of wastewater from aquaculture facilities. Notification shall be transmitted within 14 days of a request received from either TPWD or TDA, or after the permit application has been assigned to a permit writer. Notification shall include a copy of the application and any comments, memoranda, letters, or other information incorporated in the application file following date of application receipt so that TPWD and TDA may complete an initial assessment of the proposed operation.

(i) Within 45 days of the date of receipt of notification by TPWD and TDA, each will complete its initial assessment, and by letter shall:

(I) provide the executive director with formal written recommendations designed to protect fish and wildlife resources; or

(II) indicate that it has no comments; or

(III) request additional information from the commission.

(ii) If the commission does not receive formal written comments from TPWD or TDA within 45 days of the date of receipt of the notification by TPWD and TDA, the executive director will conclude that there are no comments and continue normal processing of the application.

(B) Upon receipt of a request from TPWD or TDA for additional information, the executive director will immediately provide such information if it is contained in the application materials. If additional information is not included in the application materials, and if the information is necessary for TPWD or TDA to make its evaluation, the TPWD or TDA will request such additional information from the applicant, notify the executive director of this request, and ask the applicant to send a copy of its reply to commission. If the applicant does not provide the additional information to the TPWD or TDA within 30 days of a request, the TPWD or TDA may request that the executive director suspend processing of the application. If the executive director determines that this additional information is essential to complete the technical review, the executive director will determine whether it is appropriate to either suspend processing or deem the application incomplete and return it to the applicant.

(C) Upon receipt of additional information from the executive director or applicant, the TPWD and TDA will each have 30 days to complete its review and either make final recommendations or indicate that it has no comments. If formal written comments are not received from the TPWD or TDA within 30 days, the executive director will conclude that there are no comments and continue normal processing of the application.

(D) In coordination with the TPWD and TDA, the commission shall, within 120 days of the date of adoption of this MOU, establish guidelines for a site assessment environmental report for new commercial shrimp facilities located within the coastal zone. This report shall describe the existing environmental conditions at the proposed site including aquatic habitat and the conditions of water in the state into which a discharge is proposed. The report must provide an assessment of any potential impacts of wastewater discharges on sensitive aquatic habitats in the area of the proposed site, and significant impacts related to the construction or operation of the facility, and any mitigation actions proposed by the applicant.

(3) Coordination procedures applicable to all applications.

(A) The scope of review by TPWD may include, but is not limited to: consideration of especially sensitive receiving water conditions (aquatic habitat); impacts of the discharge on substrate (scouring, sedimentation) and water transparency; alteration of receiving water flow characteristics; existing or attainable biological and recreational uses; discharge rate and volume; and the likelihood of disease transmission. Comments may be addressed directly to the applicant by TPWD.

(B) The scope of review by TDA may include, but is not limited to, whether or not an application for the discharge or disposal of wastewater from aquaculture facilities should be approved.

(C) Formal written comments received from TPWD and TDA will be considered by the executive director in making decisions on applications requesting authorization for the discharge or disposal of wastewater from aquaculture facilities. TPWD's and TDA's comments will be evaluated in conjunction with all other applicable factors and will be incorporated by the executive director whenever it is consistent with the commission's responsibilities. In accordance with the responsibilities of the commission as described in this document, the executive director reserves the right to determine the final disposition of applications. Upon making a preliminary recommendation regarding an application, the executive director will

provide a response to TPWD and TDA that contains a copy of the initial draft permit, draft order, or final decision on an exemption or registration, and documentation providing an explanation on why any of TPWD's and TDA's comments were not incorporated. A final draft permit will be transmitted to the TPWD and the TDA.

(D) TPWD shall, within 120 days of the date of adoption of this MOU, develop guidelines identifying sensitive aquatic habitat within the coastal zone. TPWD will provide the guidelines it develops to the executive director and TDA. The executive director will consider the sensitive aquatic habitat guidelines when reviewing wastewater discharge applications for new aquaculture facilities or expansion of existing facilities in the coastal zone.

(E) TPWD shall, within 120 days of the date of adoption of this MOU, develop guidelines which list the type of information it needs from permit applicants, in addition to the commission wastewater permit application, in order to make a determination as to whether the proposed discharges will not adversely affect a bay, an estuary, or other water in the state. This additional information will be used during the review of the permit application. The TPWD will develop these guidelines with input from the stakeholders, the commission, and TDA. When the guidelines are finalized by TPWD, the agencies will make them available to stakeholders and applicants, and it is expected that the requested information will routinely be required as part of any wastewater discharge application. It is understood that occasions may arise when information beyond that which is listed in the guidelines may be required by TPWD.

(F) A new exotic species permit will not be issued by TPWD to any aquaculture facility that proposes to discharge wastewater until a commission waste discharge permit or other authorization has been issued or it is determined that the facility is exempted from such requirements.

(G) TDA will provide a copy of each aquaculture license application received to the commission and TPWD. An aquaculture license will not be issued by TDA to any aquaculture facility until a commission waste discharge permit or other authorization has been issued, or it is determined that the facility is exempted from such requirements.

(H) An interagency work group will be formed whose function will be to meet at least annually to address aquaculture issues relating to water quality, fish and wildlife resources, and receiving stream habitat and uses. This work group will serve to strengthen coordination of the commission, TPWD, and TDA activities related to the aquaculture industry and provide a conduit for shared information. The work group shall be composed of members of each agency and staffed at levels which are mutually agreeable as adequate to accomplish the stated goals. Each agency shall designate a primary contact person for this group and notify the other agencies of any changes to the primary contact person.

(I) The executive director and TPWD will coordinate studies related to applications that request authorizations for the discharge and disposal of wastewater. This may include on-site visits, receiving water assessments, sample collection, data analysis and related activities. Notification of these activities will be provided at least five days prior to the activity or as soon as is practicable. TPWD will notify the appropriate commission regional office and the Wastewater Permitting Section. The executive director will notify TPWD Resource Protection Regional Office and headquarters.

(J) The executive director and TPWD will strive to coordinate responses to emergency conditions, investigation of unauthorized waste discharges, and compliance inspections of aquaculture facilities. The executive director and TPWD will provide notice to each other regarding site inspections, so as to allow the other agency to participate if desired. Notifications of scheduled compliance inspections will be provided at least five days before the inspection. Notification of other activities will be provided as soon as practicable. TPWD will notify the commission regional office and the executive director will notify TPWD Resource Protection Regional Office.

(K) The executive director, TPWD, and TDA will strive to provide to each agency, notification of public meetings and public hearings that relate to aquaculture applications.

(L) The executive director and TPWD will continue to develop and provide to applicants, permit conditions and, as appropriate, guidance related to disease, quarantine conditions, and emergency plans.

(e) Application Review Committee.

(1) Purpose.

(A) The application review committee (ARC) will review wastewater discharge authorization applications to ensure that the proposed discharges will not adversely affect a bay, an estuary, or other water in the state.

(B) The commission, TPWD, and TDA recognize the importance of integrating and coordinating among themselves to ensure that this ultimate goal, stated in subparagraph (A) of this paragraph, is achieved.

(C) In order to accomplish this, the ARC will function as a forum for discussion, answering questions and resolving differences, in an attempt to come to consensus regarding the controls needed to meet the ultimate goal.

(D) The ARC shall primarily be used as a means for settling unresolved disputes concerning aquaculture between the agencies.

(2) Membership.

(A) Each agency, the commission, TPWD, and TDA, will appoint one member to the ARC.

(B) Each agency shall appoint an alternate member of the committee.

(C) If a member or alternate is unable to attend a meeting, then that member or alternate will temporarily delegate his or her decision-making authority to other staff of that agency for that meeting only.

(D) At meetings of the ARC, technical specialists representing the agencies may participate in or contribute to the committee's discussions and other activities.

(E) Within two weeks of the adoption of this MOU, each agency will inform the other two agencies of the member and alternates.

(F) An agency may change its member or alternate by providing notice to each of the other members and alternates.

(3) Applicability. The ARC may consider any wastewater discharge application when disputes can not be resolved at the staff level.

(4) Functioning of the ARC.

(A) Meetings.

(i) Meetings will be on an as needed basis.

(ii) Any member of the ARC may request a meeting of the committee to consider one or more discharge applications.

(iii) Any meeting of the ARC to consider a specific discharge permit application should, whenever possible, be requested prior to the public notice of the application and preliminary decision.

(iv) It is the responsibility of the member requesting the meeting to notify all the members and alternates, and to establish a mutually agreeable meeting time and location.

(v) The meeting shall take place within seven calendar days of the request.

(vi) It is the responsibility of the agency requesting the meeting to take minutes of the meeting, to provide the minutes for review and comment of the other parties, and to provide a final version of the minutes which reflects any comments received.

(B) Decision making. The ARC will strive for unanimous consent on all decisions. In the event that unanimous agreement cannot be reached among members of the committee, the matter under consideration may be referred to officials of the agencies for resolution in an expeditious manner. The agencies agree that, while recognizing the areas of expertise and authority of the members, decision- making deliberations will focus on the agencies' mutual purpose of ensuring that the proposed discharge will not adversely affect a bay, an estuary, or other water in the state.

(C) Confidentiality. The ARC supports an open government policy and it is understood and agreed that information subject to public disclosure under the Texas Public Information Act shall be released upon written request.

(f) General conditions.

(1) The term of this MOU shall be from the effective date until termination of this agreement. Any amendment to the MOU shall be made by mutual agreement of the parties and shall be adopted by rule by all parties.

(2) Each party shall adopt the MOU by rule. All amendments shall also be adopted by rule. This MOU, and any subsequent amendment, shall become effective 20 days after the date on which the rule is filed in the Office of the Secretary of State.

(3) By signing this MOU, the signatories acknowledge that they are acting upon proper authority from their governing bodies.

(4) Reservation of rights. Each agency has and reserves the right to take whatever actions necessary to pursue or preserve any legal remedies available to that agency, and nothing in this MOU is intended to waive or foreclose any such right.

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

Filed with the Office of the Secretary of State, on May 24, 2001.

TRD-200102911
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: July 8, 2001
For further information, please call: (512) 463-4075

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §3.101

The Railroad Commission of Texas proposes amendments to §3.101, relating to certification for severance tax exemption or reduction for gas produced from high-cost gas wells. The proposed amendments will incorporate the Texas Legislature's amendment of Texas Tax Code §201.057 (Acts 1999, 76th Leg., ch. 365, §1), extending the available severance tax exemption or reduction to September 1, 2010. Additionally, the proposed amendments will remove the definition of the first day of production from the rule. The determination of the first day of production for the severance tax exemption or reduction for gas produced from high-cost gas wells is made by the Comptroller of Public Accounts of the State of Texas. The deletion of the unnecessary definition in the Commission's rule will avoid potential conflicting or inconsistent definitions of first day of production and will promote administrative and regulatory efficiency by allowing the Comptroller of Public Accounts to revise its definition of first day of production without engaging in a coordinated rulemaking with the Commission.

The Commission simultaneously proposes the review and readoption of §3.101 in accordance with Texas Government Code, §2001.039 (*as added by Acts 1999, 76th Leg., ch. 1499, §1.11(a)*). The agency's reasons for adopting this rule continue to exist. The notice of proposed review will be filed with the *Texas Register* concurrently with this proposal.

Leslie Savage, Planning and Administration, Oil and Gas Division, has determined that for the initial year of the first five years the rule as amended will be in effect and for each year thereafter, there will be no fiscal implications for state government as a result of enforcing or administering the amended rule. The Commission's role in certifying particular gas wells for severance tax exemption or reduction for gas produced from high cost gas wells does not include a determination of the first day of production. The Comptroller of Public Accounts determines the first day of production for purposes of this severance tax exemption or reduction. There will be no effect on local government. There will be no cost of compliance with the proposed amendments for the small business, micro-business, or individual producer.

Mark Helmueller, Hearings Examiner, Oil and Gas Section, Office of General Counsel, has determined that for each year of the first five years that the amended section will be in effect the public benefit will be clarification that the Commission's role in certifying particular gas wells for severance tax exemption or reduction for gas produced from high-cost gas wells does not include a determination of the first day of production. Administrative and regulatory efficiency will also be promoted by eliminating potential conflicting or inconsistent definitions of first day of production between the two agencies. This clarification will also promote administrative efficiency by no longer requiring the Commission to make a determination of first day of production that is not required as part of the Commission's regulatory duties and by allowing the Comptroller of Public Accounts to revise its definition of first day of production without engaging in a coordinated rulemaking with the Commission.

Comments may be submitted to Mark Helmueller, Hearings Examiner, Oil and Gas Section, Office of General Counsel, Railroad Commission of Texas, P. O. Box 12967, Austin, Texas 78711-

2967 or via electronic mail to mark.helmueller@rrc.state.tx.us. Comments will be accepted for 30 days after publication in the *Texas Register* and should refer to the docket number of this rulemaking proceeding: 20-0228137. For further information, call Mr. Helmueller at (512) 463-6802.

The Commission proposes the amendments to §3.101 pursuant to Texas Natural Resources Code, §§81.051 and 81.052, which provide the Commission with jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission.

The Texas Natural Resources Code, §§81.051, 81.052, 85.202, 88.011, 91.101, and Texas Tax Code, §201.057 are affected by the proposed amendment.

Issued in Austin, Texas on May 22, 2001.

§3.101. Certification for Severance Tax Exemption or Reduction for Gas Produced From High-Cost Gas Wells.

(a) (No change.)

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Commission--The Railroad Commission of Texas.

(2) Completion--The act of making a well capable of producing gas from a particular commission designated or new field.

(3) Completion date--The date on which a well is first made capable of producing oil or gas from a particular commission-designated or new field, as shown on the completion report filed by the operator with the commission.

(4) Comptroller--The Comptroller of Public Accounts of the State of Texas.

(5) Data-point well--A well that has been tested and/or produced in the proposed tight gas formation; and, from the test results or other data, applicant provides a measured or calculated in situ permeability and/or a measured or calculated pre-stimulation stabilized flow rate against atmospheric pressure.

(6) Director--The director of the Oil and Gas Division or the director's delegate. Any authority given to the director in this section is also retained by the commission. Any action taken by the director pursuant to this section is subject to review by the commission.

~~[(7) First day of production--The first day of the month following the earlier of the month of the deliverability test as reported on the commission designated form or the production month as indicated on the first production report filed showing a gas disposition code other than "lease or field fuel use" or "vented or flared."]~~

(7) [~~(8)~~] High-cost gas--Natural gas which the commission finds to be:

(A) produced from any gas well, if production is from a completion which is located at a depth of more than 15,000 feet;

(B) produced from geopressured brine;

(C) occluded natural gas produced from coal seams;

(D) produced from Devonian shale; or

(E) produced from designated tight formations or produced as a result of production enhancement work.

(8) [~~(9)~~] Operator--The person responsible for the actual physical operation of a gas well.

(9) [~~(10)~~] Spud date--The date of commencement of drilling operations, as shown on commission records.

(c) Applicability.

(1) (No change.)

(2) A severance tax reduction is available for high-cost gas produced from a well that is spudded or completed after August 31, 1996, and before September 1, 2010 [~~2002~~]. Eligible high-cost gas will be entitled to a reduction of the tax imposed by the Texas Tax Code, Chapter 201, for the first 120 consecutive calendar months beginning on the first day of production or until the cumulative value of the tax reduction equals 50% of the drilling and completion costs incurred for the well, whichever occurs first. The amount of tax reduction is determined pursuant to the Texas Tax Code, [~~Chapter 201, Subchapter B~~] §201.057(c).

(3) - (5) (No change.)

(d) - (h) (No change.)

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

Filed with the Office of the Secretary of State, on May 24, 2001.

TRD-200102914
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: July 8, 2001
For further information, please call: (512) 475-1295

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

DIVISION 1. PLAN OF OPERATION

28 TAC §5.4001

The Texas Department of Insurance (department) proposes amendments to 28 TAC §5.4001, the plan of operation of the Texas Windstorm Insurance Association (association or TWIA). The purpose of the association is to provide windstorm and hail insurance coverage to coastal residents who are unable to obtain such coverage in the voluntary market. In 1993, the Legislature established the catastrophe reserve trust fund to protect the policyholders of the association and to reduce the potential for payments by members of the association that give rise to premium tax credits in the event of a catastrophic loss. The proposed amendments are necessary to update §5.4001 (referred to as the plan of operation or the plan) to conform to amendments to Article 21.49 of the Insurance Code enacted by the 76th Texas Legislature in HB 2253.

In HB 2253, the legislature in its declaration of legislative intent stated that the catastrophe reserve trust fund was formed to shelter the state's general revenue fund from dissipation through the loss of premium taxes in the event of catastrophic hurricane losses and as part of the state's planning and provision for relief from catastrophic hurricane losses. Clearly, the more funds that are on deposit in the catastrophe reserve trust fund, the less likely the need for the association to make assessments which result in a loss of general revenue.

In support of the sound public policy of maintaining and protecting the catastrophe reserve trust fund to prevent losses to the general revenue fund and to provide for payment of catastrophic excess losses, the legislature declared that each year the association is required by Article 21.49 §8(i)(3) to pay the net equity of the association members into the catastrophe reserve trust fund or use the net equity to purchase reinsurance approved by the commissioner. Consistent with the required uses of each year's net equity, the legislature declared that it was the purpose of HB 2253 to further clarify the permitted uses of the assets of the association and the distribution of those assets upon dissolution of the association. HB 2253 amended Article 21.49 §4 to add subsections (c) and (d) which clarify the purposes for which the assets of the association may be used. Subsection (c) states that no part of the net earnings of the association may benefit any private shareholder or individual. Subsection (c) further specifies the purposes for which the assets of the association may be used and they are as follows: (1) satisfy a claim on a policy written by the association, (2) make investments as authorized by law, (3) pay reasonable and necessary administrative expenses including operating and claims processing expenses, and (4) make remittances under the laws of this state to be used by the state to pay claims, purchase reinsurance, and prepare for or mitigate the effects of catastrophic natural events. Subsection (d) establishes that on dissolution of TWIA, all assets of TWIA revert to the state. Article 21.49 §8(i) was amended by HB 2253 to replace the provision authorizing TWIA to enter into a written agreement with the department, with a new provision which states that under rules promulgated by the commissioner the member insurers are required, through the TWIA, to relinquish their net equity by making payments to the trust fund directly. All references to the written agreement were deleted. Accordingly, the trust fund is no longer maintained pursuant to the written agreement between TWIA, the department, and the comptroller. Moreover, these amendments specify that all money deposited in the trust fund is state money to be held by the comptroller outside of the state treasury on behalf of, and with legal title in, the department, until disbursements are made in accordance with §5.9903(c). The amendments to Article 21.49 by HB 2253 are intended to clarify the legislature's original intent, that monies in the trust fund are state funds.

In accordance with the statement of legislative intent and the amendments to Article 21.49 enacted by HB 2253, the department proposes the following amendments to the TWIA plan of operation. It is proposed that subsection (c)(3) of the plan, concerning distributions to the members, be deleted in its entirety. As a result of changes to Article 21.49 by HB 2253 there is no authorization to make distributions of the association's assets to individual member insurers of TWIA. The uses of the association's assets have been clearly defined with the addition of new subsections (c) and (d) to Article 21.49 §4 and none of the specified uses of the association's assets include making distributions to member insurers.

Subsection (c)(4) entitled "Use of funds" has been renumbered as (c)(3), and other references changed as necessary. Proposed subsection (c)(3)(A) of the plan specifies that the assets of the association may be used to pay operating expenses, claims, and reinsurance premiums and that the net equity of the association members must be paid into the trust fund annually. Proposed subsection (c)(3)(B) of the plan specifies that funds are to be disbursed from the trust fund in accordance with §5.9903(c). The proposed amendments to subsection (c)(3)(B) of the plan also specify that funds disbursed from the trust fund may not be distributed to members of the association and that if any funds remain unspent after payment of losses and loss adjustment expenses those funds must be remitted to the comptroller for redeposit in the trust fund. Subsection (c)(3)(B) also proposes to delete the provision concerning reimbursement of members for their payment of amounts reallocated from insolvent insurers' inability to pay because HB 2253 does not authorize the disbursement of association assets to member insurers. Subsections (c)(4)(C), (D), and (G) of the plan are proposed to be deleted, as the amendments made by HB 2253 do not authorize disbursements to members. Subsection (c)(4)(E) of the plan contains two separate provisions: (1) relating to use of association funds for payment of reinsurance premiums and (2) concerning the payment of net equity into the trust fund. For better organization of the subsection, the provision concerning the use of association funds to purchase reinsurance has been proposed as new subsection (c)(3)(A)(i), and the provision concerning the payment of net equity into the trust fund has been proposed as new subsection (c)(3)(A)(ii). Subsection (c)(4)(F) of the plan, concerning the establishment of a reserve fund for catastrophe losses, is no longer necessary because the catastrophe reserve trust fund was established in 1993. Therefore, subsection (c)(4)(F) is proposed to be deleted.

The department will consider the adoption of amendments to §5.4001 in a public hearing under Docket Number 2486, scheduled for 9:30 a.m. on July 17, 2001, in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas.

Marilyn Hamilton, Associate Commissioner, Personal and Commercial Lines Division, has determined that for each year of the first five years the proposed amendments are in effect, there will be no fiscal implications for state government or local government as a result of enforcing or administering the proposed amendments. Ms. Hamilton has also determined that for each year of the first five years the proposed amendments will be in effect, there will be no adverse effect on local employment or the local economy.

Ms. Hamilton has further determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the section will be to protect and maintain the assets of the catastrophe reserve trust fund in order to shelter the state's general revenue fund from dissipation through the loss of premium taxes in the event of catastrophic hurricane losses. Any economic costs to persons (including small businesses and micro-businesses) required to comply with this section are the result of legislative enactment of amendments to Article 21.49 of the Insurance Code and not as a result of the adoption, enforcement, or administration of the proposed amendments. The department does not believe it is legal or feasible to waive the requirements of these rules for any insurers which are small or micro-businesses because the requirements are mandated by legislative enactment.

To be considered, written comments on the proposed amendments must be submitted no later than 5:00 p.m. on July 9, 2001 to Lynda H. Nesenholtz, General Counsel and Chief Clerk, MC 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas, 78714-9104. An additional copy of the comment should be simultaneously submitted to Marilyn Hamilton, Associate Commissioner, Personal and Commercial Lines Division, MC 104-PC, Texas Department of Insurance, P. O. Box 149104, Austin, Texas, 78714-9104.

The amendments are proposed pursuant to the Insurance Code Article 21.49 and §36.001. Article 21.49, §5(c) of the Insurance Code provides that the Commissioner of Insurance by rule shall adopt the TWIA plan of operation with the advice of the TWIA board of directors. Section 5(f) of Article 21.49 provides that any interested person may petition the Commissioner to modify the plan of operation in accordance with the Administrative Procedure Act. Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules for the conduct and execution of the duties and functions of the Texas Department of Insurance only as authorized by statute.

The following statute is affected by this proposal: Insurance Code, Article 21.49

§5.4001. Plan of Operation.

(a)-(b) (No change.)

(c) Financial Operation of the Association.

(1) Collection, investment, and allocation of funds.

(A) (No change.)

(B) Investment. All funds collected by the association which are not otherwise required to be expended as provided in paragraph (3)[~~(4)~~] of this subsection may be retained in a checking account or accounts in any bank or banks doing business in the State of Texas and/or may be invested only in the following:

(i)-(iv) (No change.)

(C) (No change.)

(2) (No change.)

~~[(3) Distributions to the members.]~~

~~[(A) The only distributions to members which may be made on or after May 1, 1985, without the prior approval of the Commissioner are for the recovery of assessments made on or after May 1, 1985, which are not recoverable as a tax credit by the members under the Insurance Code, Article 21.49, §19. Any other distribution shall be for the sole purpose of paragraph (4)(C) or (4)(G) of this subsection and requires the prior approval of the Commissioner. The Commissioner may not unreasonably refuse to approve a request to distribute funds. In making any distribution, the board of directors may offset amounts otherwise due to a member with amounts then due from that member.]~~

~~[(B) If the association obtains a disbursement of funds from the catastrophe reserve trust fund maintained by the Department pursuant to Section 8 (i) of the Act, the funds disbursed to the association may be spent by the association only to pay losses and loss adjustment expenses of policyholders in the event of an occurrence or a series of occurrences within the defined catastrophe area that results in insureds losses and operating expenses of the association greater than $100 million. Funds disbursed from the catastrophe reserve trust fund maintained by the Department may not be distributed to any member of the association for any purpose, and any of these amounts disbursed to the association from the catastrophe reserve trust fund that remain unspent after payment of all losses and loss adjustment expenses arising out of such occurrence or series of occurrences shall be remitted to the Department or to the Treasurer of the State of Texas for deposit in the catastrophe reserve trust fund.]~~

(3) [~~(4)~~] Use of funds.

(A) All monies collected or received by the association [~~on or after May 1, 1985,~~] are required to be expended in the following ways and in the following sequence:

(i) [~~(A)~~] first, to pay the expenses and claims of the association and to pay premiums for reinsurance under any reinsurance program approved by the Commissioner;

(ii) second, to make payment of the net equity of association members on an annual basis, including all premium and other revenue of the association in excess of incurred losses and operating expenses, directly to the comptroller for deposit in the catastrophe reserve trust fund to be held by the comptroller outside the state treasury on behalf of, and with legal title in, the Texas Department of Insurance.

(B) Funds are to be disbursed from the catastrophe reserve trust fund in accordance with §5.9903(c) of this title (relating to Operation of the Trust Fund). Funds disbursed from the catastrophe reserve trust fund may not be distributed to any member of the association for any purpose, and any funds disbursed to the association from the catastrophe reserve trust fund that remain unspent after payment of all losses and loss adjustment expenses arising out of an occurrence or series of occurrences shall be remitted to the comptroller for redeposit in the catastrophe reserve trust fund.

~~[(B) second, to reimburse members for amounts reallocated from insolvent insurers' inability to pay, as provided in paragraph (2)(E) of this subsection, to the extent such amounts are not recoverable as a tax credit under the Insurance Code, Article 21.49;]~~

~~[(C) third, to reimburse members for assessments made on or after May 1, 1985, which are not recoverable as a tax credit by the members under the Insurance Code, Article 21.49;]~~

~~[(D) fourth, to reimburse members for the time value of money for the period of time between the assessment date on or after May 1, 1985, and the distribution date;]~~

~~[(E) fifth, to either pay premiums for reinsurance under a reinsurance program approved by the Commissioner to cover some or all of the claims liabilities of the association, or to make payment of the net equity of a member, including all premium and other revenue of the association in excess of incurred losses and operating expenses, to a catastrophe reserve trust fund to be held by the Texas Department of Insurance;]~~

~~[(F) sixth, to establish a reserve for catastrophe losses;]~~

~~[(G) seventh, as distribution to members of the association after approval by the Commissioner.]~~

(d)-(e) (No change.)

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

Filed with the Office of the Secretary of State, on May 23, 2001.

TRD-200102874

Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: July 8, 2001
For further information, please call: (512) 463-6327

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

CHAPTER 39. PUBLIC NOTICE

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes amendments to §39.105, Application for a Class 1 Modification of an Industrial Solid Waste, Hazardous Waste, or Municipal Solid Waste Permit, and §39.403, Applicability, and proposes new §39.106, Application for Modification of a Municipal Solid Waste Permit or Registration.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

In 1993, the commission adopted §305.70 of this title (relating to Municipal Solid Waste Class I Modifications), which established a process to allow administrative approval of certain changes to municipal solid waste (MSW) permits. The section identified the changes to an MSW facility or operation that qualified for this administrative approval and defined eligible changes as those that are minor, routine in nature, do not substantially alter permit conditions, and maintain or improve environmental protection standards. In addition, the new section was considered a mechanism whereby many facilities would be able to begin compliance with the recently promulgated federal regulations (40 Code of Federal Regulations Part 258 (relating to Criteria for Municipal Solid Waste Landfills)), commonly referred to as "Subtitle D upgrades," which called for stricter operation, design, and management standards for all MSW landfill facilities. Until the modification rule was adopted, changes to permits to incorporate the new standards could only have been made through the more formal and lengthy amendment process. Under the modification rule, the stricter federal standards were able to be implemented more expeditiously.

The rule required mailed notice in accordance with then-existing §305.103(b) of this title (relating to Notice by Mail) to certain persons if the permit modification sought was one that was marked with a superscript "1." Although the superscript notation was discussed in the preambles to the proposed and adopted versions of the rule, the superscript did not appear in the published adopted version of the rule. Therefore, an applicant cannot currently be required to provide the mailed notice described in the rule, and the mailed notice provisions once found in §305.103(b) have been relocated to other commission rules.

Since the urgency of implementing Subtitle D upgrades has long since subsided, the commission on May 19, 2000 decided that the use of the §305.70 permit modification process for Subtitle D upgrades would not continue beyond May 19, 2003, and that such a change to a permit can only be accomplished through a major amendment. Therefore, the commission has initiated this rulemaking to replace the existing §305.70 with a new §305.70 that will rectify the superscript defect, exclude references to obsolete sections, establish a clearer set of mailed notice requirements, identify more specifically the changes which can be made to permits through the modification process, expand the modification process to include changes to MSW facility registrations, and reflect the recent commission decision to not allow Subtitle D upgrades to be implemented through the permit modification process after May 19, 2003. As part of this rulemaking, §39.105 will be amended by transferring and expanding the public notice procedures pertaining to MSW permits into new §39.106, to supplement the public notice requirements of new §305.70. Concurrently, the amendment to §39.403 is being proposed to reflect the change in the title of §39.105 and to reflect the relocation of notice requirements pertaining to MSW facility modifications to the new §39.106.

SECTION BY SECTION DISCUSSION

Presently, §39.105(a) describes the notice requirements for modifications to industrial solid waste or hazardous waste permits as well as for modifications to MSW permits. Section 39.105(b) provides that the text of the required notice shall include the information listed in §39.11 of this title (relating to Text of Public Notice). In the case of industrial solid waste or hazardous waste permits, the text of the required notice shall also include the information identified in §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). Section 39.105(c) provides that if the required notice is notice by mail, that notice shall be provided to persons listed in §39.13 of this title (relating to Mailed Notice).

The proposed amendment to §39.105 will remove all references to modifications to MSW permits, leaving this section to only apply to Class 1 modifications of an industrial solid waste or hazardous waste permit.

The proposed new §39.106 will apply to applications for modification of an MSW permit or registration. Section 39.106(a) provides what information shall be included in the text of a modification notice, and states that the mailed notice shall be provided by the person holding the permit or registration. Section 39.106(b) specifies that when a mailed notice is required by proposed new §305.70 of this title, such notice shall be mailed to the persons listed in §39.413 of this title (relating to Mailed Notice). Section 39.106(c) specifies that notice by publication shall also be provided by a permittee applying for a modification under proposed §305.70(k)(8) (relating to Subtitle D upgrades for landfills). The rule describes criteria for selecting a publisher and explains the requirements for the text of the published notice.

The proposed amendment to §39.403(c)(9) will reflect the change in title of §39.105 which will indicate that notice requirements for applications for modification of MSW permits will no longer be covered under §39.105.

The proposed amendment to §39.403(c)(10) will indicate that notice requirements for applications for modification of MSW permits and registrations will now be covered under new §39.106.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal impacts for approximately 390 local government-owned and -operated MSW facilities that would be affected by the proposed

amendments if they request modifications to permits or registrations that require public notification. The proposed amendments are administrative in nature and do not introduce regulations that would have a fiscal impact on units of state and local government.

The proposed amendments transfer and expand the public notice procedures for MSW facilities into a new section. This new section only provides administrative procedures and required information for sending notices to the public concerning modification applications. The actual regulatory requirements and guidelines for modification applications and required public notices are being proposed in concurrent rulemaking.

Since the proposed amendments are administrative in nature and do not add additional regulatory requirements that have not already been proposed in concurrent rulemaking, the commission estimates there will be no additional costs to the approximately 390 local government-owned and -operated MSW facilities affected by this rulemaking other than the cost to mail notices, which was estimated to be $0.45 per notice as detailed in the concurrent rulemaking.

PUBLIC BENEFIT AND COSTS

Mr. Davis also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendments will be increased public awareness concerning proposed changes to MSW facilities.

The proposed amendments transfer and expand the public notice procedures for changes to MSW facilities into a new section. This new section only provides administrative procedures and required information for sending notices to the public concerning modification applications. The actual regulatory requirements and guidelines for modification applications and required public notices are being proposed in concurrent rulemaking.

Since the proposed amendments are administrative in nature and do not add additional regulatory requirements that have not already been proposed in concurrent rulemaking, the commission estimates there will be no additional costs to the approximately 83 individual and business-owned and -operated MSW facilities affected by this rulemaking other than the cost to mail notices, which was estimated to be $0.45 per notice as detailed in the concurrent rulemaking.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse economic effects are anticipated to the approximately 83 small or micro-business- owned and -operated MSW facilities as a result of the proposed amendments. The proposed amendments transfer and expand the public notice procedures for MSW facilities into a new section. This new section only provides administrative procedures and required information for sending notices to the public concerning modification applications. The actual regulatory requirements and guidelines for modification applications and required public notices are being proposed in concurrent rulemaking.

Since the proposed amendments are administrative in nature and do not add additional regulatory requirements that have not already been proposed in concurrent rulemaking, the commission estimates there will be no additional costs to the approximately 83 individual and business-owned and -operated MSW facilities affected by this rulemaking other than the cost to mail notices, which was estimated to be $0.45 per notice as detailed in the concurrent rulemaking.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to §2001.0225 because it is does not meet the definition of a "major environmental rule" as defined in the act and it does not meet any of the four applicability requirements listed in §2001.0225(a). "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. As for the four applicability requirements, the proposal does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of any delegation agreement or contract between the state, the commission, and an agency or representative of the federal government, nor are the repeal and new rule proposed solely under the general powers of the agency. Additionally, the proposal is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the purpose of the proposal is to clarify the requirements for providing notice when making changes to permits and registrations for MSW facilities. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these proposed rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the proposed amendment and new section is to revise the commission rules to clarify procedures for public participation in the processing of applications for modifications of MSW permits and registrations. The proposal relates to procedures for providing public notice and providing opportunity for public comment. The proposed rules will substantially advance these stated purposes by clarifying and providing specific provisions on the aforementioned matters. Promulgation and enforcement of these rules will not affect private real property which is the subject of the rules because the proposed language consists of amendments and new sections relating to the commission's procedural rules.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the proposed rulemaking and found that the rules are neither identified in Texas Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program, nor will they affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, 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 1997-186-305-WS. Comments must be received by 5:00 p.m., July 9, 2001. For further information, please contact Hector Mendieta, Policy and Regulations Division, at (512) 239-6694.

SUBCHAPTER B. PUBLIC NOTICE OF SOLID WASTE APPLICATIONS

30 TAC §39.105, §39.106

STATUTORY AUTHORITY

The amended section and new section are proposed under Texas Water Code, §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state; Health and Safety Code (HSC), §361.011, which provides the commission all powers necessary and convenient to carry out its responsibilities concerning the regulation and management of municipal solid waste; and HSC, §361.024, which provides the commission authority to adopt and promulgate rules consistent with the general intent and purposes of the Act.

The proposed amendments and new section implement Texas Health and Safety Code, Chapter 361.

§39.105. Application for a Class 1 Modification of an Industrial Solid Waste [,] or Hazardous Waste [, ~~or Municipal Solid Waste~~] Permit.

(a) Notice requirements for Class 1 modifications are in §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee) for industrial solid waste or hazardous waste permits.

[~~(a) Notice requirements for Class I modifications are in:~~]

[~~(1) §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee) for industrial solid waste or hazardous waste permits; or~~]

[~~(2) §305.70 of this title (relating to Municipal Solid Waste Class I Modifications) for municipal solid waste permits.~~]

(b) The text of required notice shall follow the requirements of §39.11 of this title (relating to Text of Public Notice) and [~~. If the application is for modification of an industrial solid waste or hazardous waste permit,~~] the additional requirements in §305.69 of this title [~~apply~~].

(c) When mailed notice is required, the applicant shall mail notice to the persons listed in §39.13 of this title (relating to Mailed Notice).

§39.106. Application for Modification of a Municipal Solid Waste Permit or Registration.

(a) When mailed notice is required by §305.70(k) or (l) of this title (relating to Municipal Solid Waste Permit and Registration Modifications), the mailed notice shall be mailed by the permit or registration holder and the text of the notice shall comply with §39.411(b)(1) - (3), (6), (7), and (12) of this title (relating to Text of Public Notice).

(b) When required by §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications), notice shall be mailed by the permit or registration holder to the persons listed in §39.413 of this title (relating to Mailed Notice).

(c) Notice in a form prescribed by the executive director shall also be published by the permittee requesting a modification under §305.70(k)(8) of this title (relating to upgrades of landfills to meet the standards of Title 40 Code of Federal Regulations Part 258). The permittee shall file an affidavit with the executive director certifying facts that constitute compliance with this requirement. The permittee shall publish notice in a newspaper of the largest general circulation that is published in the county in which the facility is located. If a newspaper is not published in the county, the notice must be published in a newspaper of general circulation in the county in which the facility is located or proposed to be located. The text of the notice by publication shall contain the information listed in subsection (a) of this section and any other information required by the executive director.

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

Filed with the Office of the Secretary of State, on May 24, 2001.

TRD-200102938
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: July 8, 2001
For further information, please call: (512) 239-5017

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SUBCHAPTER H. APPLICABILITY AND GENERAL PROVISIONS

30 TAC §39.403

STATUTORY AUTHORITY

The amended section is proposed under Texas Water Code, §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state; Health and Safety Code (HSC), §361.011, which provides the commission all powers necessary and convenient to carry out its responsibilities concerning the regulation and management of municipal solid waste; and HSC, §361.024, which provides the commission authority to adopt and promulgate rules consistent with the general intent and purposes of the Act.

The proposed amendment implements Texas Health and Safety Code, Chapter 361.

§39.403. Applicability

(a)-(b) (No change.)

(c) Notwithstanding subsection (b) of this section, Subchapters H - M of this chapter do not apply to the following actions and other applications where notice or opportunity for contested case hearings are otherwise not required by law:

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

(9) applications for Class 1 modifications of industrial or hazardous waste permits under §305.69(b) (relating to Solid Waste Permit Modification at the Request of the Permittee). Notice for Class 1 modifications shall comply with the requirements of §39.105 of this title (relating to Application for a Class 1 Modification of an Industrial Solid Waste [,] or Hazardous Waste [~~, or Municipal Solid Waste~~] Permit), without regard to the date of administrative completeness, except that text of notice shall comply with §39.411 of this title (relating to Text of Public Notice) and §305.69(b) of this title;

(10) applications for [~~Class I~~] modifications of municipal solid waste permits and registrations under §305.70 of this title (relating to Municipal Solid Waste Permit and Registration [~~Class I~~] Modifications). Notice for [~~Class I~~] modifications shall comply with the requirements of §39.106 [~~§39.105~~] of this title (relating to Application for Modification of a Municipal Solid Waste Permit or Registration), without regard to the date of administrative completeness [~~, except that text of notice shall comply with §39.411 of this title~~];

(11)-(14) (No change.)

(d)-(e) (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.

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SUBCHAPTER J. PUBLIC NOTICE OF WATER QUALITY APPLICATIONS AND WATER QUALITY MANAGEMENT PLANS

30 TAC §39.551

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §39.551, Application for Wastewater Discharge Permit, Including Application for the Disposal of Sewage Sludge or Water Treatment Sludge.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

This proposed rulemaking would amend Chapter 39 notice requirements for applicants seeking to discharge storm water and certain non-storm water from municipal separate storm sewer systems (MS4s) under an individual Texas Pollutant Discharge Elimination System (TPDES) permit. For new permits or major amendments to individual TPDES MS4 permits, this amendment would add two public posting requirements. The first posting requirement would be to post a copy of the Notice of Receipt of Application and Intent to Obtain a Permit within 30 days of the application being declared administratively complete. The second posting requirement would be to post the Notice of Application and Preliminary Decision on or before the first day of published newspaper notice. Both notices must remain posted until the commission has taken final action on the application; both notices must be posted at a place convenient and readily accessible to the public in the administrative offices of the political subdivision in the county in which the MS4 or discharge is located. These two public posting requirements would replace the direct mail requirement to provide notice to adjacent or downstream landowners of the Notice of Receipt of Application and Intent to Obtain a Permit and the Notice of Application and Preliminary Decision. This proposal would not amend nor otherwise affect other public notification requirements which are still in effect for other types of TPDES permits.

Applicants for new permits or major amendments to individual TPDES MS4 permits must continue to publish in a newspaper regularly published or circulated within each county where the proposed MS4 or discharge is located, and in each county affected by the discharge. Also, notice must still be mailed to a set group of local and state governmental entities by the commission's chief clerk. This group includes the mayor and health authorities of the city or town served by the MS4, the county judge and health authorities in the county served by the MS4, the Texas Department of Health (TDH), the Texas Parks and Wildlife Department (TPWD), and the Railroad Commission of Texas (RRC). The proposed notices posted in a public place combined with the current newspaper notice and mailed notices to local and state governmental entities will provide effective notice to interested persons.

An MS4 is a conveyance or system of conveyances owned or operated by a state, city, town, borough, county, district, association, or other public body (created by or pursuant to state law). The MS4s are designed to collect and convey storm water to designated run-off areas via roads with drainage systems, municipal streets, catch basins, curb gutters, ditches, man-made channels, or storm drains. Because MS4s may include dozens or often hundreds of storm water outfalls, a large segment of the population will be adjacent to or downstream of an MS4 outfall. It could be extremely burdensome, difficult, and expensive for the public entity to identify every person adjacent or downstream to an MS4 outfall and to pay for mailed notice to all of these persons. The costs and burden usually to cities and counties, but ultimately borne by taxpayers, could be excessive without this modification.

On September 14, 1998, the commission received authority from the United States Environmental Protection Agency (EPA) to implement the National Pollutant Discharge Elimination System (NPDES) program for Texas and commenced the TPDES. The TPDES is comprised of many programs to control discharges of pollutants to surface water in Texas. One program of the TPDES regulates storm water discharges from MS4s to water in Texas through individual TPDES permits.

According to the Memorandum of Agreement between the commission and EPA, the NPDES permits issued by the EPA to authorize storm water discharges from large and medium MS4s must be reissued by the commission as TPDES permits as each permit expires. Phase I MS4s are large systems (serving a population greater than 250,000 people) to medium systems (serving a population less than 250,000, but greater than or equal to 100,000), while Phase II MS4s are small systems (serving a population less than 100,000 people). In accordance with Phase II regulations, by December 2002, the commission must also develop and issue TPDES permits for storm water discharges from Phase II small MS4s.

Authorized discharges from MS4s include storm water, certain non-storm water discharges, and previously TPDES permitted wastewater discharges from outfalls contributing to the MS4 system. Non-storm water discharges are described in the *Federal Register* of December 8, 1999 (64 FR 68756) to be the following: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined in 40 Code of Federal Regulations §35.2005(20)), uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air-conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, street wash water and discharges, or flows from fire fighting activities.

SECTION BY SECTION DISCUSSION

New §39.551(b)(2)(C) is proposed to add language that replaces the direct mail requirement for the Notice of Receipt of Application and Intent to Obtain a Permit to adjacent or downstream landowners for a new permit or major amendment to an individual TPDES permit that authorizes discharges from an MS4. This

amendment is proposed in order to make public notice less expensive and burdensome for the MS4 owner/operator; the costs and burden usually to cities and counties, but ultimately borne by taxpayers, could be excessive without this modification. (A public posting requirement in subsection (b)(3) of this section of the Notice of Receipt of Application and Intent to Obtain a Permit would replace the direct mail requirement.)

New §39.551(b)(3) is proposed to require the applicant for a new permit or major amendment to an individual TPDES permit that authorizes discharges from an MS4 to post a copy of the Notice of Receipt of Application and Intent to Obtain a Permit. The notice must be posted within 30 days of the application being declared administratively complete and remain posted until the commission has taken final action on the application. The notice must be posted at a place convenient and readily accessible to the public in the administrative offices of the political subdivision in the county in which the MS4 or discharge is located. This notice will be provided by applicants for a new permit or major amendment to an individual TPDES permit that authorizes discharges from an MS4 to replace the direct mail notice to adjacent or downstream landowners. The purpose of this change is to establish an alternative notice requirement that will continue to provide adequate public notice while reducing the burden on cities and other public entities.

Section 39.551(c) is proposed to be amended to remove an obsolete cross-reference. New §39.551(c)(5)(A) and (B) are proposed to replace the direct mail requirement for the Notice of Application and Preliminary Decision to adjacent or downstream landowners for a new individual TPDES permit for a discharge authorized by an existing state permit issued before September 14, 1998, for which the application does not propose a major amendment. New §39.551(c)(5)(A) and (B) would mirror the existing language in §39.551(b)(2)(A) and (B), which has been the intent and practice of the commission. This amendment is proposed in order to make public notice less expensive and burdensome for the MS4 owner/operator; the costs and burden usually to cities and counties, but ultimately borne by taxpayers, could be excessive without this modification. (A public posting requirement in subsection (c)(6) of this section for the Notice of Application and Preliminary Decision would replace the direct mail requirement.)

New §39.551(c)(5)(C) is proposed to add language that replaces the direct mail requirement for the Notice of Application and Preliminary Decision to adjacent or downstream landowners for a new permit or major amendment to an individual TPDES permit that authorizes discharges from an MS4. This amendment is proposed in order to make public notice less expensive and burdensome for the MS4 owner/operator; the costs and burden usually to cities and counties, but ultimately borne by taxpayers, could be excessive without this modification. (A public posting requirement in subsection (c)(6) of this section for the Notice of Application and Preliminary Decision would replace the direct mail requirement.)

New §39.551(c)(6) is proposed to require the applicant for a new permit or major amendment to an individual TPDES permit that authorizes discharges from an MS4 to post a copy of the Notice of Application and Preliminary Decision. The notice must be posted on or before the first day of published newspaper notice and must remain posted until the commission has taken final action on the application. The notice must be posted at a place convenient and readily accessible to the public in the administrative offices of the political subdivision in the county in which the MS4 or discharge is located. This notice will be provided by applicants for a new permit or a major amendment to an individual TPDES permit that authorizes discharges from an MS4 to replace the direct mail notice to adjacent or downstream landowners. The purpose of this change is to establish an alternative notice requirement that will continue to provide adequate public notice while reducing the burden on cities and other public entities.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined for the first five-year period the proposed amendment is in effect, there may be positive fiscal impacts which are not anticipated to be significant to certain state agencies, universities, and units of local government due to less burdensome public notice requirements for the Phase I and Phase II MS4s that amend or apply for an individual TPDES permit.

The commission received authority from the EPA to issue TPDES permits on September 14, 1998. The TPDES program is comprised of many components to control discharges of pollutants to surface water in Texas. One component of the TPDES program regulates storm water discharges from MS4s to water in Texas through TPDES permits.

There are 22 Phase I MS4 systems that have been issued NPDES permits in the following cities and other public entities: Corpus Christi, San Antonio, Fort Worth, Garland, Dallas, Pasadena, Dallas-Texas Department of Transportation (TxDOT), El Paso, Laredo, Amarillo, Beaumont-TxDOT, Beaumont, Arlington, Houston-Harris County, Abilene, Austin-TxDOT, Austin, Irving, Lubbock, Mesquite, Plano, and Waco. These permits will be reissued as TPDES permits as they each expire. The first of these permits expired on May 31, 2000, and the last of these permits will expire in 2003. Additionally, there are approximately 285 smaller Phase II MS4s that serve populations of less than 100,000 people that the commission must authorize by December 2002 in accordance with federal rules.

Phase I MS4 systems are large systems (serving a population greater than 250,000 people) to medium systems (serving a population less than 250,000, but greater than or equal to 100,000), while Phase II MS4 systems are small systems (serving a population less than 100,000 people). The MS4s are a conveyance or system of conveyances owned or operated by a state, city, town, borough, county, district, association, or other public body (created by or pursuant to state law). The MS4s are designed to collect and convey storm water to designated run-off areas via roads with drainage systems, municipal streets, catch basins, curb gutters, ditches, man-made channels, or storm drains.

The proposed amendment would not affect the current notice requirements to publish notices in local newspapers nor affect the current notice requirements to send notices to local and state governmental entities via the commission's chief clerk, including the mayor and health authorities of the city or town served by the MS4 systems, the county judge and health authorities in the county served by the MS4 system, the TDH, the TPWD, and the RRC. The proposed amendment is intended to implement less burdensome public notification requirements for applicants seeking authorization to amend or apply for an individual TPDES MS4 permit while also providing an alternative method of adequate public notice.

The proposed amendment would add two public posting requirements. The first posting requirement would require the applicant to post a copy of the Notice of Receipt of Application and Intent to Obtain a Permit within 30 days of the application being declared administratively complete. The second posting requirement would require the applicant to post a copy of the Notice of Application and Preliminary Decision on or before the first day of published newspaper notice. Both notices must remain posted until the commission has taken final action on the application; both notices must be posted at a place convenient and readily accessible to the public in the administrative offices of the political subdivision in the county in which the MS4 or discharge is located. The commission does not anticipate significant fiscal implications for units of state and local government due to the posting requirements. There may be potential fiscal benefits from the proposed amended public mailing requirements. The commission estimates it would cost a medium to large Phase I MS4 system approximately $27,000 to more than $67,500, depending on the number of notices required to be mailed (minimum of 100,000 for a medium Phase I MS4 system and at least 250,000 for a large Phase I MS4 system). The commission also estimates it would cost a small Phase II MS4 system (serving 50,000 people) approximately $13,500 to mail required notices. The proposed amendment would decrease the required number of mailed notices, resulting in a cost savings for the owners/operators. Because notices will continue to be mailed to local authorities and published in local newspapers, the required information concerning the application status of MS4 systems serving particular areas would continue to be made available to the public, and there will be new requirements for the Notice of Receipt of Application and Intent to Obtain a Permit and the Notice of Application and Preliminary Decision to be posted in a public place.

PUBLIC BENEFIT AND COSTS

Mr. Davis also determined for each year of the first five years the proposed amendment is in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendment will be reduced costs for units of state and local government.

By definition, Phase I and II MS4 systems are publicly owned and operated; therefore, the commission estimates there will be no fiscal implications for individuals and businesses as a result of implementing the proposed amendment.

Because notices will continue to be mailed to local authorities and published in local newspapers, the required information concerning the application status of MS4 systems serving particular areas would continue to be made available to the public, and there will be new requirements for the Notice of Receipt of Application and Intent to Obtain a Permit and the Notice of Application and Preliminary Decision to be posted in a public place.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

By definition, Phase I and II MS4 systems are publicly owned and operated; therefore, the commission estimates there will be no adverse fiscal implications for small or micro-businesses as a result of implementing the proposed amendment.

Because notices will continue to be mailed to local authorities and published in local newspapers, the required information concerning the application status of MS4 systems serving particular areas would continue to be made available to the public, and there will be new requirements for the Notice of Receipt of Application and Intent to Obtain a Permit and the Notice of Application and Preliminary Decision to be posted in a public place.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule." "Major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This rulemaking is intended to implement less burdensome public notification requirements for applicants seeking authorization to amend or apply for an individual TPDES MS4 permit while also providing an alternative method of adequate public notice. Therefore, the rulemaking does not meet the definition of "major environmental rule" because the rulemaking is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission conducted a takings impact assessment for this rule under Texas Government Code, §2007.043. This rulemaking is procedural in nature and does not provide the commission with any additional authority or jurisdictional responsibility related to MS4s. This rulemaking is intended to implement less burdensome public notification requirements for applicants seeking authorization to amend or apply for an individual TPDES MS4 permit while also providing an alternative method of adequate public notice. Therefore, the rulemaking will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act (CCA) Implementation Rules, 31 Texas Administrative Code (TAC) §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program (CMP) or will affect an action/authorization identified in the CCA Implementation Rules, 31 TAC §505.11(a)(6), and will, therefore, require that applicable goals and policies of the CMP be considered during the rulemaking process.

The commission prepared a preliminary consistency determination for the proposed rulemaking pursuant to 31 TAC §505.22, and found the proposed rulemaking is consistent with the applicable CMP goals and policies. The goals of the CMP, in 31 TAC §501.12, applicable to the rulemaking are to: protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas; to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone; to ensure and enhance planned public access to and enjoyment of the coastal zone in a manner that is compatible with private property rights and other uses of the coastal zone; and to balance these competing interests. The policy of the CMP applicable to the proposed rulemaking is §501.14(f)(1)(A), which requires the commission rules to comply with the Clean Water Act.

Promulgation and enforcement of the proposed rules will not violate (exceed) any standards identified in the applicable CMP goals and policies because the change proposed by the rulemaking is procedural in nature and will not have direct or significant adverse effect on any coastal natural resource areas, nor will the rulemaking have a substantive effect on commission actions subject to the CMP.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on June 25, 2001 at 10:00 a.m., in Building F, Room 3202A, at the commission's central office located at 12100 Park 35 Circle. 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 be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, 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 2000-040-039-AD. Comments must be received by 5:00 p.m., July 9, 2001. For further information or questions concerning this proposal, please contact Debi Dyer, Policy and Regulations Division, at (512) 239-3972.

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.012, which states that the commission is the agency responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment; §5.013, which establishes the commission's authority over various statutory programs; §5.103 and §5.105, which establish the commission's general authority to adopt rules; §5.551, which establishes that the commission shall by rule provide for notice to the extent necessary to satisfy the EPA requirements; §26.011, which states the commission has the powers and duties prescribed in Chapter 26 and all other powers necessary or convenient to carry out its responsibilities to adopt reasonable rules or orders adopted or issued by the commission to regulate discharges under Chapter 26; and Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice.

The proposed amendment implements TWC, §5.551 and Texas Government Code, §2001.004.

§39.551. Application for Wastewater Discharge Permit, Including Application for the Disposal of Sewage Sludge or Water Treatment Sludge.

(a) (No change.)

(b) Notice of receipt of application and intent to obtain permit.

(1) (No change.)

(2) Mailed notice to adjacent or downstream landowners is not required for:

(A) an application to renew a permit; [~~or~~]

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

(C) an application for a new permit or major amendment to a TPDES permit that authorizes the discharges from a municipal separate storm sewer system.

(3) For permits listed in subsection (b)(2)(C) of this section, the executive director will require the applicant to post a copy of the notice of receipt of application and intent to obtain a permit. The notice must be posted within 30 days of the application being declared administratively complete and remain posted until the commission has taken final action on the application. The notice must be posted at a place convenient and readily accessible to the public in the administrative offices of the political subdivision in the county in which the MS4 or discharge is located.

(c) Notice of application and preliminary decision. Notice under §39.419 of this title (relating to Notice of Application and Preliminary Decision) is required to be published after the chief clerk has mailed the preliminary decision and the Notice of Application and Preliminary Decision to the applicant. This notice must contain the text [~~as~~] required by §39.411(b)(1) - (3), (5) - (7), (9), and (12), and (c)(2) - (6). In addition to §39.419 of this title, for all applications except applications to renew permits [~~and those in subsection (c)(1) of this section~~], the following provisions apply.

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

(5) Mailed notice to adjacent or downstream landowners is not required for:

(A) an application to renew a permit;

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

(C) an application for a new permit or major amendment to a TPDES permit that authorizes the discharges from a municipal separate storm sewer system.

(6) For permits listed in subsection (c)(5)(C) of this section, the executive director will require the applicant to post a copy of the notice of application and preliminary decision. The notice must be posted on or before the first day of published newspaper notice and must remain posted until the commission has taken final action on the application. The notice must be posted at a place convenient and readily accessible to the public in the administrative offices of the political subdivision in the county in which the MS4 or discharge is located.

(d) - (g) (No change.)

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

Filed with the Office of the Secretary of State, on May 24, 2001.

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: July 8, 2001
For further information, please call: (512) 239-6087

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CHAPTER 115. CONTROL OF AIR POLLUTION FROM VOLATILE ORGANIC COMPOUNDS

The Texas Natural Resource Conservation Commission (commission) proposes amendments to Subchapter B, General Volatile Organic Compound Sources, §115.142; Subchapter D, Petroleum Refining, Natural Gas Processing, and Petrochemical Processes, §§115.322, 115.323, 115.325, 115.327, and 115.329; Subchapter E, Solvent-Using Processes, §§115.412, 115.413, 115.415 -115.417, 115.419, 115.423, 115.426, 115.427, 115.432, 115.433, 115.435, 115.436, 115.439, and 115.442; and Subchapter F, Miscellaneous Industrial Sources, §§115.512, 115.517, and 115.519. These sections will be submitted to the United States Environmental Protection Agency (EPA) as proposed revisions to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The commission proposes these amendments to Chapter 115, Control of Air Pollution from Volatile Organic Compounds (VOC), and revisions to the SIP in order to make a variety of changes which clarify and add flexibility to existing requirements, correct technical and typographical errors, update references to terms, and delete redundant language and language made obsolete by the passing of compliance dates. The proposed clarifications are consistent with rule interpretations made by the commission's Air Rule Interpretation Team. The amendments also add a minor recordkeeping requirement necessary to determine compliance with an exemption.

SECTION BY SECTION DISCUSSION

Throughout this rulemaking the outdated term "undesignated head" is proposed to be replaced with the proper term "division" in response to revised *Texas Register* rules published in the February 13, 1998 issue of the *Texas Register* (23 TexReg 1289). Also throughout the rulemaking, the term "Centigrade" is proposed to be replaced with the term "Celsius" which is now the term commonly used to describe this temperature scale. Justification for these changes will not be discussed any further in this discussion other than to point out where each change has been made.

Subchapter B, General Volatile Organic Compound Sources

Division 4, Industrial Wastewater

The proposed amendment to §115.142(2), Control Requirements, would clarify that the secondary seal requirements of §115.142(2)(F) should only apply to external floating roof tanks. A misplaced phrase in the current rule makes the paragraph appear to apply to both internal and external floating roof tanks.

Subchapter D, Petroleum Refining, Natural Gas Processing, and Petrochemical Processes

Division 2, Fugitive Emissions Control in Petroleum Refineries in Gregg, Nueces, and Victoria Counties

The proposed amendment to §115.322(1), Control Requirements, would provide the correct reference to the definition of the term "leak." The current rule language states that the definition of the term "leak" can be found in §115.10, Definitions. However, the term "leak" is no longer defined in §115.10 as the result of a previous rulemaking to remove redundant definitions because numerous terms found in §115.10 were already defined in §101.1, Definitions. The term "leak" was one of the definitions removed.

The proposed amendment to §115.323(1), Alternate Control Requirements, would replace the term "undesignated head" with "division."

The proposed amendment to §115.325, Testing Requirements, would replace the term "undesignated head" with "division" and the complete title of the division would be added to the reference statement.

The proposed amendment to §115.327, Exemptions, would replace the term "undesignated head" with "division." In §115.327(1), the complete title of the division would be added to the reference statement. In §115.327(2) and (4), the reference to the division title is deleted because it is only needed the first time the division is referenced within a section. In §115.327(3), a typographical correction would be made to correct the spelling of the term "Fahrenheit," and the term "Centigrade" would be changed to "Celsius."

The proposed amendment to §115.329, Counties and Compliance Schedules, would add clarifying language and replace the term "undesignated head" with "division" and the complete title of the division would be added to the reference statement.

Subchapter E, Solvent-Using Processes

Division 1, Degreasing Processes

The title of this division is proposed to be changed from "Degreasing and Cleanup Processes" to "Degreasing Processes" to more accurately reflect the content of the division.

The proposed amendment to §115.412, Control Requirements, would incorporate the control requirements for Gregg, Nueces, and Victoria Counties into the current subsection (a) by deleting all of subsection (b), which currently contains the control requirements for these three counties, and specifying Gregg, Nueces, and Victoria Counties in the first subsection, which would become an undesignated subsection. These changes are proposed to remove identical, redundant control requirements in the current subsection (b) to make the rule briefer and easier to read. Also to improve readability, a catch line would be added to each paragraph that identifies the topics being covered. The term "solvent" would be inserted in §115.412(1) and the term "degreasing" would replace "cleaning" in §115.412(2) so that the terms used in this chapter are consistent with the definitions in §101.1, Definitions. The term "Centigrade" would be replaced with "Celsius" in §115.412(1)(A)(i). The proposed amendments to §115.412(1)(E) and (2)(D)(i) would clarify how the freeboard ratio should be determined for cold solvent cleaning or open-top vapor degreasing units which have an upper portion which is narrower than the air/solvent or the air/vapor level or if the cover of a degreaser is hinged such that the opening is narrower than the overall width of a degreaser. The freeboard primarily serves to reduce drafts near the air/solvent or air/vapor interface. Having a narrower top would help to reduce the drafts near the air/solvent

or air/vapor interface, thereby reducing the amount of solvent being evaporated. The freeboard ratio should be determined by dividing the freeboard height by the smallest interior dimension (i.e., length, width, or diameter). The smallest interior dimension could be located at any point, from the top or opening of the unit to the air/solvent or air/vapor level. This change is consistent with air rule interpretation Number R5-412.001. Section 115.412(2)(E) would be revised to correctly reference the proper subparagraph. The acronym "OSHA" would be added after the phrase "Occupational Safety and Health Administration" in §115.412(2)(F)(xii) and replace the term "Occupational Safety and Health Administration" in §115.412(3)(I)(i).

The proposed amendments to §115.413, Alternate Control Requirements, would incorporate the alternate control requirements for Gregg, Nueces, and Victoria Counties into the current subsection (a)by deleting all of subsection (b), which currently contains the alternate control requirements for these three counties, and specifying Gregg, Nueces, and Victoria Counties in the first subsection, which would become an undesignated subsection. These changes are proposed to remove identical, redundant alternate control requirements in the current subsection (b) to make the rule briefer and easier to read. The proposed amendments would also reformat current subsection (a) by rephrasing the first portion of the text to clearly indicate the subject of the paragraphs to follow (alternate control requirements for degreasing processes), by moving the second portion of the text into a new paragraph (1), and by renumbering the existing paragraphs accordingly. These changes improve readability and are necessary to make the formatting of this rule consistent with that used in the corresponding §115.423, Alternate Control Requirements. The term "executive director" would be lower-cased for consistency with other divisions. An incorrect reference to the "section" (which should have been "undesignated head) would be corrected to reference the "division." Also, cross-references throughout this section would be revised to reflect reformatting and renumbering changes proposed in other sections.

The proposed amendments to §115.415, Testing Requirements, would rephrase the current subsection (a) to more clearly indicate the subject (testing requirements for degreasing processes) of the paragraphs to follow. The proposed revisions would also incorporate the testing requirements for Gregg, Nueces, and Victoria Counties into the current subsection (a) by deleting all of subsection (b), which currently contains the testing requirements for these three counties, and specifying Gregg, Nueces, and Victoria Counties in the first subsection, which would become an undesignated subsection. These changes are proposed to remove identical, redundant testing requirements in the current subsection (b) to make the rule briefer and easier read. Cross-references throughout this section would be revised to reflect reformatting and renumbering changes proposed in other sections. The proposed amendments to §115.415 would also add a new paragraph (3), which authorizes the use of test methods other than those specifically listed in §115.415(1) or (2), provided that any new test method is validated using the procedures in 40 Code of Federal Regulations (CFR) 63, Appendix A, Test Method 301, with the executive director acting as the administrator. The proposed new language has previously been added to five other divisions within Chapter 115 with the EPA's approval. This revision is necessary because in some specific unique situations the listed test methods may be inappropriate. The new paragraph increases flexibility by allowing the use of additional test methods which may be more cost-effective and more appropriate in certain unique situations.

The proposed amendments to §115.416, Recordkeeping Requirements, would revise the sentence structure and replace the phrase "any open-top vapor or conveyorized degreasing operation" with the phrase "degreasing process" in the current subsection (a) for clarity and consistency with other sections in this division. The revisions would also incorporate the recordkeeping requirements for Gregg, Nueces, and Victoria Counties into the current subsection (a) by deleting all of subsection (b), which currently contains the recordkeeping requirements for these three counties, and specifying Gregg, Nueces, and Victoria Counties in the first subsection, which would become an undesignated subsection. These changes are proposed to remove identical, redundant recordkeeping requirements in the current subsection (b) to make the rule briefer and easier to read. The proposed revision would also replace the phrase "Texas Natural Resource Conservation Commission (TNRCC)" with the administratively correct term "executive director" and the acronym "EPA" would replace the phrase "United States Environmental Protection Agency (EPA)." A cross-reference would be revised to reflect a reformatting and renumbering change proposed for the referenced section. A new paragraph (3) would add a recordkeeping requirement for degreasing operations in Gregg, Nueces, and Victoria Counties which are exempt under current §115.417(b)(3), proposed to become §115.417(5). The recordkeeping requirement is needed to determine compliance with the exemption. The requirement simply states that the operator must keep records in sufficient detail to document compliance with the exemption cutoff limit of 550 pounds of VOC emissions in any consecutive 24- hour period and is necessary to provide enforceability of the exemption. Please note that "any consecutive 24-hour period" is considered a rolling 24-hour period, rather than midnight of one calendar day to midnight of the next calendar day.

The proposed amendments to §115.417, Exemptions, would incorporate the exemptions for Gregg, Nueces, and Victoria Counties into the current subsection (a) by deleting all of subsection (b), which currently contains the exemptions for these three counties, and specifying Gregg, Nueces, and Victoria Counties in the first subsection, which would become an undesignated subsection. The size exemption for Gregg, Nueces, and Victoria Counties that is currently located in §115.417(b)(3) is still applicable; therefore, the content of this paragraph is proposed to become a new paragraph (5). These changes are proposed to remove identical, redundant exemptions in the current subsection (b) to make the rule briefer and easier to read. Cross-references throughout this section would be revised to reflect reformatting and renumbering changes proposed in other sections. The current §115.417(a)(2), proposed to become §115.417(2), would be restructured and reformatted to include two subparagraphs so that remote reservoir cold solvent cleaners can be specified as exempt from the freeboard and water cover requirements of §115.412(1)(E). Even though remote reservoirs are a subset of cold solvent cleaners (because they use liquid solvent to remove soils from part surfaces while maintaining the solvent below its boiling point) the two pieces of equipment do not operate in the same way because their designs are different. For a remote reservoir, the liquid solvent is pumped to a sink-like work area that drains solvent back into an enclosed container while parts are being cleaned, allowing no solvent to pool around the parts. For a cold solvent cleaner, the solvent does pool around the parts and therefore, a freeboard or water cover is necessary.

The purpose of the freeboard is to ensure that when parts are placed into the solvent pool, there is enough empty air space between the solvent level and the top of the tank to minimize solvent drag out when an air stream passes over the open reservoir as well as to prevent solvent overflow when parts are placed in the pool, thus decreasing air emissions. Also, for the cold solvent cleaning system exemption in the proposed §115.417(2)(A), the "or if" statement would be changed to a "provided that" statement. This is necessary so the exemption will be consistent with the EPA's guidelines concerning the control of VOC emissions from solvent metal cleaning. The rule language in the current §115.417(a)(2) would inadvertently allow a high vapor pressure solvent to be exempt from the requirements of §115.412(1)(E) as long as the solvent was not heated above 120 degrees Fahrenheit. This was never the intent of the EPA's guidelines nor was it the intent of the commission.

The proposed amendment to §115.419, Counties and Compliance Schedules, would add clarifying language and replace the term "undesignated head" with the term "division."

Subchapter E, Division 2, Surface Coating Processes

The proposed amendments to §115.423, Alternate Control Requirements, would clarify the requirements for when a vapor control system is used to control emissions from coating operations. Specifically, current §115.423(3) would be reformatted into two paragraphs to add an equation specifying how to determine the minimum overall control efficiency necessary to demonstrate equivalency with the emission limitations of §115.421 when a vapor control system is used to control emissions from coating operations. The owner or operator can choose to use either a daily weighted average or the maximum VOC content in the equation. Use of the maximum VOC content (i.e., the worst-case scenario) has the advantage of being a one-time calculation. The phrase "of any surface coating facility" would be deleted from proposed paragraph (3)(B) because it is redundant.

The proposed amendments to §115.426, Monitoring and Recordkeeping Requirements, would clarify that records of non-exempt solvent washings are not required if an owner or operator using non-exempt solvents for washing directs the non-exempt solvent into a container that prevents evaporation into the atmosphere. This change is consistent with air rule interpretation Number R5- 412.005.

The proposed amendments to §115.427, Exemptions, would delete a portion of §115.427(a)(3)(C) that explains that coatings which are not subject to a standard in §115.421(a)(1) - (15) are not included in the exemption calculation and move it to §115.427(a)(3) so it is clear that this statement applies to all of the exemptions listed under this paragraph. The same clarifying statement would also be added to §115.427(b)(1). The phrase "volatile organic compound (VOC)" would be replaced by the acronym "VOC."

The proposed amendments would also relocate the exemption for aerosol coating (spray paint) by deleting the current §115.427(a)(3)(J) and placing this exemption in a proposed new §115.427(a)(6). This revision is necessary because this exemption was intended to apply to all surface coating operations (see the April 3, 1998 issue of the *Texas Register* (23 TexReg 3505)); however, the current location of this exemption inadvertently excludes vehicle refinishing (body shops). The current §115.427(a)(3)(K) would be renumbered to become a new §115.427(a)(3)(J) as a result of the proposed deletion of the current §115.427(a)(3)(J).

Revisions are proposed for current §115.427(a)(3)(K), proposed to be renumbered as §115.427(a)(3)(J), because the current rule language does not state from what requirements the aerospace vehicles cleaning and coating activities are exempt. The subparagraph was added to the Surface Coating Processes Division effective July 20, 2000, as published in the July 14, 2000 issue of the *Texas Register* (25 TexReg 6752). The EPA's Control of Volatile Organic Compound Emissions from Coating Operations at Aerospace Manufacturing and Rework Operations (aerospace CTG) was the basis for the July 20, 2000 rule revision. The adopted rule language was based on rule language provided in the Aerospace Manufacturing and Rework Operations Model Rule, found in Appendix B of the aerospace CTG. In the aerospace CTG's model rule it stated: "this rule does not apply to the following activities where cleaning and coating of aerospace components and vehicles may take place: research and development, quality control, laboratory testing, and electronic parts and assemblies (except for cleaning and coating of completed assemblies)." From this statement, it is clear that the intent was for the surface coating requirements not to apply to the activities outlined above; therefore, the clarifying phrase "are exempt from this division" would be added to the subparagraph.

The proposed amendment to §115.427(b)(2)(C) and the deletion of §115.427(b)(2)(D) is necessary to make the format of the rule language in §115.427(b) consistent with that in §115.427(a). On April 7, 1998, the commission adopted rule language that updated the terminology in the existing miscellaneous metal parts/products exemption from "fully assembled marine vessels and fixed offshore structures" to "ships and offshore oil or gas drilling platforms" for consistency with the new requirements for surface coating of ships and offshore oil and gas drilling platforms. The term "and" would be added to §115.427(b)(2)(B) because §115.427(b)(2)(C) is now the last subparagraph in the paragraph.

Subchapter E, Division 3, Flexographic and Rotogravure Printing

The proposed amendments to §115.432, Control Requirements, would change the term "standard exemption" to "permit by rule" throughout the section due to the requirements of Senate Bill 766, 76th Legislature, 1999, which amended the Texas Clean Air Act (TCAA) and created "permits by rule." The phrase "carbon adsorption or incineration system" would be replaced with the more general term "vapor control system" in §115.432(a)(1)(C) and (b)(3) because control systems used to reduce VOC emissions may encompass more than just carbon adsorption or incineration systems. In §115.432(a)(2), the phrase "no more than" would replace "at or below" and "to" would replace "and" for clarification. A reference to Chapter 106, relating to Permits by Rule, would be added in §115.432(a)(2)(A) because it is the chapter that contains the permits by rule discussed in the section. In §115.432(a)(2)(B), the administratively correct term "executive director" would replace the phrase "Texas Natural Resource Conservation Commission" and the language would be corrected to include authorizations by permit amendment and standard permit, instead of just permit and permit by rule.

The proposed amendments to §115.433, Alternate Control Requirements, would make administrative corrections to replace the term "section" (which should have been "undesignated head") with "division" and lower-case the term "executive director."

The proposed amendments to §115.435, Testing Requirements, would change references from "carbon adsorber" to "carbon adsorption system" for clarification. The term and acronym, Texas Air Control Board (TACB), would be replaced with the administratively correct term "executive director." The acronyms "CFR," "EPA," and "VOC" would be added as needed throughout the section to replace the terms "Code of Federal Regulations," "United States Environmental Protection Agency (EPA)," and "volatile organic compound," respectively. In addition, the phrase "of the 30-day period" would be added to §115.435(a)(7)(A)(ii)(I) to clarify that "daily" refers to each 24-hour period of the 30-day period.

The proposed amendments to §115.436, Monitoring and Recordkeeping Requirements, would replace "Texas Air Control Board" and its acronym TACB with the administratively correct term "executive director," and "United States Environmental Protection Agency (EPA)" would be replaced with just the acronym.

The proposed amendments to §115.439, Counties and Compliance Schedules, would delete subsections (a) - (d) because the language is obsolete due to the passing of a July 31, 1993 compliance date and add new language in an undesignated subsection stating that all affected persons in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Gregg, Hardin, Harris, Jefferson, Liberty, Montgomery, Nueces, Orange, Tarrant, Victoria, and Waller Counties shall continue to comply with applicable sections of this division (relating to Flexographic and Rotogravure Printing) as required by §115.930 (relating to Compliance Dates).

Subchapter E, Division 4, Offset Lithographic Printing

The proposed amendments to §115.442(1)(E), Control Requirements, would replace "this regulation" with "the fountain solution limitations of this paragraph" for clarification.

Subchapter F, Miscellaneous Industrial Sources

Division 1, Cutback Asphalt

The proposed amendments to §115.512, Control Requirements, would add the word "by" to further clarify that §115.512(1) only applies to state, municipal, and county agencies.

The proposed amendments to §115.517, Exemptions, would correct a cross-reference from §115.512(3) to §115.512(2) needed as the result of the renumbering of §115.512 effective August 18, 1999.

The proposed amendments to §115.519, Counties and Compliance Schedules, would delete subsections (a) and (b) because the language is obsolete due to the passing of December 31, 1992, and April 16, 1993, compliance dates and add new language stating that all affected persons in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Nueces, Orange, Tarrant, and Waller Counties shall continue to comply with applicable sections of this division (relating to Cutback Asphalt) as required by §115.930 (relating to Compliance Dates).

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined for each year of the first five-year period the proposed rules are in effect, there will be no significant fiscal implications to units of state or local government as a result of implementation of the proposed rules. The proposed rules are estimated to cost units of state and local government located in Gregg, Nueces, and Victoria Counties up to $500 per year to comply with new recordkeeping requirements for certain degreasing operations.

The proposed amendments to the commission's VOC rules are intended to clarify and add flexibility to existing requirements, correct rule errors, updated references to a variety of terms, delete redundant and obsolete rule language, and add a recordkeeping requirement for degreasing operations in Gregg, Nueces, and Victoria Counties. The commission estimates that there will be fiscal implications, which are not anticipated to be significant, to certain units of state and local government due to implementation of the recordkeeping requirements of this proposal. The remaining provisions are procedural in nature and are not expected to result in additional fiscal implications for units of state and local government.

The proposed recordkeeping requirements will require owners and operators of degreasing operations located in Gregg, Nueces, and Victoria Counties that are exempt from VOC control requirements to keep records to document compliance with the exemption limit of 550 pounds of VOC emissions in any consecutive 24-hour period. Examples of facilities and operations affected include cold solvent cleaners, vapor degreasers, and conveyorized units at local vehicle repair shops, oil and lube shops, welding shops, maintenance shops at schools or hospitals, machine shops, refineries, and chemical plants. Facilities that conduct any type of maintenance on moving parts will likely be using some type of degreaser and may be required to maintain compliance records.

The commission estimates that approximately ten facilities owned and operated by units of state and local government would be required to maintain compliance records due to implementation of the proposed rules. The cost to comply with the recordkeeping requirements of this proposal is estimated not to exceed $500 a year. Included in the compliance cost is the purchase of filing space and administrative supplies, printing of records, and the initial training of persons responsible for maintaining the records.

The total costs to units of local government in Gregg, Nueces, and Victoria Counties to comply with this proposal is estimated not to exceed approximately $5,000 a year.

PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from enforcement of and compliance with the proposed rules would be increased compliance with air emission standards due to rules that are more clear and understandable and more extensive record retention requirements.

The proposed recordkeeping requirements will require owners and operators of degreasing operations in Gregg, Nueces, and Victoria Counties that are exempt from VOC control requirements to keep records to document compliance with the exemption limit of 550 pounds of VOC emissions in any consecutive 24-hour period. Examples of facilities and operations affected include cold solvent cleaners, vapor degreasers, and conveyorized units at local vehicle repair shops, oil and lube shops, welding shops, maintenance shops at schools or hospitals, machine shops, refineries, and chemical plants. Facilities that conduct any type of maintenance on moving parts will likely be using some type of degreaser and may be required to maintain compliance records.

The commission estimates that approximately 30 privately-owned and operated facilities would be required to maintain compliance records due to implementation of the proposed rules. The cost for a facility to comply with the recordkeeping requirements of this proposal is estimated not to exceed $500 a year. Included in the compliance cost is the purchase of filing space and administrative supplies, printing of records, and the initial training of persons responsible for maintaining the records.

The total costs to privately owned and operated businesses in Gregg, Nueces, and Victoria Counties to comply with this proposal is estimated not to exceed approximately $15,000 a year.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be adverse fiscal implications, which are not anticipated to be significant, for approximately 30 small or micro-businesses as a result of implementation of the proposed rules. These changes require owners of degreasing operations in Gregg, Nueces, and Victoria Counties that are exempt from VOC control requirements to keep records to document compliance with the exemption limit of 550 pounds of VOC emissions in any consecutive 24-hour period.

Examples of facilities and operations affected include cold solvent cleaners, vapor degreasers, and conveyorized units at local vehicle repair shops, oil and lube shops, welding shops, maintenance shops at schools or hospitals, machine shops, refineries, and chemical plants. Facilities that conduct any type of maintenance on moving parts will likely be using some type of degreaser and may be required to maintain compliance records.

The commission estimates that the majority of the 30 degreasing operations required to implement the new recordkeeping requirements are small or micro-businesses. The overall cost to comply with the recordkeeping requirements is estimated not to exceed $500 a year. Included in the compliance cost is the purchase of filing space and administrative supplies, printing of records, and the initial training of persons responsible for maintaining the records.

The following is an analysis of the cost per employee for small or micro-businesses affected by the proposed rules. It is estimated that it will cost affected small or micro-businesses up to approximately $500 per year to comply with the proposed rules. A small business with 100 employees would incur costs of approximately $5.00 per-employee while a micro-businesses with 20 employees would incur costs of approximately $25 per-employee. The overall cost associated with these rules is not expected to change with the number of employees employed, but the cost per employee would vary depending on the number of persons employed by an affected business.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this proposal is not subject to §2001.0025 because it does not meet the definition of a "major environmental rule" as defined in that statute. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

This proposal is not a major environmental rule because its primary purpose is to clarify procedural and technical requirements for facilities subject to Chapter 115 rules. Specifically, the amended sections clarify the requirements for cold solvent cleaners and the applicability of the requirements; provide additional test methods for degreasing processes to be used under certain circumstances; require degreasing operations exempt under proposed §115.417(5) from the control requirements in §115.412 to keep records to document compliance with the exemption conditions; clarify an exemption from recordkeeping for certain surface coating facility owners or operators; and clarify rule language to correct errors, update references, and delete redundant and obsolete language. Also, as determined in the preceding fiscal note, the fiscal impacts associated with this proposal are not anticipated to be significant.

In addition, a draft regulatory impact analysis is not required because the rules do not meet any of the four applicability criteria for requiring a regulatory analysis of a "major environmental rule" as defined in the Texas Government Code. Section 2001.0225 applies only to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This proposal does not exceed a standard set by federal law, and the proposed technical requirements are consistent with applicable federal standards. In addition, this proposal does not exceed an express requirement of state law and is not proposed solely under the general powers of the agency, but is specifically authorized by the provisions cited in the STATUTORY AUTHORITY section of this preamble. Finally, this proposal does not exceed a requirement of a delegation agreement or contract to implement a state and federal program. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these proposed rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The primary purpose of the proposal is to revise specific rules in Chapter 115 to clarify and add flexibility to existing requirements, correct errors, update references, and delete redundant and obsolete language. Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking because they do not affect private real property. Specifically, the proposed rules do not affect a landowner's rights in private real property because this proposal does not burden (constitutionally), nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the rules. Therefore, these rules will not constitute a takings under the Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposal is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, or will affect an action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, and will, therefore, require

that applicable goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission prepared a preliminary consistency determination for the proposed rules pursuant to 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination.

The CMP goal applicable to the proposed rulemaking is 31 TAC §501.12(1), which requires that the quality and values of coastal natural resource areas be protected and preserved. The CMP policy applicable to the proposed rulemaking is 31 TAC §501.14(q), which requires that the commission protect air quality in coastal areas, are applicable to this rulemaking. Promulgation and enforcement of the proposed rules will not violate (exceed) any standards identified in the applicable CMP goals and policies because no new emissions are authorized and because the proposal would provide for more clear and understandable rules and a new recordkeeping requirement which may result in increased compliance with air emission standards.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Because Chapter 115 contains applicable requirements under 30 TAC Chapter 122, Federal Operating Permits, owners or operators subject to the Federal Operating Permit Program must, consistent with the revision process in Chapter 122, revise their operating permit to include the revised Chapter 115 requirements for each emission unit affected by the revisions to Chapter 115 at their site.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on July 3, 2001 at 10:00 a.m. at the TNRCC Complex in Building F, Room 2210, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Angela Slupe, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2001-005-115-AI. Comments must be received by 5:00 p.m., July 9, 2001. For further information, please contact Keith Sheedy of the Enforcement Division at (512) 239-1556 or Jill Burditt of the Policy and Regulations Division at (512) 239-0560.

SUBCHAPTER B. GENERAL VOLATILE ORGANIC COMPOUND SOURCES

DIVISION 4. INDUSTRIAL WASTEWATER

30 TAC §115.142

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; Texas Health and Safety Code, TCAA, §382.017, which provides the commission authority to adopt rules consistent with the policy and purposes of the TCAA; §382.002, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to develop plans to protect the state's air; and §382.016, which authorizes the commission to require that records of the air contaminant emissions from a source or activity be made and maintained.

The proposed amendment implements the TCAA, §382.011, relating to General Powers and Duties; §382.012, relating to State Air Control Plan; §382.017, relating to Rules; and TWC, §5.103, relating to Rules.

§115.142. Control Requirements.

The owner or operator of an affected source category within a plant in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, as defined in §115.10 of this title (relating to Definitions), shall comply with the following control requirements. Any component of a wastewater storage, handling, transfer, or treatment facility, if the component contains an affected volatile organic compounds (VOC) wastewater stream, shall be controlled in accordance with either paragraph (1) or (2) of this section, except for properly operated biotreatment units which shall meet the requirements of paragraph (3) of this section. In the Dallas/Fort Worth and El Paso areas, and until December 31, 2002 in the Houston/Galveston area, the control requirements apply from the point of generation of an affected VOC wastewater stream until the affected VOC wastewater stream is either returned to a process unit or is treated to remove VOC so that the wastewater stream no longer meets the definition of an affected VOC wastewater stream. In the Beaumont/Port Arthur area, and after December 31, 2002 in the Houston/Galveston area, the control requirements apply from the point of generation of an affected VOC wastewater stream until the affected VOC wastewater stream is either returned to a process unit, or is treated to reduce the VOC content of the wastewater stream by 90% by weight and also reduce the VOC content of the same VOC wastewater stream to less than 1,000 parts per million by weight. For wastewater streams which are combined and then treated to remove VOC, the amount of VOC to be removed from the combined wastewater stream shall be at least the total amount of VOC that would be removed to treat each individual affected VOC wastewater stream so that they no longer meet the definition of affected VOC wastewater stream, except for properly operated biotreatment units which shall meet the requirements of paragraph (3) of this section. For this division, a component of a wastewater storage, handling, transfer, or treatment facility shall include, but is not limited to, wastewater storage tanks, surface impoundments, wastewater drains, junctions boxes, lift stations, weirs, and oil-water separators.

(1) (No change.)

(2) If a wastewater component is equipped with an internal or external floating roof, it shall meet the following requirements.

(A) - (E) (No change.)

(F) For external floating roof storage tanks, the secondary [~~Secondary~~] seals shall be the rim-mounted type (i.e., the

seal shall be continuous from the floating roof to the tank wall). The [~~For external floating roof tanks, the~~] accumulated area of gaps that exceed 1/8 in. (0.32 cm) in width between the secondary seal and tank wall shall be no greater than 1.0 in.^{2} per foot (21 cm^2/meter) of tank diameter.

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

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

Filed with the Office of the Secretary of State, on May 24, 2001.

TRD-200102958
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: July 9, 2001
For further information, please call: (512) 239-4712

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SUBCHAPTER D. PETROLEUM REFINING, NATURAL GAS PROCESSING, AND PETROCHEMICAL PROCESSES
DIVISION 2. FUGITIVE EMISSION CONTROL IN PETROLEUM REFINERIES IN GREGG, NUECES, AND VICTORIA COUNTIES

30 TAC §§115.322, 115.323, 115.325, 115.327, 115.329

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; Texas Health and Safety Code, TCAA, §382.017, which provides the commission authority to adopt rules consistent with the policy and purposes of the TCAA; §382.002, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to develop plans to protect the state's air; and §382.016, which authorizes the commission to require that records of the air contaminant emissions from a source or activity be made and maintained.

The proposed amendments implement the TCAA, §382.011, relating to General Powers and Duties; §382.012, relating to State Air Control Plan; §382.017, relating to Rules; and TWC, §5.103, relating to Rules.

§115.322. Control Requirements.

For Gregg, Nueces, and Victoria Counties, no person shall operate a petroleum refinery without complying with the following requirements:

(1) No component shall be allowed to have a volatile organic compound (VOC) leak as defined in §101.1 [~~§115.10~~] of this title (relating to Definitions) for more than 15 calendar days after the leak is found, except as provided in paragraph (2) of this section.

(2) - (5) (No change.)

§115.323. Alternate Control Requirements.

For all affected persons in Gregg, Nueces, and Victoria Counties, the following alternate control techniques may apply:

(1) Any alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in this division [~~undesignated head~~] (relating to Fugitive Emission Control in Petroleum Refineries in Gregg, Nueces, and Victoria Counties) 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.

(2) (No change.)

§115.325. Testing Requirements.

For all affected persons in Gregg, Nueces, and Victoria Counties, compliance with this division [~~undesignated head~~] (relating to Fugitive Emission Control in Petroleum Refineries in Gregg, Nueces, and Victoria Counties) shall be determined by applying the following test methods, as appropriate:

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

§115.327. Exemptions.

For all affected persons in Gregg, Nueces, and Victoria Counties, the following exemptions shall apply:

(1) Valves with a nominal size of two inches (5 cm) or less are exempt from the requirements of this division [~~undesignated head~~] (relating to Fugitive Emission Control in Petroleum Refineries in Gregg, Nueces, and Victoria Counties), provided allowable emissions at any refinery from sources affected by these sections after controls are applied with exemptions will not exceed by more than 5.0% such allowable emissions with no exemptions. Any person claiming an exemption for valves two inches (5 cm) nominal size or smaller under this section shall, at the time he provides his control plan, also provide the following information:

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

(2) Components which contact a process fluid that contains less than 10% VOC by weight are exempt from the requirements of this division [~~undesignated head (relating to Fugitive Emission Control in Petroleum Refineries)~~].

(3) Components which contact a process liquid containing a VOC having a true vapor pressure equal to or less than 0.147 psia (1.013 kPa) at 68 degrees Fahrenheit [~~Farenheit~~] (20 degrees Celsius [~~Centigrade~~]) are exempt from the requirements of §115.324 of this title if the components are inspected visually according to the inspection schedules specified within this same section.

(4) Petroleum refineries or individual process units in a temporary nonoperating status shall submit a plan for compliance with the provisions of this division [~~undesignated head (relating to Fugitive Emission Control in Petroleum Refineries)~~], as soon as practicable, but no later than one month before the process unit is scheduled for start-up and be in compliance as soon as practicable, but no later than three months after start-up. All petroleum refineries affected by this section shall notify the executive director of any nonoperating refineries or individual process units when they are shut down and dates of any start-ups as they occur.

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

§115.329. Counties and Compliance Schedules.

All affected persons in Gregg, Nueces, and Victoria Counties shall continue to comply with applicable sections of this division [~~undesignated~~

~~head~~] (relating to Fugitive Emission Control in Petroleum Refineries in Gregg, Nueces, and Victoria Counties) as required by §115.930 of this title (relating to Compliance Dates).

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

Filed with the Office of the Secretary of State, on May 24, 2001.

TRD-200102959
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: July 9, 2001
For further information, please call: (512) 239-4712

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SUBCHAPTER E. SOLVENT-USING PROCESS
DIVISION 1. DEGREASING PROCESSES

30 TAC §§115.412, 115.413, 115.415 - 115.417, 115.419

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; Texas Health and Safety Code, TCAA, §382.017, which provides the commission authority to adopt rules consistent with the policy and purposes of the TCAA; §382.002, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to develop plans to protect the state's air; and §382.016, which authorizes the commission to require that records of the air contaminant emissions from a source or activity be made and maintained.

The proposed amendments implement the TCAA, §382.011, relating to General Powers and Duties; §382.012, relating to State Air Control Plan; §382.016, relating to Monitoring Requirements; Examination of Records; §382.017, relating to Rules; and TWC, §5.103, relating to Rules.

§115.412. Control Requirements.

[~~(a)~~] In the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas as defined in §115.10 of this title (relating to Definitions) and in Gregg, Nueces, and Victoria Counties, the following control requirements shall apply.

(1) Cold solvent cleaning. No person shall own or operate a system utilizing a volatile organic compound (VOC) for the cold solvent cleaning of objects without the following controls.

(A) A cover shall be provided for each cleaner which shall be kept closed whenever parts are not being handled in the cleaner. The cover shall be designed for easy one-handed operation if any of the following exists:

(i) the true vapor pressure of the solvent is greater than 0.3 psia (2 kPa) as measured at 100 degrees Fahrenheit (38 degrees Celsius [~~Centigrade~~]);

(ii) the solvent is agitated; or

(iii) the solvent is heated.

(B) An internal cleaned-parts drainage facility, for enclosed draining under a cover, shall be provided for all cold solvent cleaners.

(C) A permanent label summarizing the operating requirements in subparagraph (F) of this paragraph shall be attached to the cleaner in a conspicuous location near the operator.

(D) If a solvent spray is used, it must be a solid fluid stream (not a fine, atomized, or shower-type spray) and at an operating pressure of ten [~~10~~] psig or less as necessary to prevent splashing above the acceptable freeboard.

(E) The system shall be equipped with a freeboard that provides a ratio [~~(the freeboard height divided by the degreaser width)~~] equal to or greater than 0.7, or a water cover (solvent must be insoluble in and heavier than water). To determine the freeboard ratio, the freeboard height measurement is taken from the top of the degreaser to the top of the air/solvent level. This number is then divided by the smallest width measurement. The width measurement is taken at the smallest interior dimension. This dimension could be located at any point, from the top or opening of the unit to the air/solvent level.

(F) The operating procedures shall be as follows.

(i) Waste solvent shall not be disposed of or transferred to another party such that the waste solvent can evaporate into the atmosphere. Waste solvents shall be stored only in covered containers.

(ii) The degreaser cover shall be kept closed whenever parts are not being handled in the cleaner.

(iii) Parts shall be drained for at least 15 seconds or until dripping ceases.

(iv) Porous or absorbent materials, such as cloth, leather, wood, or rope, shall not be degreased.

(2) Open-top vapor degreasing. No person shall own or operate a system utilizing a VOC for the open-top vapor degreasing [~~cleaning~~] of objects without the following controls:

(A) a cover that can be opened and closed easily without disturbing the vapor zone;

(B) the following devices which will automatically shut off the sump heat:

(i) a condenser coolant flow sensor and thermostat which will detect if the condenser coolant is not circulating or if the condenser coolant temperature exceeds the solvent manufacturer's recommendations;

(ii) a solvent level sensor which will detect if the solvent level drops below acceptable design limits; and

(iii) a vapor level sensor which will detect if the vapor level rises above acceptable design limits;

(C) a spray safety switch which will shut off the spray pump to prevent spraying above the vapor level;

(D) one of the following controls:

(i) a freeboard that provides a ratio [~~(the distance from the top of the vapor level to the top edge of the degreasing tank divided by the degreaser width)~~] equal to or greater than 0.75 and, if the degreaser opening is greater than 10 ft^2 ($1m^2$), a powered cover. To determine the freeboard ratio, the freeboard height measurement is taken from the top of the degreaser to the top of the air/vapor level. This number is then divided by the smallest width measurement. The width measurement is taken at the smallest interior dimension. This

dimension could be located at any point, from the top or opening of the unit to the air/vapor level;

(ii) a properly sized refrigerated chiller capable of achieving 85% or greater control of VOC emissions;

(iii) an enclosed design where the cover or door opens only when the dry part is actually entering or exiting the degreaser; or

(iv) a carbon adsorption system with ventilation equal to or greater than 50 cfm/ft^2 (15m^3/min per m^2) of air/vapor area (with the cover open) and exhausting less than 25 ppm of solvent by volume averaged over one complete adsorption cycle;

(E) a permanent, conspicuous, label summarizing the operating procedures listed in subparagraph (F) of this paragraph;

(F) the following operating procedures:

(i) the cover shall be closed at all times except when processing work loads through the degreaser;

(ii) parts shall be positioned so that complete drainage is obtained;

(iii) parts shall be moved in and out of the degreaser at less than 11 ft/min (3.3 m/min);

(iv) the work load shall be retained in the vapor zone at least 30 seconds or until condensation ceases;

(v) any pools of solvent on the cleaned parts shall be removed by tipping the part before withdrawing it from the vapor zone;

(vi) parts shall be allowed to dry within the degreaser freeboard area for at least 15 seconds or until visually dry;

(vii) porous or absorbent materials, such as cloth, leather, wood, or rope, shall not be degreased;

(viii) work loads shall not occupy more than half of the degreaser open top surface area;

(ix) solvent shall not be sprayed above the vapor level;

(x) solvent leaks shall be repaired immediately, or the degreaser shall be shut down until repairs are made;

(xi) waste solvent shall not be disposed of or transferred to another party such that the waste solvent will evaporate into the atmosphere. Waste solvent shall be stored only in covered containers;

(xii) exhaust ventilation for systems other than those which vent to a major control device shall not exceed 65 cfm per ft^2 (20 m^3/min per m^2) of degreaser open area, unless necessary to meet Occupational Safety and Health Administration (OSHA) requirements or unless a carbon adsorption system is installed as a major control device. Ventilation fans or other sources of air agitation shall not be used near the degreaser opening;

(xiii) water shall not be visibly detectable in the solvent exiting the water separator.

(3) Conveyorized degreasing. No person shall own or operate a system utilizing a VOC for the conveyorized cleaning of objects without the following controls:

(A) one of the following major control devices:

(i) a properly sized refrigerated chiller capable of achieving 85% or greater control of VOC emissions; or

(ii) a carbon adsorption system with ventilation equal to or greater than 50 cfm/ft^2 (15 m^3/min/m^2) of air/vapor area (when downtime covers are open) and exhausting less than 25 ppm of solvent by volume averaged over one complete adsorption cycle;

(B) a drying tunnel or other means, such as rotating (tumbling) basket if space is available, to prevent solvent liquid or vapor carry-out;

(C) a condenser flow switch and thermostat which will shut off sump heat if the condenser coolant is not circulating or if the condenser coolant discharge temperature exceeds the solvent manufacturer's recommendation;

(D) a spray safety switch which will shut off the spray pump if the vapor level drops more than four inches (ten [~~10~~] cm);

(E) a vapor level control thermostat which will shut off the sump heat when the vapor level rises above the designed operating level;

(F) entrances and exits which silhouette work loads so that the average clearance (between parts and edge of the degreaser opening) is either less than four inches (ten [~~10~~] cm) or less than 10% of the width of the opening;

(G) downtime covers which close off the entrance and exit during nonoperating hours;

(H) a permanent, conspicuous label near the operator summarizing the operating requirements in subparagraph (I) of this paragraph;

(I) the following operating procedures:

(i) exhaust ventilation for systems other than those which vent to a major control device shall not exceed 65 cfm/ft^2 (20 m^3/min/m^2) of degreaser opening, unless necessary to meet OSHA [~~Occupational Safety and Health Administration~~] requirements or unless a carbon adsorption system is installed as a major control device. Ventilation fans shall not be used near the degreaser opening;

(ii) parts shall be positioned so that complete drainage is obtained;

(iii) vertical conveyor speed shall be maintained at less than 11 ft/min (3.3 m/min);

(iv) waste solvent shall not be disposed of, or transferred to another party, such that the waste solvent can evaporate into the atmosphere. Waste solvent shall be stored only in covered containers;

(v) leaks shall be repaired immediately or the degreaser shall be shut down until repairs are made;

(vi) water shall not be visibly detectable in the solvent exiting the water separator;

(vii) downtime covers shall be placed over entrances and exits of conveyorized degreasers immediately after the conveyor and exhaust are shut down and removed just before they are started up;

(viii) porous or absorbent materials, such as cloth, leather, wood, or rope, shall not be degreased.

~~[(b) For Gregg, Nueces, and Victoria Counties, the following control requirements shall apply.]~~

~~[(1) No person shall own or operate a system utilizing a VOC for the cold cleaning of objects without the following controls.]~~

~~[(A) A cover shall be provided for each cleaner which shall be kept closed whenever parts are not being handled in the cleaner.~~

The cover shall be designed for easy one-handed operation if any of the following exists:]

[(i) the true vapor pressure of the solvent is greater than 0.3 psia (2 kPa) as measured at 100°Fahrenheit (38 degrees Celsius);]

[(ii) the solvent is agitated; or]

[(iii) the solvent is heated.]

[(B) An internal cleaned-parts drainage facility, for enclosed draining under a cover, shall be provided for all cold cleaners.]

[(C) A permanent label summarizing the operating requirements in subparagraph (F) of this paragraph shall be attached to the cleaner in a conspicuous location near the operator.]

[(D) If a solvent spray is used, it must be a solid fluid stream (not a fine, atomized, or shower-type spray) and at an operating pressure of 10 psig or less as necessary to prevent splashing above the acceptable freeboard.]

[(E) The system shall be equipped with a freeboard that provides a ratio (the freeboard height divided by the degreaser width) equal to or greater than 0.7, or a water cover (solvent must be insoluble in and heavier than water).]

[(F) The operating procedures shall be as follows.]

[(i) Waste solvent shall not be disposed of or transferred to another party such that the waste solvent can evaporate into the atmosphere. Waste solvents shall be stored only in covered containers.]

[(ii) The degreaser cover shall be kept closed whenever parts are not being handled in the cleaner.]

[(iii) Parts shall be drained for at least 15 seconds or until dripping ceases.]

[(iv) Porous or absorbent materials, such as cloth, leather, wood, or rope, shall not be degreased.]

[(2) No person shall own or operate a system utilizing a VOC for the open-top vapor cleaning of objects without the following controls:]

[(A) a cover that can be opened and closed easily without disturbing the vapor zone;]

[(B) the following devices which will automatically shut off the sump heat:]

[(i) a condenser coolant flow sensor and thermostat which will detect if the condenser coolant is not circulating or if the condenser coolant temperature exceeds the solvent manufacturer's recommendations;]

[(ii) a solvent level sensor which will detect if the solvent level drops below acceptable design limits; and]

[(iii) a vapor level sensor which will detect if the vapor level rises above acceptable design limits;]

[(C) a spray safety switch which will shut off the spray pump to prevent spraying above the vapor level;]

[(D) one of the following controls:]

[(i) a freeboard that provides a ratio (the distance from the top of the vapor level to the top edge of the degreasing tank divided by the degreaser width) equal to or greater than 0.75 and, if the degreaser opening is greater than 10 ft² (1m²), a powered cover;]

[(ii) a properly-sized, refrigerated chiller capable of achieving 85% or greater control of VOC emissions;]

[(iii) an enclosed design where the cover or door opens only when the dry part is actually entering or exiting the degreaser; or]

[(iv) a carbon adsorption system with ventilation equal to or greater than 50 cfm/ft² (15m³/min per m²) of air/vapor area (with the cover open) and exhausting less than 25 ppm of solvent by volume averaged over one complete adsorption cycle;]

[(E) a permanent, conspicuous label summarizing the operating procedures listed in subparagraph (F) of this paragraph;]

[(F) the following operating procedures.]

[(i) The cover shall be closed at all times, except when processing work loads through the degreaser.]

[(ii) Parts shall be positioned so that complete drainage is obtained.]

[(iii) Parts shall be moved in and out of the degreaser at less than 11 ft/min (3.3 m/min).]

[(iv) The work load shall be retained in the vapor zone at least 30 seconds or until condensation ceases.]

[(v) Any pools of solvent on the cleaned parts shall be removed by tipping the part before withdrawing it from the vapor zone.]

[(vi) Parts shall be allowed to dry within the degreaser freeboard area for at least 15 seconds or until visually dry.]

[(vii) Porous or absorbent materials, such as cloth, leather, wood, or rope, shall not be degreased.]

[(viii) Work loads shall not occupy more than half of the degreaser open top surface area.]

[(ix) Solvent shall not be sprayed above the vapor level.]

[(x) Solvent leaks shall be repaired immediately, or the degreaser shall be shut down until repairs are made.]

[(xi) Waste solvent shall not be disposed of or transferred to another party such that the waste solvent will evaporate into the atmosphere. Waste solvent shall be stored only in covered containers.]

[(xii) Exhaust ventilation for systems other than those which vent to a major control device shall not exceed 65 cfm per ft² (20 m³/min per m²) of degreaser open area, unless necessary to meet Occupational Safety and Health Administration requirements or unless a carbon adsorption system is installed as a major control device. Ventilation fans or other sources of air agitation shall not be used near the degreaser opening.]

[(xiii) Water shall not be visibly detectable in the solvent exiting the water separator.]

[(3) No person shall own or operate a system utilizing a VOC for the conveyorized cleaning of objects without the following controls:]

[(A) one of the following major control devices:]

[(i) a properly-sized, refrigerated chiller capable of achieving 85% or greater control of VOC emissions; or]

[(ii) a carbon adsorption system with ventilation equal to or greater than 50 cfm/ft² (15 m³/min/m²) of air/vapor area

(when downtime covers are open) and exhausting less than 25 ppm of solvent by volume averaged over one complete adsorption cycle;]

[(B) a drying tunnel or other means, such as rotating (tumbling) basket if space is available, to prevent solvent liquid or vapor carry-out;]

[(C) a condenser flow-switch and thermostat which will shut off sump heat if the condenser coolant is not circulating or if the condenser coolant discharge temperature exceeds the solvent manufacturer's recommendation;]

[(D) a spray safety switch which will shut off the spray pump if the vapor level drops more than four inches (10 cm).]

[(E) a vapor level control thermostat which will shut off the sump heat when the vapor level rises above the designed operating level;]

[(F) entrances and exits which silhouette work loads so that the average clearance (between parts and edge of the degreaser opening) is either less than four inches (10 cm) or less than 10% of the width of the opening;]

[(G) downtime covers which close off the entrance and exit during nonoperating hours;]

[(H) a permanent, conspicuous label near the operator summarizing the operating requirements in subparagraph (I) of this paragraph;]

[(I) the following operating procedures.]

(i) Exhaust ventilation for systems other than those which vent to a major control device shall not exceed 65 cfm/ft^2 (20 m^3/min/m^2) of degreaser opening, unless necessary to meet Occupational Safety and Health Administration requirements or unless a carbon adsorption system is installed as a major control device. Ventilation fans shall not be used near the degreaser opening.]

(ii) Parts shall be positioned so that complete drainage is obtained.]

(iii) Vertical conveyor speed shall be maintained at less than 11 ft/min (3.3 m/min).]

(iv) Waste solvent shall not be disposed of or transferred to another party such that the waste solvent can evaporate into the atmosphere. Waste solvent shall be stored only in covered containers.]

(v) Leaks shall be repaired immediately or the degreaser shall be shut down until repairs are made.]

(vi) Water shall not be visibly detectable in the solvent exiting the water separator.]

(vii) Downtime covers shall be placed over entrances and exits of conveyorized degreasers immediately after the conveyor and exhaust are shut down and removed just before they are started up.]

(viii) Porous or absorbent materials, such as cloth, leather, wood, or rope, shall not be degreased.]

§115.413. Alternate Control Requirements.

[(a)] The alternate control requirements for degreasing processes [For all affected persons] in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas and in Gregg, Nueces, and Victoria Counties are as follows.[:]

(1) Alternate [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 [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.

(2) [(1)] An alternative capture and control system for cold solvent cleaners with a demonstrated overall volatile organic compound (VOC) emission reduction efficiency of 65% or greater may be used in lieu of the requirements of §115.412(1) [§115.412(a)(1)] of this title (relating to Control Requirements), if approved by the executive director.

(3) [(2)] An alternate capture and control system for open-top vapor or conveyorized degreasers with a demonstrated overall VOC emission reduction efficiency of 85% or greater may be used in lieu of the requirements of §115.412(2)(D) or (3)(A) [§115.412(a)(2)(D) or (a)(3)(A)] of this title, if approved by the executive director.

[(b) For all affected persons in Gregg, Nueces, and Victoria Counties, alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in this section may be approved by the Executive Director in accordance with §115.910 of this title if emission reductions are demonstrated to be substantially equivalent.]

[(1) An alternative capture and control system for cold solvent cleaners with a demonstrated overall VOC emission reduction efficiency of 65% or greater may be used in lieu of the requirements of §115.412(b)(1) of this title, if approved by the executive director.]

[(2) An alternate capture and control system for open-top vapor or conveyorized degreasers with a demonstrated overall VOC emission reduction efficiency of 85% or greater may be used in lieu of the requirements of §115.412(b)(2)(D) or (b)(3)(A) of this title, if approved by the executive director.]

§115.415. Testing Requirements.

[(a)] The testing requirements for degreasing processes in [For] the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas and in Gregg, Nueces, and Victoria Counties are as follows [, the following testing requirements shall apply].

(1) Compliance with §115.412(1) [§115.412(a)(1)] of this title (relating to Control Requirements) shall be determined by applying the following test methods, as applicable:

(A) determination of true vapor pressure using American Society for Testing Materials (ASTM) Test Method D323-89, ASTM Test Method D2879, ASTM Test Method D4953, ASTM Test Method D5190, or ASTM Test Method D5191 for the measurement of Reid vapor pressure (RVP), adjusted for actual storage temperature in accordance with American Petroleum Institute (API) Publication 2517, Third Edition, 1989; or

(B) minor modifications to these test methods and procedures approved by the executive director.

(2) Compliance with §115.412(2)(D)(iv) and (3)(A)(ii) [§115.412(a)(2)(D)(iv) and (a)(3)(A)(ii)] of this title and §115.413(3) [§115.413(a)(2)] of this title (relating to Alternate Control Requirements) shall be determined by applying the following test methods, as appropriate:

(A) Test Methods 1-4 (40 Code of Federal Regulations (CFR) 60, Appendix A) for determining flow rates, as necessary;

(B) Test Method 18 (40 CFR 60, Appendix A) for determining gaseous organic compound emissions by gas chromatography;

(C) Test Method 25 (40 CFR 60, Appendix A) for determining total gaseous nonmethane organic emissions as carbon;

(D) Test Methods 25A or 25B (40 CFR 60, Appendix A) for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis; or

(E) minor modifications to these test methods and procedures approved by the executive director.

(3) Test methods other than those specified in paragraphs (1) and (2) of this section may be used if validated by 40 CFR 63, Appendix A, Test Method 301. For the purposes of this paragraph, substitute "executive director" each place that Test Method 301 references "administrator."

[(b) For Gregg, Nueces, and Victoria Counties, the following testing requirements shall apply.]

[(1) Compliance with §115.412(b)(1) of this title shall be determined by applying the following test methods, as applicable:]

[(A) determination of true vapor pressure using ASTM Test Method D323-89, ASTM Test Method D2879, ASTM Test Method D4953, ASTM Test Method D5190, or ASTM Test Method D5191 for the measurement of RVP, adjusted for actual storage temperature in accordance with API Publication 2517, Third Edition, 1989; or]

[(B) minor modifications to these test methods and procedures approved by the executive director.]

[(2) Compliance with §115.412(b)(2)(D)(iv) and (b)(3)(A)(ii) of this title and §115.413(b)(2) of this title shall be determined by applying the following test methods, as appropriate:]

[(A) Test Methods 1-4 (40 CFR 60, Appendix A) for determining flow rates, as necessary;]

[(B) Test Method 18 (40 CFR 60, Appendix A) for determining gaseous organic compound emissions by gas chromatography;]

[(C) Test Method 25 (40 CFR 60, Appendix A) for determining total gaseous nonmethane organic emissions as carbon;]

[(D) Test Methods 25A or 25B (40 CFR 60, Appendix A) for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis; or]

[(E) minor modifications to these test methods and procedures approved by the executive director.]

§115.416. Recordkeeping Requirements.

[(a)] The owner or operator of each degreasing process in [For] the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas and in Gregg, Nueces, and Victoria Counties [, the owner or operator of any open-top vapor or conveyorized degreasing operation] shall maintain the following records at the facility for at least two years and shall make such records available upon request to representatives of the executive director [Texas Natural Resource Conservation Commission (TNRCC)], EPA [United States Environmental Protection Agency (EPA)], or the local air pollution control agency having jurisdiction in the area:

(1) a record of control equipment maintenance, such as replacement of the carbon in a carbon adsorption unit;

(2) the results of all tests conducted at the facility in accordance with the requirements described in §115.415(2) of this title (relating to Testing Requirements); [.]

(3) for each degreasing operation in Gregg, Nueces, and Victoria Counties which is exempt under §115.417(5) of this title (relating to Exemptions), records of solvent usage in sufficient detail to document continuous compliance with this exemption.

[(b) For Gregg, Nueces, and Victoria Counties, the owner or operator of any open-top vapor or conveyorized degreasing operation shall maintain the following records at the facility for at least two years and shall make such records available upon request to representatives of the TACB, EPA, or the local air pollution control agency having jurisdiction in the area:]

[(1) a record of control equipment maintenance, such as replacement of the carbon in a carbon adsorption unit;]

[(2) the results of all tests conducted at the facility in accordance with the requirements described in §115.415(b)(2) of this title (relating to Testing Requirements).]

§115.417. Exemptions.

[(a)] The following exemptions apply in [For] the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas and in Gregg, Nueces, and Victoria Counties [, the following exemptions shall apply].

(1) Any cold solvent cleaning system is exempt from the provisions of §115.412(1)(B) [§115.412(a)(1)(B)] of this title (relating to Control Requirements) and may use an external drainage facility in place of an internal type drainage system, if the true vapor pressure of the solvent is less than or equal to 0.6 psia (4.1 kPa) as measured at 100 degrees Fahrenheit (38 degrees Celsius) or if a cleaned part cannot fit into an internal drainage facility.

(2) The following are [Any cold solvent cleaning system is] exempt from the requirements of §115.412(1)(E) [§115.412(a)(1)(E)] of this title [(relating to Control Requirements)]:

(A) a cold solvent cleaning system for which [, if] the true vapor pressure of the solvent is less than or equal to 0.6 psia (4.1 kPa) as measured at 100 degrees Fahrenheit (38 degrees Celsius), provided that [or if] the solvent is not heated above 120 degrees Fahrenheit (49 degrees Celsius); and

(B) remote reservoir cold solvent cleaners.

(3) Any conveyorized degreaser with less than 20 ft^2 (2 m^2) of air/vapor interface is exempt from the requirement of §115.412(3)(A) [§115.412(a)(3)(A)] of this title.

(4) An owner or operator who operates a remote reservoir cold solvent cleaner which uses solvent with a true vapor pressure equal to or less than 0.6 psia (4.1 kPa) measured at 100 degrees Fahrenheit (38 degrees Celsius) and which has a drain area less than 16 in^2 (100 cm^2) and who properly disposes of waste solvent in enclosed containers is exempt from §115.412(1) [§115.412(a)(1)] of this title.

(5) In Gregg, Nueces, and Victoria Counties, degreasing operations located on any property which can emit, when uncontrolled, a combined weight of VOC less than 550 pounds (249.5 kg) in any consecutive 24-hour period are exempt from the provisions of §115.412 of this title.

[(b) For Gregg, Nueces, and Victoria Counties, the following exemptions shall apply.]

[(1) Any cold solvent cleaning system is exempt from the provisions of §115.412(b)(1)(B) of this title (relating to Control Requirements) and may use an external drainage facility in place of an internal type drainage system, if the true vapor pressure of the solvent is less than or equal to 0.6 psia (4.1 kPa) as measured at 100 degrees

Fahrenheit (38 degrees Celsius) or if a cleaned part can not fit into an internal drainage facility.]

[(2) Any cold solvent cleaning system is exempt from the requirements of §115.412(b)(1)(E) of this title (relating to Control Requirements), if the true vapor pressure of the solvent is less than or equal to 0.6 psia (4.1 kPa) as measured at 100 degrees Fahrenheit (38 degrees Celsius), or if the solvent is not heated above 120 degrees Fahrenheit (49 degrees Celsius).]

[(3) Degreasing operations located on any property which can emit, when uncontrolled, a combined weight of VOC less than 550 pounds (249.5 kg) in any consecutive 24-hour period are exempt from the provisions of §115.412(b) of this title (relating to Control Requirements).]

[(4) Any conveyorized degreaser with less than 20 ft^2 (2 m^2) of air/vapor interface is exempt from the requirements of §115.412(b)(3)(A) of this title (relating to Control Requirements).]

[(5) An owner or operator who operates a remote reservoir cold solvent cleaner which uses solvent with a true vapor pressure equal to or less than 0.6 psia (4.1 Kpa) measured at 100 degrees Fahrenheit (38 degrees Celsius) and which has a drain area less than 16 in^2 (100 cm^2) and who properly disposes of waste solvent in enclosed containers is exempt from §115.412(b)(1) of this title.]

§115.419. Counties and Compliance Schedules.

All affected persons in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Gregg, Hardin, Harris, Jefferson, Liberty, Montgomery, Nueces, Orange, Tarrant, Victoria, and Waller Counties shall continue to comply with applicable sections of this division [undesignated head] (relating to Degreasing Processes) as required by §115.930 of this title (relating to Compliance Dates).

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

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239-4712

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DIVISION 2. SURFACE COATING PROCESSES

30 TAC §§115.423, 115.426, 115.427

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; Texas Health and Safety Code, TCAA, §382.017, which provides the commission authority to adopt rules consistent with the policy and purposes of the TCAA; §382.002, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to develop plans to protect the state's air; and §382.016, which authorizes the commission to require that records of the air contaminant emissions from a source or activity be made and maintained.

The proposed amendments implement the TCAA, §382.011, relating to General Powers and Duties; §382.012, relating to State Air Control Plan; §382.017, relating to Rules; and TWC, §5.103, relating to Rules.

§115.423. Alternate Control Requirements.

The alternate control requirements for surface coating processes in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas and in Gregg, Nueces, and Victoria Counties are as follows.

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

(3) If a vapor control system is used to control emissions from coating operations: [,]

(A) the capture and abatement system shall be capable of achieving and maintaining emission reductions equivalent to the emission limitations of §115.421 of this title (relating to Emission Specifications) and an overall control efficiency of at least 80% of the VOC emissions from those coatings. The following equation shall be used to determine the minimum overall control efficiency necessary to demonstrate equivalency with the emission limitations of §115.421 of this title:

Figure: 30 TAC §115.423(3)(A)

(B) the [The] owner or operator [of any surface coating facility] shall submit design data for each capture system and emission control device which is proposed for use to the executive director for approval. In the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, capture efficiency testing shall be performed in accordance with §115.425(4) of this title (relating to Testing Requirements).

(4) (No change.)

§115.426. Monitoring and Recordkeeping Requirements.

The following recordkeeping requirements apply to the owner or operator of each surface coating process in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas and in Gregg, Nueces, and Victoria Counties. [:] Records of non-exempt solvent washings are not required to be kept if the non-exempt solvent is directed into containers that prevent evaporation into the atmosphere.

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

§115.427. Exemptions.

(a) For the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the following exemptions shall apply:

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

(3) The following exemptions apply to surface coating operations, except for aircraft prime coating controlled by §115.421(a)(9)(A)(v) of this title and vehicle refinishing (body shops) controlled by §115.421(a)(8)(B) and (C) of this title. Excluded from the volatile organic compound (VOC) emission calculations are coatings and solvents used in surface coating activities which are not addressed by the surface coating categories of §115.421(a)(1) - (15) of this title. For example, architectural coatings (i.e., coatings which are applied in the field to stationary structures and their appurtenances, to portable buildings, to pavements, or to curbs) at a property would not be included in the calculations.

(A) Surface coating operations on a property which, when uncontrolled, will emit a combined weight of VOC [volatile organic compound (VOC)] of less than three [3] pounds per hour

and 15 pounds in any consecutive 24-hour period are exempt from §115.421(a) of this title and §115.423 of this title (relating to Alternate Control Requirements).

(B) (No change.)

(C) Surface coating operations on a property for which total coating and solvent usage does not exceed 150 gallons in any consecutive 12-month period are exempt from §115.421(a) and §115.423 of this title. [~~Excluded from this calculation are coatings and solvents used in surface coating activities which are not addressed by the surface coating categories of §115.421(a)(1) - (15) of this title. For example, architectural coatings (i.e., coatings which are applied in the field to stationary structures and their appurtenances, to portable buildings, to pavements, or to curbs) at a property would not be included in the calculation.~~]

(D) - (I) (No change.)

[~~(J) Aerosol coatings (spray paint) are exempt from this division.~~]

(J) [~~(K)~~] The following activities where cleaning and coating of aerospace vehicles or components may take place are exempt from this division: research and development, quality control, laboratory testing, and electronic parts and assemblies; except for cleaning and coating of completed assemblies.

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

(6) Aerosol coatings (spray paint) are exempt from this division.

(b) For Gregg, Nueces, and Victoria Counties, the following exemptions shall apply:

(1) Surface coating operations located at any property which, when uncontrolled, will emit a combined weight of VOC less than 550 pounds (249.5 kg) in any continuous 24-hour period are exempt from §115.421(b) of this title. Excluded from this calculation are coatings and solvents used in surface coating activities which are not addressed by the surface coating categories of §115.421(b)(1) - (10) of this title. For example, architectural coatings (i.e., coatings which are applied in the field to stationary structures and their appurtenances, to portable buildings, to pavements, or to curbs) at a property would not be included in the calculation.

(2) The following coating operations are exempt from §115.421(b)(8) of this title:

(A) (No change.)

(B) vehicle refinishing (body shops); and

(C) ships and offshore oil or gas drilling platforms.

[~~(C) exterior of fully assembled marine vessels; and~~]

[~~(D) exterior of fully assembled fixed offshore structures.~~]

(3) - (4) (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.

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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DIVISION 3. FLEXOGRAPHIC AND ROTOGRAVURE PRINTING

30 TAC §§115.432, 115.433, 115.435, 115.436, 115.439

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; Texas Health and Safety Code, TCAA, §382.017, which provides the commission authority to adopt rules consistent with the policy and purposes of the TCAA; §382.002, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to develop plans to protect the state's air; and §382.016, which authorizes the commission to require that records of the air contaminant emissions from a source or activity be made and maintained.

The proposed amendments implement the TCAA, §382.011, relating to General Powers and Duties; §382.012, relating to State Air Control Plan; §382.017, relating to Rules; and TWC, §5.103, relating to Rules.

§115.432. Control Requirements.

(a) For 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) No person shall operate or allow the operation of a packaging rotogravure, publication rotogravure, or flexographic printing line that uses solvent-containing ink unless volatile organic compound (VOC) emissions are limited by one of the following:

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

(C) operation of a vapor control system [~~carbon adsorption or incineration system~~] to reduce the VOC emissions from an effective capture system by at least 90% by weight. The design and operation of the capture system for each printing line must be consistent with good engineering practice and shall be required to provide for an overall reduction in VOC emissions, as demonstrated to the satisfaction of the executive director, upon request, of at least the following weight percentages:

(i) - (iii) (No change.)

(2) Any graphic arts facility that becomes subject to the provisions of paragraph (1)(A), (B), or (C) of this subsection by exceeding provisions of §115.437(a) of this title (relating to Exemptions) will remain subject to the provisions of this subsection, even if throughput or emissions later fall below exemption limits unless and until emissions are reduced to no more than [~~at or below~~] the controlled emissions level existing prior to implementation of the project by which throughput or emission rate was reduced to [~~and~~] less than the applicable exemption limits in §115.437(a) of this title; and:

(A) the project by which throughput or emission rate was reduced is authorized by any permit or permit amendment or standard permit or permit by rule [standard exemption] required by Chapter 116 of this title (relating to Control of Air Pollution by Permit for New Construction or Modification) or Chapter 106 of this title (relating to Permits by Rule). If a permit by rule [standard exemption] is available for the project, compliance with this subsection must be maintained for 30 days after the filing of documentation of compliance with that permit by rule [standard exemption]; or

(B) if authorization by permit, permit amendment, standard permit, or permit by rule [or standard exemption] is not required for the project, the owner/operator has given the executive director [Texas Natural Resource Conservation Commission] 30 days' notice of the project in writing.

(3) (No change.)

(b) For Gregg, Nueces, and Victoria Counties, no person shall operate or allow the operation of a packaging rotogravure, publication rotogravure, or flexographic printing line that uses solvent- containing ink, unless VOC emissions are limited by one of the following:

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

(3) operation of a vapor control system [carbon adsorption or incineration system] to reduce the VOC emissions from an effective capture system by at least 90% by weight. The design and operation of the capture system for each printing line must be consistent with good engineering practice and shall be required to provide for an overall reduction in VOC emissions, as demonstrated to the satisfaction of the executive director upon request of at least the following weight percentages:

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

§115.433. Alternate Control Requirements.

(a) For all affected persons in 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 [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.

(b) For all affected persons in Gregg, Nueces, and Victoria Counties, 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 [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.

§115.435. Testing Requirements.

(a) For the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, compliance shall be determined by applying the following test methods, as appropriate:

(1) Test Methods 1-4 (40 Code of Federal Regulations (CFR) 60, Appendix A) for determining flow rates, as necessary;

(2) Test Method 24 (40 CFR [Code of Federal Regulations] 60, Appendix A) for determining the volatile organic compound (VOC) content and density of printing inks and related coatings;

(3) Test Method 25 (40 CFR [Code of Federal Regulations] 60, Appendix A) for determining total gaseous nonmethane organic emissions as carbon;

(4) Test Methods 25A or 25B (40 CFR [Code of Federal Regulations] 60, Appendix A) for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis;

(5) EPA [U. S. Environmental Protection Agency (EPA)] guidelines series document "Procedures for Certifying Quantity of Volatile Organic Compounds Emitted by Paint, Ink, and Other Coatings," EPA-450/3-84-019, as in effect December 1984;

(6) additional performance test procedures described in 40 CFR [Code of Federal Regulations (CFR)] 60.444;

(7) the capture efficiency which shall be measured using applicable procedures outlined in 40 CFR, Part 52.741, Subpart O, Appendix B. These procedures are: Procedure T -- Criteria for and Verification of a Permanent or Temporary Total Enclosure; Procedure L -- VOC [Volatile Organic Compounds (VOC)] Input; Procedure G.2 -- Captured VOC Emissions (Dilution Technique); Procedure F.1 -- Fugitive VOC Emissions from Temporary Enclosures; Procedure F.2 -- Fugitive VOC Emissions from Building Enclosures.

(A) The following are exemptions to capture efficiency testing requirements.

(i) (No change.)

(ii) If a source uses a control device designed to collect and recover VOC (e.g., carbon adsorption system [adsorber]), an explicit measurement of capture efficiency is not necessary if the following conditions are met. The overall control of the system can be determined by directly comparing the input liquid VOC to the recovered liquid VOC. The general procedure for use in this situation is given in 40 CFR §60.433 with the following additional restrictions.

(I) The source must be able to equate solvent usage with solvent recovery on a 24-hour (daily) basis, rather than a 30-day weighted average. This must be done within 72 hours following each 24-hour period of the 30-day period specified in 40 CFR §60.433.

(II) The solvent recovery system (i.e., capture and control system) must be dedicated to a single process line (e.g., one process line venting to a carbon adsorption [adsorber] system); or if the solvent recovery system controls multiple process lines, the source must be able to demonstrate that the overall control (i.e., the total recovered solvent VOC divided by the sum of liquid VOC input to all process lines venting to the control system) meets or exceeds the most stringent standard applicable for any process line venting to the control system.

(B) (No change.)

(C) The following conditions must be met in measuring capture efficiency.

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

(iii) During an initial pretest meeting, the executive director [Texas Air Control Board (TACB)] and the source owner or operator shall identify those operating parameters which shall be monitored to ensure that capture efficiency does not change significantly over time. These parameters shall be monitored and recorded initially during the capture efficiency testing and thereafter during facility operation. The executive director [TACB] may require a new capture efficiency test if the operating parameter values change significantly from those recorded during the initial capture efficiency test;

(8) (No change.)

(b) For Gregg, Nueces, and Victoria Counties, compliance shall be determined by applying the following test methods, as appropriate:

(1) Test Methods 1-4 (40 CFR 60, Appendix A) for determining flow rates, as necessary;

(2) - (7) (No change.)

§115.436. Monitoring and Recordkeeping Requirements.

(a) For the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the owner or operator of any rotogravure or flexographic printing facility shall:

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

(5) maintain all records at the affected facility for at least two years and make such records available upon request to representatives of the executive director [~~Texas Air Control Board (TACB)~~], EPA [~~United States Environmental Protection Agency (EPA)~~], or the local air pollution agency having jurisdiction in the area; and

(6) maintain on file the capture efficiency protocol submitted under §115.435(a)(7) of this title (relating to Testing Requirements). The owner or operator shall submit all results of the test methods and capture efficiency protocols to the executive director [~~TACB~~] within 60 days of the actual test date. The source owner or operator shall maintain records of the capture efficiency operating parameter values on-site for a minimum of one year. If any changes are made to capture or control equipment, the owner or operator is required to notify the executive director in writing within 30 days of these changes, and a new capture efficiency and/or control device destruction or removal efficiency test may be required.

(b) For Gregg, Nueces, and Victoria Counties, the owner or operator of any rotogravure or flexographic printing facility shall:

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

(5) maintain all records at the affected facility for at least two years and make such records available upon request to representatives of the executive director [~~TACB~~], EPA, or the local air pollution agency having jurisdiction in the area.

§115.439. Counties and Compliance Schedules.

All affected persons in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Gregg, Hardin, Harris, Jefferson, Liberty, Montgomery, Nueces, Orange, Tarrant, Victoria, and Waller Counties shall continue to comply with applicable sections of this division (relating to Flexographic and Rotogravure Printing) as required by §115.930 of this title (relating to Compliance Dates).

~~[(a) All affected persons in Chambers, Collin, Denton, Fort Bend, Hardin, Liberty, Montgomery, and Waller Counties shall be in compliance with §115.432(a) of this title (relating to Control Requirements), §115.433(a) of this title (relating to Alternate Control Requirements), §115.435(a) of this title (relating to Testing Requirements), §115.436(a) of this title (relating to Recordkeeping Requirements), and §115.437(a) of this title (relating to Exemptions) as soon as practicable, but no later than July 31, 1993.]~~

~~[(b) All affected persons in Dallas, El Paso, Jefferson, Orange, and Tarrant Counties shall be in compliance with §115.437(a)(1) of this title as soon as practicable, but no later than July 31, 1993.]~~

~~[(c) All affected persons in Brazoria, Galveston, and Harris Counties shall be in compliance with §115.437(a)(2) of this title as soon as practicable, but no later than July 31, 1993.]~~

~~[(d) All affected persons in Victoria County shall be in compliance with §115.436(b)(3)(C) of this title (relating to Monitoring and Recordkeeping Requirements) as soon as practicable, but no later than July 31, 1993.]~~

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

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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DIVISION 4. OFFSET LITHOGRAPHIC PRINTING

30 TAC §115.442

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; Texas Health and Safety Code, TCAA, §382.017, which provides the commission authority to adopt rules consistent with the policy and purposes of the TCAA; §382.002, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to develop plans to protect the state's air; and §382.016, which authorizes the commission to require that records of the air contaminant emissions from a source or activity be made and maintained.

The proposed amendment implements the TCAA, §382.011, relating to General Powers and Duties; §382.012, relating to State Air Control Plan; §382.017, relating to Rules; and TWC, §5.103, relating to Rules.

§115.442. Control Requirements.

For the 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) No person shall operate or allow the operation of an offset lithographic printing line that uses solvent-containing ink, unless volatile organic compound (VOC) emissions are limited by the following:

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

(E) Any person who owns or operates any type of offset lithographic printing press shall be considered in compliance with the fountain solution limitations of this paragraph [~~this regulation~~] if the only VOCs in the fountain solution are in nonalcohol additives or alcohol substitutes, so that the concentration of VOCs in the fountain solution is 3.0% or less (by weight). The fountain solution shall not contain any isopropyl alcohol.

(F) (No change.)

(2) (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.

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Director, Environmental Law Division
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SUBCHAPTER F. MISCELLANEOUS INDUSTRIAL SOURCES
DIVISION 1. CUTBACK ASPHALT

30 TAC §§115.512, 115.517, 115.519

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; Texas Health and Safety Code, TCAA, §382.017, which provides the commission authority to adopt rules consistent with the policy and purposes of the TCAA; §382.002, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to develop plans to protect the state's air; and §382.016, which authorizes the commission to require that records of the air contaminant emissions from a source or activity be made and maintained.

The proposed amendments implement the TCAA, §382.011, relating to General Powers and Duties; §382.012, relating to State Air Control Plan; §382.017, relating to Rules; and TWC, §5.103, relating to Rules.

§115.512. Control Requirements.

The following control requirements shall apply 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).

(1) The use of conventional cutback asphalt containing volatile organic compounds (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 by or specified for use by any state, municipal, or county agency who uses or specifies the type of asphalt application.

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

§115.517. Exemptions.

For persons in Nueces County and the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston Areas, the following are exempt from the provisions of §115.512(2) [~~§115.512(3)~~] of this title (relating to Control Requirements):

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

§115.519. Counties and Compliance Schedules.

All affected persons in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Nueces, Orange, Tarrant, and Waller Counties shall continue to comply with applicable sections of this division (relating to Cutback Asphalt) as required by §115.930 of this title (relating to Compliance Dates).

~~[(a) All affected persons in Chambers, Collin, Denton, Fort Bend, Hardin, Liberty, Montgomery, and Waller Counties shall be in compliance with this undesignated head concerning to Cutback Asphalt as soon as practicable, but no later than April 16, 1993.]~~

~~[(b) All persons in Brazoria, Galveston, Harris, Jefferson, and Orange Counties affected by the provisions of §115.512(2) of this title (relating to Exemptions) shall be in compliance with this section as soon as practicable, but no later than December 31, 1992.]~~

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

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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CHAPTER 305. CONSOLIDATED PERMITS
SUBCHAPTER D. AMENDMENTS, RENEWALS, TRANSFERS, CORRECTIONS, REVOCATION, AND SUSPENSION OF PERMITS

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes the repeal of §305.70, Municipal Solid Waste Class I Modifications and new §305.70, Municipal Solid Waste Permit and Registration Modifications.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

In 1993, the commission adopted §305.70, Municipal Solid Waste Class I Modifications, which established a process to allow administrative approval of certain changes to municipal solid waste (MSW) permits. The section identified the changes to an MSW facility or operation that qualified for this administrative approval and defined eligible changes as those that are minor, routine in nature, do not substantially alter permit conditions, and maintain or improve environmental protection standards. In addition, the new section was considered a mechanism whereby many facilities would be able to begin compliance with the recently promulgated federal regulations (40 Code of Federal Regulations (CFR) Part 258 (relating to Criteria for Municipal Solid Waste Landfills)), commonly referred to as "Subtitle D upgrades," which called for stricter operation, design, and management standards for all MSW landfill facilities. Until the modification rule was adopted, changes to permits to incorporate the new standards could only have been made through the more formal amendment process. Under the modification rule, the stricter federal standards were able to be implemented more expeditiously.

The rule required mailed notice in accordance with then-existing §305.103(b) of this title (relating to Notice by Mail) to certain persons if the permit modification sought was one that was marked with a superscript "1." Although the superscript notation was discussed in the preambles to the proposed and adopted versions of the rule, the superscript did not appear in the published adopted version of the rule. Therefore, an applicant cannot currently be required to provide the mailed notice described in the rule, and the mailed notice provisions once found in §305.103(b) have been relocated to other commission rules.

Although §305.70 only specifically addresses changes to MSW permits, the executive director has utilized the rule to process minor changes to permitted and registered MSW facilities since adoption of the rule in 1993. The rule is used to process minor changes to registered facilities as there is otherwise no authorization process, other than that required for a new registration, to make minor changes to an existing registered facility. The executive director uses the rule to process minor changes to registered MSW facilities in lieu of requiring the registrant to obtain a new registration for each minor change.

Over the years, the executive director has identified other permit and registration changes that are more appropriately handled through the modification process and has generally processed those applications under §305.70(i). The language in this "catch all" provision has been subject to a continuing debate over what permit changes §305.70(i) can or should cover.

Since the urgency of implementing Subtitle D upgrades has long since subsided, the commission on May 19, 2000 decided that the use of the §305.70 permit modification process for Subtitle D upgrades would not continue beyond May 19, 2003, and that such a change to a permit can only be accomplished through a major amendment.

This proposal is intended to rectify the superscript defect, exclude references to obsolete sections, establish a clearer set of mailed notice requirements, clarify that the rule applies to both permitted and registered MSW facilities, identify more specifically the changes which can be made to registrations and permits through the modification process, and reflect the recent commission decision that Subtitle D upgrades may be approved only through a major permit amendment after May 19, 2003.

The proposed rules reflect a change in philosophy to allow owners and operators the flexibility to implement those changes that are necessary to improve day-to-day operations or to prevent nuisance problems without a long wait for agency approval, provided they meet expected performance standards and do not result in a decrease in protection of the environment or public health and safety. Examples of changes which will not require a modification are changes to eliminate interim fill sectors or cells, improvements to a safety or fire protection plan, changes in interior road design or construction materials, use of alternative windblown control measures, and addition of visual screening devices. Facilities exempt from permitting or registration will not be regulated under a permit or registration if they are located in non-waste management areas as proposed in §305.70(j)(7), as long as they do not affect drainage. Instead of requiring approval by modification, temporary use of alternative daily cover and temporary changes in operating hours may be approved by letter by the executive director under proposed §305.70(m).

SECTION BY SECTION DISCUSSION

Section 305.70(a) is proposed to clarify that the section applies only to modifications to MSW permits and registrations, and that modifications to industrial and hazardous waste permits are covered in §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). Subsection (a) also provides that special conditions in a permit or registration ordered by the commission following the contested hearing process or included by the executive director as a result of negotiations between the applicant and interested persons during the permitting/registration process are not eligible for modification under this section.

Section 305.70(b) is proposed to indicate that references to the term "permit" include the permit document and all of the attachments thereto as defined in Chapter 330, Subchapter E, §§330.50 - 330.64 of this title (relating to Permit Procedures), and references to the term "registration" include the registration document and all of the attachments thereto as defined in Chapter 330, Subchapter E, of this title.

Section 305.70(c) is proposed to express that unless a change is specifically listed in §305.70(k), any change which results in an increase in the landfill capacity authorized for waste disposal or which increases the permitted or registered daily maximum rate of waste acceptance at a Type V facility can only be authorized either as a permit amendment under §305.62(c)(1) of this title (relating to Amendment) in the case of a permitted facility, or as a new registration in the case of a registered facility.

Section 305.70(d) is proposed to clarify that in order for a change to an MSW facility to be processed as a permit or registration modification, the change must either be specifically listed under §305.70(k) or the change must be a minor change to an MSW facility or its operation that cannot substantially alter the permit or registration conditions; and the change does not reduce the capability of the facility to protect human health and the environment.

Section 305.70(e) is proposed to specify that a permittee or registrant may put into effect a modification provided that they have received prior written authorization for the modification from the executive director. In order for the permittee or registrant to receive prior written authorization, the permittee or registrant must submit a modification application to the executive director which includes, at a minimum: 1) a description of the proposed change; 2) an explanation detailing why the change is necessary; 3) appropriate revisions to all applicable narrative pages and drawings of Attachment A of the permit or registration (i.e., site development plan, site operating plan, engineering report, etc); 4) a reference to the specific subsection under which the modification application is being made; and 5) for modifications requiring notice, an updated landownership map and an updated landowners list as required under §330.52(b)(4)(D) and (b)(5) of this title (relating to Technical Requirements of Part I of the Application).

Section 305.70(f) is proposed to indicate that a permittee or registrant must submit one original and two copies of the modification application in accordance with §305.44 of this title (relating to Signatories to Applications). A total of three copies of the modification application are needed as the original is maintained by the MSW Permits Section for review, one copy of the application is provided to TNRCC Central Records, and one copy is provided to the appropriate TNRCC Regional Office. The rule requires that the engineering documents associated with the permit or registration modification application be signed and sealed by the responsible licensed professional engineer as required by §330.51(d) of this title (relating to Permit Application for Municipal Solid Waste Facilities). Failure of the permittee or registrant to submit the modification application with complete information

(i.e., the minimum information required by subsections (e) or (f)) shall result in the application being returned to the permittee or registrant without further action.

Section 305.70(g) is proposed to require the executive director to review and take one of six specific actions on the permit or registration modification application no later than 60 calendar days after receipt of a complete application. No later than 60 calendar days after receipt of the permit or registration application, the executive director must: 1) approve the application, with or without changes, and modify the permit or registration accordingly; 2) deny the application; 3) provide a notice-of-deficiency letter requiring additional or clarified information and requiring the resubmittal of a new application; 4) extend the 60-calendar day review period, if necessary, by notifying the permittee or registrant in writing that additional time is required for the modification review (the letter must include the reason for the extension and the date to which the review period has been extended); 5) determine that the application does not qualify as a registration modification and that the requested change requires a new application for registration; or 6) determine that the application does not qualify as a permit modification and that the requested change requires a major amendment to the permit pursuant to §305.62 of this title (relating to Amendment). If at the end of 60 days from receipt of the modification request the executive director has failed to take one of the preceding steps, the modification is automatically approved.

Section 305.70(h) is proposed to clarify that when an application for a permit or registration modification is denied by the executive director, the permittee or registrant must comply with the original permit conditions.

Section 305.70(i) is proposed to require that mailed notice be provided for certain modifications and to establish mailed notice requirements. If a permit or registration modification is listed in subsection (k) of this section or if a permit or registration modification application is made under subsection (l) and the executive director determines that notice is required, within 15 days of submitting the modification application to the executive director or within 15 days of being notified by the executive director that notice is required for a modification under subsection (l) of this section, the permittee or registrant must prepare and send notice of the modification application in accordance with §39.106 of this title (relating to Application for Modification of a Municipal Solid Waste Permit or Registration) which is being proposed concurrently with this rulemaking.

Section 305.70 (j) is proposed to provide a list of changes to permitted and registered facilities that are eligible to be authorized by modification. Applications for changes identified in this section are required to be submitted in accordance with subsections (e) and (f) and must meet the criteria in subsection (d).

Section 305.70(j)(1) is proposed to specifically identify the establishment of a trench or area that will accept brush and construction demolition waste and rubbish only as being eligible to be authorized by modification, provided that the trench or area is located within the disposal footprint specified in the approved municipal solid waste landfill (MSWLF) permit or site development plan.

Section 305.70(j)(2) is proposed to specify that changes in excavation details for landfills are eligible to be authorized by modification, except for changes that increase the depth or lateral extent of the disposal footprint (as described in the site development plan or permit); result in a change to the Soils and Liner Quality Control Plan (SLQCP); or increase the disposal capacity of the landfill facility.

Section 305.70(j)(3) is proposed to specify that changes to landfill marker systems (e.g., from a grid based upon geographic coordinates to a grid based upon survey coordinates) are eligible to be authorized by modification.

Section 305.70(j)(4) is proposed to specify that changes in sampling frequency (e.g., for groundwater and methane monitoring systems) are eligible to be authorized by modification.

Section 305.70(j)(5) is proposed to specify that the submittal of a new SLQCP or changes to an existing SLQCP are eligible to be authorized by modification.

Section 305.70(j)(6) is proposed to specify that changes in closure or post-closure care plans are eligible to be authorized by modification.

Section 305.70(j)(7) is proposed to specify that changes to the site layout plan that add or delete a registered or exempted facility/activity are eligible to be authorized by modification, provided that the facility/activity either requires a registration or would be exempt were it located offsite (e.g., a used or scrap tire collection area, a compost operation, a recycling collection area, a liquid waste processing facility, a registered transfer station, a citizens' collection area used for collection of non-putrescible recyclable materials either stockpiled or collected in bins, a citizens' collection station, a beneficial landfill gas recovery plant, a brush collection/chipping/mulching area, stockpiles of non-putrescible recyclable materials, etc.). The rule does not intend to regulate exempt facilities/activities located in non-waste areas as long as they do not significantly alter drainage patterns within the permitted area.

Section 305.70(j)(8) is proposed to specify that changes in the site layout plan, other than changes in the entry gate location, that relocate the gatehouse, office, or maintenance buildings, or add scales or a wash pad not over a waste fill area to a facility may be authorized by permit or registration modification.

Section 305.70(j)(9) is proposed to specify that changes in the design details for a solidification basin may be authorized by modification.

Section 305.70(j)(10) is proposed to specify that changes to a site development plan, site operating plan, engineering report, Part A application form of a permit or registration or any other approved plan that changes operating personnel, operating equipment needs, site name, permittee/registrant name, or that makes minor changes in wording that do not alter the design or operations of a facility may be authorized by modification.

Section 305.70(j)(11) is proposed to specify that changes in the drainage control plan that alter internal run-on/run-off control without impacting offsite drainage or increasing landfill disposal capacity are eligible to be authorized by modification. The paragraph also clarifies that changes in the drainage control plan may include revisions to topslopes and sideslopes of landfills which may cause adjustment in the final contours.

Section 305.70(j)(12) is proposed to specify that changes in perimeter roadways, perimeter berms, or other features in the buffer zone resulting from changes in the facility's drainage system design may be authorized by modification.

Section 305.70(j)(13) is proposed to specify that changes to the approved final contours and final slopes of a landfill resulting from sequence of development changes that reduce the waste

disposal area may be authorized by modification, provided the changes do not result in a landfill height or capacity increase.

Section 305.70(j)(14) is proposed to specify that the addition of a construction gate for access to borrow pits or offsite maintenance facilities may be authorized by modification, provided the borrow pit or maintenance facility is located on property that is owned or under lease by the permittee or registrant, contiguous to the permit or registration boundary, and restricted to use by the contractor or landfill personnel.

Section 305.70(j)(15) is proposed to specify that a change in the facility records storage area from an onsite to an offsite location may be authorized by modification.

Section 305.70(j)(16) is proposed to specify that the addition of a compost plan (containing instructions and procedures to ensure collection of the composting refund) to the site operating plan of an MSWLF may be authorized by modification.

Section 305.70(j)(17) is proposed to specify that the replacement of existing monitoring wells, such as landfill gas or groundwater monitoring wells, that have been damaged or rendered inoperable with no change to the design or depth of the wells or to the monitoring system may be authorized as a modification.

Section 305.70(j)(18) is proposed to specify that changes to an existing leachate collection system may be authorized by modification.

Section 305.70(j)(19) is proposed to specify that the installation of a landfill gas monitoring system where none existed before may be authorized as a modification.

Section 305.70(j)(20) is proposed to specify that design changes to an existing landfill gas monitoring system may be authorized as a modification.

Section 305.70(j)(21) is proposed to specify that design changes to an existing landfill gas collection system may be authorized as a modification.

Section 305.70(j)(22) is proposed to specify that changes to comply with the provisions of §330.203 of this title (relating to Special Conditions (Liner Design Constraints)) may be authorized as a modification.

Section 305.70(j)(23) is proposed to specify that the submittal of a new Groundwater Sampling and Analysis Plan (GWSAP) or changes to an existing GWSAP may be authorized as a modification. Examples of changes that may be processed under this paragraph include: 1) the addition of constituents to the detection monitoring constituents listed in §330.241 of this title (relating to Constituents for Detection Monitoring); 2) substitution of alternative inorganic indicator constituents in lieu of some or all of the heavy metals in accordance with §330.234(a)(2) of this title (relating to Detection Monitoring Program); 3) deletion of sampling constituents in accordance with §330.234(a)(1) of this title; 4) changes in sampling and analytical methods; and 5) other changes to the GWSAP.

Section 305.70(j)(24) is proposed to specify that the submittal of a new waste acceptance plan or the addition of detailed narrative or design drawings that provide details for the acceptance of waste streams previously authorized within the permit or registration may be authorized by modification. An example of a change that would be authorized as a modification under this section would be the incorporation of detailed narrative and design drawings for a Class 1 nonhazardous industrial waste trench where the Class 1 waste was listed in the permit as an authorized waste stream. Any change which expands the waste streams authorized by a permit would require the permittee to obtain a major amendment to the permit under §305.62(c)(1) of this title, and any change which expands the waste streams authorized by registration would require the registrant to obtain a new registration.

Section 305.70(j)(25) is proposed to specify that revisions to an existing Waste Acceptance Plan for waste streams authorized by the permit or registration may be authorized by modification.

Section 305.70(j)(26) is proposed to specify that the installation of a new landfill groundwater monitoring well or system where none had existed before may be authorized by modification.

Section 305.70(j)(27) is proposed to specify that the upgrade of an existing landfill groundwater monitoring system may be authorized by modification, provided there is no increase in the depth or in the design of wells or the well system or a change in the groundwater characterization as defined in Chapter 330, Subchapter I of this title (relating to Groundwater Monitoring and Corrective Action).

Section 305.70(j)(28) is proposed to specify that the plugging of groundwater monitoring wells may be authorized as a modification. This section applies only to groundwater monitoring wells which the executive director has determined are no longer needed. The executive director may determine that the plugging of groundwater monitoring wells is appropriate in various situations including, but not limited to, when a facility has completed the post-closure maintenance period, when an obsolete groundwater monitoring system is being replaced with a new groundwater monitoring system, or when a damaged groundwater monitoring well is being replaced.

Section 305.70(j)(29) is proposed to specify that the substitution of an equivalent financial assurance mechanism may be authorized by modification.

Section 305.70(j)(30) is proposed to specify that changes to a closure or post-closure cost estimate that result in an increase in the amount of financial assurance required may be authorized by modification if the increase in the cost estimate is due to an increase in the maximum area requiring closure or to the addition of registered or exempted facilities.

Section 305.70(j)(31) is proposed to specify that changes to a closure or post-closure cost estimate that result in a decrease in the amount of financial assurance required may be authorized by modification if the decrease in the cost estimate is due to a reduction in the total area requiring closure.

Section 305.70(j)(32) is proposed to specify that changes in the amount of financial assurance required as the result of corrective action may be processed as a modification.

Section 305.70(k) is proposed to identify those applications for modifications that require mailed notice in accordance with §39.106 of this title (relating to Application for Modification of a Municipal Solid Waste Permit or Registration) and §39.413 of this title (relating to Mailed Notice) before approval of the modification.

Section 305.70(k)(1)(A) is proposed to specifically identify a change in the direction of fill sequence as a change to the sequence of landfill development that is eligible to be authorized by modification.

Section 305.70(k)(1)(B) is proposed to specifically identify the establishment of a dedicated trench or area that will accept Class

1 nonhazardous industrial waste as a change to the sequence of landfill development that is eligible to be authorized by modification, provided that the landfill permit authorizes the acceptance of that waste; the dedicated trench or area is located within the disposal footprint specified in the approved facility permit or site development plan; and the landfill permit or site development plan does not fully address the requirements of §330.137 of this title (relating to Disposal of Industrial Wastes).

Section 305.70(k)(2) is proposed to specify that changes to the metes and bounds description of a permit or registration boundary that reduce the size of the facility and do not result in permit or registration acreage beyond the original permit or registration boundary are eligible to be authorized by modification.

Section 305.70(k)(3) is proposed to specify that requests to use an alternate daily cover material on a permanent basis in accordance with §330.133(c) of this title (relating to Landfill Cover) are eligible to be authorized by modification.

Section 305.70(k)(4) is proposed to specify that changes to the entry gate location that do not alter the access traffic patterns delineated in the permit or registration are eligible to be authorized by modification.

Section 305.70(k)(5) is proposed to specify that a one-time increase in the height of the landfill may be authorized as a modification if the criteria listed in subparagraphs (A) - (F) of this paragraph are met.

Section 305.70(k)(5)(A) is proposed to indicate that an authorization to increase the height of a specific landfill may be granted through the modification process only one time per facility, and that subsequent requests for a height increase require a major permit amendment.

Section 305.70(k)(5)(B) is proposed to state that the one-time height increase is limited to ten feet at any one or several points above the originally permitted final contour elevations for the purpose of improving drainage.

Section 305.70(k)(5)(C) is proposed to indicate that a revised final contour plan must be prepared and submitted with the one-time height increase modification application, and that the plan must detail the revised final contours and include design calculations demonstrating that the proposed design provides the necessary run-off capability and controls, including erosion control measures.

Section 305.70(k)(5)(D) is proposed to state that the waste disposal area may not be expanded beyond the disposal footprint specified in the landfill permit or site development plan.

Section 305.70(k)(5)(E) is proposed to state that a height increase cannot result in a rate of waste disposal greater than noted in the landfill permit.

Section 305.70(k)(5)(F) is proposed to indicate the various situations under which a one-time height increase may be processed as a permit modification. Clause (i) indicates that the one-time height increase may be granted if the entire landfill facility will cease the receipt of solid waste within 365 days of the approval of the height increase (including the placement of additional fill authorized by the one-time height increase), and initiates formal closure of the entire facility in accordance with MSW rule requirements; and clause (ii) states the one-time height increase may be granted as a modification if the height increase is requested solely for the purpose of improving the surface water drainage from the fill area.

Section 305.70(k)(6) is proposed to specify that a modification in the operation of a landfill that will change the incoming waste stream to a more restrictive waste stream (i.e., a change from a Type I, II, or III landfill operation to a Type IV landfill operation) may be granted as a permit modification, provided the receipt of waste under the present operation ceases once the modification is approved; the filled portion of the landfill will be closed in accordance with Chapter 330, Subchapter J of this title (relating to Closure and Post-Closure); and the modification application details changes to the site development plan and site operating plan as appropriate to reflect the proposed change in operation.

Section 305.70(k)(7) is proposed to specify that changes to the post-closure use of a landfill during the post-closure maintenance period may be authorized by modification.

Section 305.70(k)(8) is proposed to specify that the upgrade of a permitted landfill to meet the requirements of 40 CFR Part 258 (relating to Criteria for Municipal Solid Waste Landfills) may be authorized as a modification, provided no more than three notices of deficiency have been issued on the modification application. Incomplete applications remaining and upgrade applications received by the executive director on or after May 19, 2003 require a major amendment to the permit under §305.62(c)(1) of this title.

Section 305.70(k)(9) is proposed to specify that the installation of a landfill gas collection system where none existed before may be processed as a modification.

Section 305.70(k)(10) is proposed to authorize approval by modification of changes to a site layout plan that add, delete, or relocate a facility/activity, provided that the facility/activity does not require registration within the boundaries of a permitted landfill, but would not be exempt were it located outside the boundaries of a permitted landfill (e.g., a liquid waste solidification facility, a petroleum-contaminated soil stabilization area, stockpiles of putrescible recyclable materials, or a pesticide-container collection area).

Section 305.70(l) is proposed to authorize the executive director to determine if an application for a permit or registration modification for a change not listed in subsection (j) or (k) of this section is eligible to be processed as a permit or registration modification and if the change requires public notice in accordance with subsection (k) of this section. In making this determination, the executive director shall consider if the requested change meets the criteria in subsections (d) and (e) of this section.

Section 305.70 (m) is proposed to authorize the executive director to approve a temporary authorization, without modifying a permit or registration, for situations such as the use of alternate daily cover on a trial basis, or temporary changes in operating hours to address natural disaster situations, accommodate special community events, or prevent disruption of waste services due to holidays. The executive director may approve a temporary authorization for a term of not more than 180 days, and may reissue the temporary authorization once for an additional 180 days if circumstances warrant the extension. Temporary authorizations must meet the criteria of subsections (d) and (e)(1), (2), and (4) of this section (i.e., they must apply to minor changes to an MSW facility or its operation that do not substantially alter the permit or registration conditions; do not reduce the capability of the facility to protect human health and the environment; etc.).

Section 305.70(n) is proposed to indicate that the applicant, public interest counsel, or other person may file with the chief clerk

a motion to overturn the executive director's action on a modification application or a temporary authorization in accordance with §50.139 of this title (relating to Motion to Overturn Executive Director's Decision).

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed rulemaking is in effect there will be no significant fiscal impacts for approximately 390 owners of local government-owned and-operated MSW facilities that would be affected by the proposed rulemaking if they request modifications to permits or registrations that require public notification. Additionally, there could be significant fiscal impacts for owners of four MSW landfills that are required to upgrade their permits. If the required permit upgrades occur after May 19, 2003, the upgrade applications will be handled as major amendments, instead of modifications, which could result in potentially costly public hearings.

The proposed rulemaking is intended to update public notification requirements for certain modifications to MSW permits and registrations, identify and expand the changes which can be made to registrations and permits through the modification process, delete references to obsolete sections, clarify that the rule applies to both permitted and registered MSW facilities, and to update the rule to reflect that upgrades to landfills required by federal regulations (40 CFR Part 258 (relating to Criteria for Municipal Solid Waste Landfills)) can only be implemented through a major permit amendment after May 19, 2003.

The proposed rulemaking increases the number of changes to permits and registrations, from 27 to 43, that are specifically allowed to be carried out under the modification process. The modification process allows MSW permit and registration holders to modify their permits and registrations through applications sent to the agency, without providing the opportunity for a public hearing. Of the 43 changes that can be handled through the modification process, 11 require public notification. Applicants for modifications which require public notification are required to mail notices to owners of land within 500 feet of the facility's boundary in addition to a standard list of city, county, state, and federal agencies. The 11 modifications that would require public notification include: 1) changes to the direction of fill sequence; 2) the opening of a dedicated trench or area that will accept Class 1 nonhazardous industrial waste under specified conditions; 3) changes in the metes and bounds description of the permit or registration boundary that reduce the size of the facility; 4) the use of an alternate daily cover material on a permanent basis; 5) changes to the entry gate location that do not alter access traffic patterns delineated in the permit or registration; 6) an increase in the height of a landfill over the maximum permitted height of the landfill under specified criteria; 7) a modification in the operation of a landfill that will change the incoming waste stream to a more restrictive waste stream; 8) changes to post-closure use of a landfill during the post-closure care period; 9) upgrade of a permitted landfill facility to meet the requirements of (40 CFR Part 258 (relating to Criteria for Municipal Solid Waste Landfills)) under specified conditions; 10) installation of a landfill gas collection system not already authorized in the permit; and 11) changes to a site layout plan that add, delete, or relocate certain facilities/activities.

In addition to updating public notification requirements, the proposed rulemaking would require all Subtitle D upgrades to landfills that accept household waste be implemented only through the major permit amendment process after May 19, 2003. The United States Environmental Protection Agency implemented stricter standards for landfills that accept household waste in 1993. Since then, the agency has allowed facility owners to upgrade their sites through the modification process; however, since the majority of sites have already performed the required upgrades, the agency will require any further upgrades to be handled as a major amendment after May 19, 2003, which will require a public notice, the opportunity for public comment, and the opportunity to request a public hearing.

The commission estimates that approximately 390 local government-owned and -operated MSW facilities would be affected by the proposed rulemaking if they request modifications to permits or registrations that require public notification. However, the costs involved would be much less than if the requested changes had to be made through the amendment process. Because the number of persons to be notified varies according to the location of the MSW facility, the commission cannot determine the overall cost due to public notification at this time. Some facilities may be bordered by few landowners while other facilities may have many adjacent landowners. Costs involved would be those for printing notices, envelopes, and first class postage at approximately $0.45 per notice. Since only landowners located within 500 feet of the MSW facility would have to be notified of potential changes to the facility, the commission estimates that approximately 15 to 200 notices would have to be mailed for each modification requiring public notice.

Four out of the approximately 390 permits for local government-owned and -operated MSW landfills which accept household waste have not been upgraded to meet stricter federal regulations (40 CFR Part 258). If the owners of these facilities perform the required upgrades to their permit prior to May 19, 2003, these upgrades could be handled through the modification process. Any Subtitle D upgrade to existing permits for these facilities that occurs after May 19, 2003 will go through the major amendment process, which could result in a potentially costly public hearing. Although the exact cost cannot be determined, the commission estimates that overall costs for a public hearing could be as high as $100,000, depending on the complexity of the changes, number and types of expert witnesses involved, and the length of the hearing.

PUBLIC BENEFIT AND COSTS

Mr. Davis also has determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated from enforcement of and compliance with the proposed rulemaking will be increased public awareness concerning proposed changes to MSW facilities.

The proposed rulemaking increases the number of changes to permits and registrations, from 27 to 43, that are allowed to be carried out under the modification process. The modification process allows MSW permit and registration holders to modify their permits and registrations through applications sent to the agency, without providing an opportunity for a public hearing. Of the 43 changes that can be handled through the modification process, 11 require public notification. Applicants for modifications which require public notification are required to mail notices to owners of land within 500 feet of the facility's boundary in addition to a standard list of city, county, state, and federal agencies.

The commission estimates that approximately 83 individual and business-owned and -operated MSW facilities could be affected by the proposal if the owners request modifications to existing

permits or registrations that require public notification. However, the costs involved would be much less than if the requested changes had to be made through the amendment process. Because the number of persons to be notified varies according to the location of the MSW facility, the commission cannot determine the overall cost due to public notification at this time. Some facilities may be bordered by few landowners while other facilities may have many adjacent landowners. Costs involved would be those for printing notices, envelopes, and first class postage at approximately $0.45 per notice. Since only landowners located within 500 feet of the MSW facility would have to be notified of potential changes to the facility, the commission estimates that approximately 15 to 200 notices would have to be mailed for each modification requiring public notice.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse economic effects are anticipated to the approximately 83 small or micro-business- owned and -operated MSW facilities as a result of the proposed rulemaking. The proposed rulemaking increases the number of changes to permits and registrations that are allowed to be carried out under the modification process, which allows MSW permit and registration holders to modify their permits and registrations through applications sent to the agency, without providing an opportunity for a public hearing. Of the 43 changes that can be handled through the modification process, 11 require public notification. Applicants for modifications which require public notification are required to mail notices to owners of land within 500 feet of the facility's boundary in addition to a standard list of city, county, state, and federal agencies.

The commission estimates that approximately 83 small and micro-business-owned and -operated MSW facilities could be affected by the proposal if the owners request modifications to existing permits or registrations that require public notification. However, the costs involved would be much less than if the requested changes had to be made through the amendment process. Because the number of persons to be notified varies according to the location of the MSW facility, the commission cannot determine the overall cost due to public notification at this time. Some facilities may be bordered by few landowners while other facilities may have many adjacent landowners. Costs involved would be those for printing notices, envelopes, and first class postage at approximately $0.45 per notice. Since only landowners located within 500 feet of the MSW facility would have to be notified of potential changes to the facility, the commission estimates that approximately 15 to 200 notices would have to be mailed for each modification requiring public notice.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to §2001.0225 because it is does not meet the definition of a "major environmental rule" as defined in the act and it does not meet any of the four applicability requirements listed in §2001.0225(a). "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. As for the four applicability requirements, the proposal does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of any delegation agreement or contract between the state, the commission, and an agency or representative of the federal government, nor are the repeal and new rule proposed solely under the general powers of the agency. Additionally, the proposal is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the purpose of the proposal is to clarify and simplify the process for making changes to permits and registrations for MSW facilities. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for this rulemaking under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rulemaking is to repeal the existing rule and replace it with a new rule which will specifically identify those modifications for which public notice must be given, remove references to obsolete sections, establish a clearer set of mailed notice requirements, clarify that the section applies to both permitted and registered MSW facilities, identify more specifically the changes which can be made to registrations and permits through the modification process, and reflect the recent commission decision that Subtitle D upgrades may be implemented only through a major permit amendment after May 19, 2003. The proposed rulemaking will substantially advance the stated purpose by clarifying and providing specific provisions on the aforementioned matters. Promulgation and enforcement of this rule will not burden or affect private real property which is the subject of the rule because the proposed new rule is only an update of the repealed rule, providing current references, clarification of procedures, and more specific information on the type of modifications that can be made to permitted and registered MSW facilities. The rule is applicable only to entities which have permits or registrations for MSW facilities. Therefore, this proposal will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed this rulemaking and found that the proposal is a rulemaking subject to the Texas Coastal Management Program (CMP) and must be consistent with all applicable goals and policies of the CMP. The commission has prepared a consistency determination for this proposed rule under 31 TAC §505.22 and has found that the rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goals applicable to the rulemaking are the goals to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs). Applicable policies are those related to the regulation of solid waste facilities in 31 TAC §501.14(d)(1)(I) and (d)(2). These policies require that solid waste facilities shall be sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and, at a minimum, comply with standards established under the federal Solid Waste Disposal Act, and that the commission shall comply with the policies in 31 TAC 501.14(d) when issuing permits and adopting rules under Texas Health and Safety Code, Chapter 361. The specific purpose of the rulemaking is to repeal an existing rule and replace it with a new rule which will specifically identify those modifications for which public notice must be given, remove references to obsolete rules, establish

a clearer set of mailed notice requirements, clarify that the rule applies to both permitted and registered MSW facilities, identify more specifically the changes which can be made to registrations and permits through the modification process, and reflect the recent commission decision that landfill permit upgrades to meet standards under Subtitle D of the federal Solid Waste Disposal Act may be implemented only through a major permit amendment after May 19, 2003. Promulgation and enforcement of the proposed rule would be consistent with the applicable CMP goals and policies, and the rule would not reduce the capability of a facility to protect human health and the environment. The commission invites public comment on the applicability of the CMP and on the consistency determination of the proposed rule.

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, 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 1997-186-305-WS. Comments must be received by 5:00 p.m., July 9, 2001. For further information, please contact Hector Mendieta, Policy and Regulations Division, at (512) 239-6694.

30 TAC §305.70

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

STATUTORY AUTHORITY

The repeal is proposed under Texas Water Code, §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state; Health and Safety Code (HSC), §361.011, which provides the commission all powers necessary and convenient to carry out its responsibilities concerning the regulation and management of municipal solid waste; and HSC, §361.024, which provides the commission authority to adopt and promulgate rules consistent with the general intent and purposes of the Act.

No other codes, rules, or statutes will be affected by this proposal.

§305.70. Municipal Solid Waste Class I Modifications.

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

Filed with the Office of the Secretary of State, on May 24, 2001.

TRD-200102940
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: July 8, 2001
For further information, please call: (512) 239-5017

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30 TAC §305.70

STATUTORY AUTHORITY

The new section is proposed under Texas Water Code, §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state; Health and Safety Code (HSC), §361.011, which provides the commission all powers necessary and convenient to carry out its responsibilities concerning the regulation and management of municipal solid waste' and HSC, §361.024, which provides the commission authority to adopt and promulgate rules consistent with the general intent and purposes of the Act.

The proposed new section implements Texas Health and Safety Code, Chapter 361.

§305.70. Municipal Solid Waste Permit and Registration Modifications.

(a) This section applies only to modifications to municipal solid waste (MSW) permits and registrations. Modifications to industrial and hazardous solid waste permits are covered in §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). Changes to special conditions in an MSW permit or registration which were specifically ordered by the commission following the contested hearing process or included by the executive director as a result of negotiations between the applicant and interested persons during the permitting/registration process are not eligible for modification under this section.

(b) References to the term "permit" in this section include the permit document and all of the attachments thereto as further defined in Chapter 330, Subchapter E, §§330.50 - 330.64 of this title (relating to Permit Procedures). References to the term "registration" in this section include the registration document and all of the attachments thereto as further defined in Chapter 330, Subchapter E of this title.

(c) Except as provided in subsection (k) of this section, any increase in the landfill capacity authorized for waste disposal or any increase in the permitted or registered daily maximum rate of waste acceptance at a Type V facility shall be subject either to the requirements of §305.62(c)(1) of this title (relating to Amendment) in the case of a permitted facility, or to the requirements of a new registration in the case of a registered facility.

(d) Except as provided in subsection (k) of this section, permit and registration modifications apply to minor changes to an MSW facility or its operation that do not substantially alter the permit or registration conditions and do not reduce the capability of the facility to protect human health and the environment.

(e) A permittee or registrant may implement a modification to an MSW permit or registration provided that the permittee or registrant has received prior written authorization for the modification from the executive director. In order to receive prior written authorization, the permittee or registrant must submit a modification application to the executive director which includes, at a minimum, the following information:

(1) a description of the proposed change;

(2) an explanation detailing why the change is necessary;

(3) appropriate revisions to all applicable narrative pages and drawings of Attachment A of a permit or a registration (i.e., a site development plan, site operating plan, engineering report, or any other approved plan attached to a permit or a registration document). These revisions shall be marked and include revision dates and notes as necessary in accordance with §330.51(e)(4) of this title (relating to Permit Application for Municipal Solid Waste Facilities) and §330.64(b) and (c) of this title (relating to Additional Standard Permit Conditions for Municipal Solid Waste Facilities);

(4) a reference to the specific provision under which the modification application is being made; and

(5) for those modifications submitted in accordance with subsection (l) that the executive director determines that notice is required and for those listed in subsection (k) of this section, an updated landowners map and an updated landowners list as required under §330.52(b)(4)(D) and (b)(5) of this title (relating to Technical Requirements of Part I of the Application).

(f) The permittee or registrant must submit one original and two copies of the modification application in accordance with §305.44 of this title (relating to Signatories to Applications). Failure to submit the modification application with complete information shall result in the application being returned to the permittee or registrant without further action. Engineering documents must be signed and sealed by the responsible licensed professional engineer as required by §330.51(d) of this title (relating to Permit Application for Municipal Solid Waste Facilities).

(g) If at the end of 60 calendar days after receipt of the permit or registration modification application (and, in the case of modifications requiring notice, after the notice requirements have been met), the executive director has not taken one of the following six steps, the application shall be automatically approved:

(1) approve the application, with or without changes, and modify the permit or registration accordingly;

(2) deny the application;

(3) provide a notice-of-deficiency letter requiring additional or clarified information regarding the proposed change and requiring the resubmittal of a new application;

(4) extend the 60-calendar day review period, if necessary, by notifying the permittee or registrant in writing that additional time is required for the modification review. The letter notifying the permittee or registrant of the review period extension shall include the reason for the extension and the date to which the review period has been extended;

(5) determine that the application does not qualify as a registration modification, and that the requested change requires a new application for registration; or

(6) determine that the application does not qualify as a permit modification and that the requested change requires a major amendment to the permit pursuant to §305.62(c)(1) of this title (relating to Amendment).

(h) If an application for a permit or registration modification is denied by the executive director, the permittee or registrant must comply with the original permit or registration conditions.

(i) If a permit or registration modification is listed in subsection (k) of this section or if a permit or registration modification application is made under subsection (l) of this section and the executive director determines that notice is required, within 15 days of submitting the modification application to the executive director or within 15 days of being notified by the executive director that notice is required for a modification under subsection (l) of this section, the permittee or registrant must prepare and send notice of the modification application in accordance with §39.106 of this title (relating to Application for Modification of a Municipal Solid Waste Permit or Registration). Prior to executive director approval of the modification application, the permittee or registrant must provide certification, on a form prescribed by the executive director, that notice was provided as required by §39.106 of this title.

(j) Paragraphs (1) - (32) of this subsection are permit and registration modifications that, in order to qualify as modifications, must meet the criteria in subsection (d) of this section (i.e., they must apply to minor changes to an MSW facility or its operation that do not substantially alter the permit or registration conditions and do not reduce the capability of the facility to protect human health and the environment):

(1) the establishment of a trench or area that will accept brush and construction demolition waste and rubbish only (also known as a Type IV area) if the trench or area is located within the disposal footprint specified in the site development plan or municipal solid waste landfill (MSWLF) permit;

(2) changes in excavation details for landfills, except for changes that would:

(A) increase the depth or lateral extent of the disposal footprint as described in the site development plan or permit;

(B) result in a change to the Soils and Liner Quality Control Plan (SLQCP); or

(C) increase the disposal capacity of the landfill facility;

(3) changes to the landfill marker systems (e.g., from a grid based upon geographic coordinates to a grid based upon survey coordinates);

(4) changes in sampling frequency (e.g., for groundwater and landfill gas monitoring systems);

(5) submittal of a new SLQCP or changes to an existing SLQCP;

(6) changes in closure or post-closure care plans;

(7) changes to the site layout plan that add or delete a properly registered or exempted facility/activity, provided that the facility/activity either requires a registration or would be exempt were it located offsite (e.g., a used or scrap tire collection area, a compost operation, a recycling collection area, a liquid waste processing facility, a registered transfer station, a citizens' collection area used for collection of non-putrescible recyclable materials either stockpiled or collected in bins, a citizens' collection station, a beneficial landfill gas recovery plant, a brush collection/chipping/mulching area, stockpiles of non-putrescible recyclable materials, etc.);

(8) changes in the site layout, other than entry gate location, that relocate the gatehouse, office or maintenance building locations, or add a wash pad not over the waste fill area or scales to the facility;

(9) changes in the design details for a solidification basin;

(10) changes to a site development plan, site operating plan, engineering report, the Part A application form of a permit or registration, or of any other approved plan that changes operating personnel, operating equipment needs, site name, permittee/registrant name, or makes minor changes in wording that do not alter the design or operations of a facility;

(11) changes in the drainage control plan that alter internal stormwater run-on/run-off control without impacting offsite drainage or increasing landfill disposal capacity. Changes may include revisions to topslopes and sideslopes of landfills which may cause adjustment to approved final contours;

(12) changes to perimeter roadways, perimeter berms, or other features in the buffer zone that result from changes in the facility drainage system design;

(13) changes to the approved final contours and approved final slopes with no height or capacity increase over the maximum permitted height or capacity, due to sequence of development changes that reduce the waste disposal area;

(14) the addition of a construction gate for access to borrow pits or offsite maintenance facilities, provided that the borrow pit or maintenance facility is located on property owned or under lease by the permittee or registrant, is contiguous to the permit or registration boundary and is restricted to use by the contractor or landfill personnel;

(15) a change in the facility records storage area from an onsite to an offsite location;

(16) the addition of a compost plan (a plan containing instructions and procedures to ensure collection of the composting refund, as cited in Texas Health and Safety Code, §361.0135) to the site operating plan of an MSWLF;

(17) new monitoring wells that replace existing monitor wells (e.g., landfill gas or groundwater monitoring wells) that have been damaged or rendered inoperable, with no change to the design or depth of the wells or to the monitoring system design;

(18) changes to an existing leachate collection system design or installation of a new leachate collection system;

(19) installation of a landfill gas monitoring system;

(20) changes to an existing landfill gas monitoring system design;

(21) changes to an existing landfill gas collection system design;

(22) changes to comply with the provisions of §330.203 of this title (relating to Special Conditions (Liner Design Constraints));

(23) submittal of a new Groundwater Sampling and Analysis Plan (GWSAP) or changes to an existing GWSAP such as the addition of constituents to the detection monitoring constituents listed in §330.241 of this title (relating to Constituents for Detection Monitoring); substitution of alternative inorganic indicator constituents in lieu of some or all of the heavy metals in accordance with §330.234(a)(2) of this title (relating to Detection Monitoring Program); deletion of sampling constituents in accordance with §330.234(a)(1) of this title; changes in sampling and analytical methods; and other changes to the GWSAP;

(24) submittal of a new waste acceptance plan or the addition of detailed narrative or design drawings which provide details for the acceptance of waste streams authorized within the permit or registration (e.g., Class 1 nonhazardous industrial waste);

(25) revisions to an existing waste acceptance plan to include waste streams authorized by the permit or registration;

(26) installation of a landfill groundwater monitoring well or system where none had existed before;

(27) upgrade of an existing landfill groundwater monitoring system so long as there is no increase in depth or design of wells or well system or change in groundwater characterization as defined in Chapter 330, Subchapter I of this title (relating to Groundwater Monitoring and Corrective Action), in which case the changes would have to be requested as an amendment under §305.62 of this title;

(28) the plugging of groundwater monitoring wells when the executive director has determined that the plugging of groundwater monitoring wells is appropriate in various situations including, but not limited to, when a facility has completed the post-closure maintenance period, when an obsolete groundwater monitoring system is being replaced with a new groundwater monitoring system, or when a damaged groundwater monitoring well is being replaced;

(29) substitution of an equivalent financial assurance mechanism;

(30) changes to a closure or post-closure cost estimate that result in an increase in the amount of financial assurance required if the increase in the cost estimate is due to an increase in the maximum area requiring closure or to the addition of registered or exempted facilities;

(31) changes to a closure or post-closure cost estimate that result in a decrease in the amount of financial assurance required if the decrease in the cost estimate is due to a reduction in the total area requiring closure; and

(32) changes in the amount of financial assurance required as the result of corrective action.

(k) Paragraphs (1) - (10) of this subsection are modifications which require notice. For those modifications requiring notice, the permittee or registrant must send notice of the modification application by first-class mail in accordance with §39.106 of this title and to all persons listed in §39.413 of this title (relating to Mailed Notice):

(1) the changes in the sequence of landfill development:

(A) changes to the direction of fill sequence;

(B) the opening of a dedicated trench or area that will accept Class 1 nonhazardous industrial waste, provided that the landfill permit authorizes the acceptance of that waste; the dedicated trench or area is located within the disposal footprint specified in the site development plan or MSWLF permit; and the landfill permit does not already fully address the requirements of §330.137 of this title (relating to the Disposal of Industrial Wastes);

(2) changes in the metes and bounds description of the permit or registration boundary that reduce the size of the facility and that do not result in permit or registration acreage beyond the original permit or registration boundary;

(3) the use of an alternate daily cover material on a permanent basis in accordance with §330.133(c) of this title (relating to Landfill Cover);

(4) changes to the entry gate location that do not alter access traffic patterns delineated in the permit or registration;

(5) an increase in the height of a landfill over the maximum permitted height of the landfill in accordance with the following criteria:

(A) Authorization to increase the height of a landfill may only be granted as a modification one time per facility. Subsequent applications for an increase in height require a major permit amendment in accordance with §305.62 of this title.

(B) A height increase shall be limited to ten feet at any one or several points above the originally permitted final contour elevations for the purpose of improving drainage.

(C) A revised final contour plan shall be prepared and submitted with the application. The plan must detail the revised final contours and include design calculations demonstrating that the proposed design provides the necessary runoff capability and controls, including erosion controls.

(D) The waste disposal area may not be expanded beyond the disposal footprint specified in the landfill permit.

(E) A height increase cannot result in a rate of waste disposal greater than noted in the landfill permit.

(F) A height increase can only be granted for one of the following situations:

(i) the entire facility will cease the receipt of solid waste within 365 days of the approval of the height increase (including

the additional fill authorized by the height increase) and initiate formal closure of the entire facility;

(ii) the height increase is requested solely for the purpose of improving the surface water drainage from the fill area;

(6) a modification in the operation of a landfill that will change the incoming waste stream to a more restrictive waste stream (i.e., a change from a Type I, II, or III landfill operation to a Type IV landfill operation) may be granted, provided the receipt of waste under the present operation ceases once the modification is approved; the filled portion of the landfill will be closed in accordance with Chapter 330, Subchapter J of this title (relating to Closure and Post-Closure); and the modification application details changes to the site development plan and site operating plan as appropriate to reflect the proposed change in operation;

(7) changes to post-closure use of a landfill during the post-closure care period;

(8) upgrade of a permitted landfill facility to meet the requirements of 40 Code of Federal Regulations Part 258 (relating to Criteria for Municipal Solid Waste Landfills), provided there are no outstanding notices of deficiency on the modification application on May 19, 2003. Incomplete applications remaining and upgrade applications received after May 19, 2003 require a major amendment to the permit under to §305.62(c)(1) of this title. No more than three notice-of-deficiency letters are authorized, after which time the change can only be made through a permit amendment under §305.62(c)(1) of this title;

(9) installation of a landfill gas collection system not already authorized in the permit;

(10) changes to a site layout plan that add, delete, or relocate a facility/activity, provided that the facility/activity does not require registration within the boundaries of a permitted landfill, but would not be exempt were it located outside the boundaries of a permitted landfill (e.g., a liquid waste solidification facility, a petroleum-contaminated soil stabilization area, stockpiles of putrescible recyclable materials, or a pesticide-container collection area).

(l) In case of an application for a permit or registration modification for a change not listed in subsection (j) or (k) of this section, the executive director shall make a determination as to whether the change is eligible to be processed as a permit or registration modification and if the change requires public notice in accordance with subsection (k) of this section. In making this determination, the executive director shall consider if the requested change meets the criteria in subsections (d) and (e) of this section.

(m) In order to obtain a temporary authorization, a permittee or registrant shall request a temporary authorization and include in the application a specific description of the activities to be conducted, an explanation of why the authorization is necessary, and how long the authorization is needed. The executive director may approve a temporary authorization for a term of not more than 180 days, and may reissue the temporary authorization once for an additional 180 days, if circumstances warrant the extension. Temporary authorizations must be in accordance with subsections (d) and (e)(1), (2), and (4) of this section (i.e., they must apply to minor changes to an MSW facility or its operation that do not substantially alter the permit or registration conditions; do not reduce the capability of the facility to protect human health and the environment; etc.). Examples of temporary authorizations include:

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

(2) temporary changes in operating hours to address natural disaster situations, accommodate special community events, or prevent disruption of waste services due to holidays;

(n) The applicant, public interest counsel, or other person may file with the chief clerk a motion to overturn the executive director's action on a modification application in accordance with §50.139 of this title (relating to Motion to Overturn Executive Director's 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 May 24, 2001.

TRD-200102941
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: July 8, 2001
For further information, please call: (512) 239-5017

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CHAPTER 336. RADIOACTIVE SUBSTANCE RULES

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes amendments to §336.2, Definitions; §336.305, Occupational Dose Limits for Adults; §336.307, Determination of External Dose from Airborne Radioactive Material, §336.310, Planned Special Exposures; §336.312, Dose to an Embryo/Fetus; §336.315, General Requirements for Surveys and Monitoring; §336.316, Conditions Requiring Individual Monitoring of External and Internal Occupational Dose; §336.319, Use of Process or Other Engineering Controls; §336.320, Use of Other Controls; §336.321, Use of Individual Respiratory Protection Equipment; §336.322, Further Restrictions on the Use of Respiratory Protection Equipment; §336.335, Reporting Requirements for Incidents; §336.341, General Recordkeeping Requirements for Licensees; §336.346, Records of Individual Monitoring Results; §336.358, Appendix A, Protection Factors for Respirators; §336.359, Appendix B, Annual Limits on Intake (ALI) and Derived Air Concentrations (DAC) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sanitary Sewerage; and §336.611, Public Notification and Public Participation. The commission is also proposing the repeal of Subchapter I, §336.801, Purpose and Scope; §336.802, Definitions; §336.803, Financial Assurance Requirements; §336.804, Financial Assurance Mechanisms; §336.805, Long-Term Care Requirements; §336.806, Wording of Financial Assurance Mechanisms; and §336.807, Appendix A. Wording of Financial Assurance Instruments.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Nearly all of the amendments to this chapter are derived from three United States Nuclear Regulatory Commission (NRC) rulemakings: 1.) Respiratory Protection and Controls to Restrict Internal Exposures, October 7, 1999 (64 FR 54543), and October 13, 1999 (64 FR 55524), effective February 4, 2000; 2.) Minor Corrections, Clarifying Changes, and a Minor Policy Change, July 23, 1998 (63 FR 39477), and August 26, 1998 (63 FR 45393), effective October 26, 1998; and, to a very limited extent, 3.) Resolution of Dual Regulation of Airborne Effluents

of Radioactive Materials; Clean Air Act, December 10, 1996 (61 FR 65119), effective January 9, 1997, which is being revised to add a definition inadvertently omitted in an earlier rulemaking (in 1998). The commission must incorporate NRC rulemakings into its rules compatible with standards specified by the NRC in each rulemaking to preserve the status of Texas as an Agreement State authorized to administer a portion of the radiation control program in this state. NRC rules must be incorporated into the commission's rules within three years of their effective date.

The amendments from NRC's "Respiratory Protection and Controls to Restrict Internal Exposures" rulemaking make the regulations more consistent with the philosophy of controlling the sum of internal and external radiation exposure, reflect current guidance on respiratory protection from the American National Standards Institute (ANSI), are consistent with recently effective revisions to the Occupational Safety and Health Administration's (OSHA's) respiratory protection rule, and make requirements for radiological protection less prescriptive, while reducing unnecessary regulatory burden without reducing worker protection. The amendments provide greater assurance that worker doses will be maintained as low as is reasonably achievable and that recent technological advances in respiratory protection equipment and procedures are reflected in the regulations and clearly approved for use by licensees.

The amendments from NRC's "Minor Corrections, Clarifying Changes, and a Minor Policy Change" rulemaking make minor corrections and clarifying changes and are also intended to conform with the NRC's revised radiation protection standards. In addition, the rulemaking includes a minor policy change that raises the criteria for placement of monitoring devices on minors from 0.05 rem to 0.1 rem in a year and on declared pregnant women from 0.05 rem to 0.1 rem during their pregnancies. The 0.1 rem deep dose equivalent monitoring criterion represents a quantity more consistent with the measurement sensitivity of personal dosimeters or individual monitoring devices. (Minor Corrections, Clarifying Changes, and a Minor Policy Change, July 23, 1998 (63 FR 39478)). The NRC determined that the current criteria of 0.05 rem, if received uniformly in a year or throughout the gestation period would result in an average monthly dose of less than 0.005 rem, and that the most routinely utilized monitoring devices cannot accurately measure doses below 0.01 rem, which is greater than the average monthly dose of 0.005 rem. These changes to the threshold for monitoring exposures to radiation and radioactive material do not change the total occupational dose limits for minors or declared pregnant women of 0.5 rem.

Lastly, the definition for "constraint (dose constraint)" from NRC's "Resolution of Dual Regulation of Airborne Effluents of Radioactive Materials; Clean Air Act" rulemaking was inadvertently omitted from a previous commission rulemaking (August 28, 1998 issue of the *Texas Register* (23 TexReg 8837)) and needs to be incorporated now to assure compatibility with the NRC regulations.

The commission also proposes in 30 Texas Administrative Code (TAC) Chapter 336, Radioactive Substance Rules, to update one cross-reference in Subchapter D and one in Subchapter G, and to repeal Subchapter I, which was made obsolete when its requirements were previously incorporated into 30 TAC Chapter 37, Subchapters S and T.

SECTION BY SECTION DISCUSSION

Subchapter A, General Provisions

All of the changes proposed in Subchapter A are derived from the federal rule changes.

Section 336.2, Definitions, is proposed to be amended to make it compatible with the latest version of Title 10 Code of Federal Regulations (CFR) §20.1003. New federal definitions are added for "Air-purifying respirator," "Assigned protection factor (APF)," "Atmosphere-supplying respirator," "Constraint (dose constraint)," "Demand respirator," "Disposable respirator," "Filtering facepiece (dust mask)," "Fit factor," "Fit test," "Helmet," "Hood," "Lens dose equivalent (LDE)," "Loose-fitting facepiece," "Negative pressure respirator (tight fitting)," "Positive pressure respirator," "Powered air-purifying respirator (PAPR)," "Pressure demand respirator," "Qualitative fit test (QLFT)," "Quantitative fit test (QNFT)," "Self-contained breathing apparatus (SCBA)," "Supplied-air respirator (SAR) or airline respirator," "Tight-fitting facepiece," and "User seal check (fit check)." Also, per the NRC rules, the commission proposes the amendment of the definitions of "Declared pregnant woman," "High radiation area," "Individual monitoring devices," and "Very high radiation area," and the deletion of the definition of "Eye dose equivalent." The new definition of "Constraint (dose constraint)" is proposed to be added to make it clear that although a constraint is not the same as a limit, licensees are expected to develop radiation programs to ensure that doses from air emissions are below ten mrem per year. The definition of "Declared pregnant woman" is proposed to be revised to specify that the written declaration of pregnancy is to be given to the licensee rather than to the employer, unless the employer is also the licensee. This is necessary to ensure that the entity responsible for work assignments involving radiation exposure, the licensee, is aware of the declaration of pregnancy to facilitate timely and appropriate protective action. The revision also specifies that the declaration, as well as associated dose restrictions, remain in effect until withdrawn in writing or until the woman is no longer pregnant. The determination that a declared pregnant woman is no longer pregnant should be based on a discussion between the declared pregnant woman and the licensee. The definitions of "High radiation area" and "Very high radiation area" are proposed to be revised to make it clear that these area designations exist solely to note radiation levels from sources external to an individual who may receive the dose. The existing definition of "Eye dose equivalent (EDE)" is proposed to be deleted and replaced by the new definition of "Lens dose equivalent (LDE)" to avoid confusion between the acronyms for dose to the lens of the eye (EDE) and effective dose equivalent (EDE). This should pose no procedural burden on licensees because the required NRC Forms 4 and 5 for records and reports were revised in August 1995 to reflect the new terminology, and these forms or their equivalents are required to be used by the existing rules.

Subchapter D, Standards for Protection Against Radiation

All of the changes proposed in Subchapter D are derived from the federal rule changes, except the cross-reference update in §336.359.

Section 336.305(a)(2)(A), Occupational Dose Limits for Adults, is proposed to be amended by replacing the words "an eye" with the words "a lens." This change is proposed to be consistent with the previously proposed deletion of the definition of "Eye dose equivalent (EDE)" and its replacement by the new definition of "Lens dose equivalent (LDE)" in §336.2 to avoid confusion between the acronyms for dose to the lens of the eye (EDE) and effective dose equivalent (EDE). Section 336.305(c) is proposed to be amended by changing "shall" to "must" for better

readability and changing "eye" to "lens" for consistency with the change to §336.305(a)(2)(A). These changes would also update this section to make it consistent with the latest version of 10 CFR §20.1201.

Section 336.307(a), Determination of External Dose from Airborne Radioactive Material, is proposed to be amended in the second line to replace "eye" with "lens" for the same reason given in the discussion of §336.305(a)(2)(A) and to update this section to be consistent with the latest version of 10 CFR §20.1203.

Section 336.310(1), Planned Special Exposures, is proposed to be amended by changing "higher exposure" to "dose estimated to result from the planned special exposure." This amendment is intended to clarify what was intended by the words "higher exposure" used in the rule previously. The phrase applies to dose estimates performed prior to authorizing the planned special exposure (PSE). The new wording states that PSE's are authorized only in exceptional situations when alternatives that might avoid the dose estimated to result from the PSE are unavailable or impractical. Improved clarification will avoid possible misinterpretation of a PSE criterion. This change would also make this section compatible with the latest version of 10 CFR §20.1206.

Section 336.312, Dose to an Embryo/Fetus, is proposed to be amended. The section title is proposed to be changed to "Dose Equivalent to an Embryo/Fetus" to make it clear that the dose limit specifically applies to the dose equivalent, which is the technically correct term to denote effect of dose to an organ. Subsection (c)(2) is proposed to be amended by adding the word "resulting" in front of the word "from" for greater clarity. Subsection (d) is proposed to be amended by moving the phrase "by the time the woman declares pregnancy to the licensee" for greater clarity, by adding "equivalent" after the word "dose" in two places to use the technically correct expression "dose equivalent," and by changing "has exceeded" to "is found to have exceeded" for greater clarity. These changes would also make this section compatible with the latest version of 10 CFR §20.1208.

Section 336.315, General Requirements for Surveys and Monitoring, is proposed to be amended to be consistent with the latest version of 10 CFR §20.1501. Subsection (a)(2)(A) is proposed to be amended by adding at the beginning the words "magnitude and extent of" in front of "radiation levels" to clarify the intended meaning that surveys should evaluate both the area covering the dose field as well as the amount of dose in that area; and subsection (a)(2)(C) is proposed to be amended by deleting the unnecessary words "that could be present."

Section 336.316, Conditions Requiring Individual Monitoring of External and Internal Occupational Dose, is proposed to be amended to make it consistent with the latest version of 10 CFR 20.1502. In paragraph (1), the words "from licensed and unlicensed radiation sources under the control of the licensee" are added after "exposure to radiation" to improve clarity and to make it clear that, in determining whether or not monitoring is required, a licensee need not take into account sources of radiation not under its control. In paragraphs (1) and (2), the criteria for monitoring minors and declared pregnant women in subparagraphs (B) are separated into two subparagraphs, (B) and new (C), and amended to make them consistent with §336.312 and technically correct. The criteria for monitoring the deep dose equivalent are changed for minors and declared pregnant women from 0.05 rem to 0.1 rem. (Minor Corrections, Clarifying Changes, and a Minor Policy Change, July 23, 1998 (63 FR 39478)). The 0.1 rem in a year deep dose equivalent monitoring criterion is consistent with the public dose limit and is more consistent with the measurement sensitivity of individual monitoring devices. The NRC determined that the current criteria of 0.05 rem, if received uniformly in a year or throughout the gestation period would result in an average monthly dose of less than 0.005 rem, and that the most routinely utilized monitoring devices cannot accurately measure doses below 0.01 rem, which is greater than the average monthly dose of 0.005 rem. Changing the criteria for monitoring does not, in any way, change the dose limits for declared pregnant women, for the embryo/fetus, or for minors. This change constitutes a small licensee burden reduction while maintaining the current adequate level of protection of health and safety of minors and declared pregnant women.

Section 336.319, Use of Process or Other Engineering Controls, is proposed to be amended by adding "decontamination" to the list of examples of process or engineering controls that licensees should consider for controlling the concentration of radioactive material in air. The NRC and the commission intend that licensees consider decontamination, consistent with maintaining total effective dose as low as reasonably achievable, to reduce resuspension of radioactive material in the work places as a means of controlling internal dose instead of using respirators. This amendment would make this section compatible with the latest version of 10 CFR §20.1701.

Section 336.320, Use of Other Controls, is proposed to be amended to add a subsection (b) to the section. This new subsection is added to clarify that if a licensee performs an as low as reasonably achievable dose analysis to determine whether or not respirators should be used, the licensee may consider safety factors other than radiological. A reduction in the total effective dose equivalent for a worker is not reasonably achievable if, in the licensee's judgment, an attendant increase in the worker's industrial health and safety risk would exceed the benefit obtained by the reduction in the radiation risk. The NRC's Regulatory Guide 8.15, "Acceptable Programs for Respiratory Protection," and NUREG-0041, "Manual of Respiratory Protection Against Airborne Radioactive Material" address how factors such as heat, discomfort, reduced vision, etc., associated with respirator use, might reduce efficiency or increase stress thereby increasing health risk. The NRC and the commission expect that licensees will exercise judgment in determining how non-radiological factors apply to selecting an appropriate level of respiratory protection. This new subsection would make this section compatible with the latest version of 10 CFR §20.1702.

Section 336.321, Use of Individual Respiratory Protection Equipment, is proposed to be amended to make it consistent with the latest version of 10 CFR §20.1703 and §20.1705. This section states the requirements for licensees who use respiratory protection equipment to limit intakes of radioactive material. The use of a respirator is, by definition, intended to limit intake of airborne radioactive materials, unless the device is clearly and exclusively used for protection against non-radiological airborne hazards. Whether or not credit is taken for the device in estimating doses, use of the respiratory protection device to limit intake of radioactive material and associated physiological stresses to the user activates the requirements of §336.321. Thus this section defines the minimum respiratory protection program expected of any licensee who assigns or permits the use of respirators to limit intake.

Section 336.321(a) is proposed to be amended to change "licensee uses respiratory protection equipment" to "licensee assigns or permits the use of respiratory equipment" to make it clear when this sections applies. This subsection is also proposed to be amended to delete the reference to §336.320 because this language has been misinterpreted at times to mean that an approved respiratory protection program is not needed if respirators are used when concentrations of radioactive material in the air are already below values that define an airborne radioactivity area. The new language makes it clear that, if a licensee uses respiratory protection equipment to limit intakes, the minimum requirements of this section are applicable.

In §336.321(a)(1), the language is proposed to be amended to add the acronym "NIOSH" and to delete "and the Mine Safety and Health Administration (NIOSH/MSHA)" so that licensees are permitted to use only respirators certified by the National Institute for Occupational Safety and Health.

Section 336.321(a)(2) is proposed to be amended to delete "NIOSH/MSHA and has not had certification extended by NIOSH/MSHA" because all existing extensions have expired and no new extensions will be granted except for classes of respirators certified under 42 CFR Part 84 and to be consistent with the previous deletion of the Mine Safety and Health Administration as a respirator certifier. Also, further clarification of the language is proposed, including deletion of "including a demonstration by testing, or a demonstration on the basis of reliable test information, that the material and performance characteristics of the equipment are capable of providing the proposed degree of protection under anticipated conditions of use" and addition of "The application must include evidence that the material and performance characteristics of the equipment are capable of providing the proposed degree of protection under anticipated conditions of use. This must be demonstrated either by licensee testing or on the basis of reliable test information."

In §336.321(a)(3)(A) - (E), minor editing is proposed. Subparagraph (D) is proposed to be reworded to improve clarity, reorder priorities, and bring together in one subparagraph all of the elements required in written procedures. Subparagraph (E) is proposed to be revised to clarify that the worker's medical evaluation for using non-face sealing respirators occurs before the first field use, not before first fitting (as required for tight fitting respirators) because fit testing is not needed for these types.

Section 336.321(a)(3)(F) is proposed to be added to require fit testing before first field use of tight-fitting, face sealing respirators and periodically after the first use. This new language clarifies when and how often fit testing is required. The NRC and the commission require that the licensee specify a frequency of retest in the procedures, that may not exceed one year. The new language also specifies existing NRC staff guidance and American National Standards Institute (ANSI) recommendations regarding the test "fit factors" that must be achieved to use the assigned protection factors (APFs). Specifically, fit testing with "fit factors" greater than or equal to ten times the APF is required for tight fitting, negative pressure devices. A fit factor greater than or equal to 500 is required for all tight fitting face pieces used with positive pressure, continuous flow, and pressure-demand devices. ANSI recommended a fit factor of 100 for these devices, but OSHA selected 500 to provide an additional safety margin. The NRC agrees with the OSHA position and, in the interest of consistency, this fit factor is specified as 500. This provision is intended to maintain a sufficient margin of safety to accommodate the greater difficulty in maintaining a good "fit" under field and work conditions as compared to fit test environments. It is important to note that all tight fitting facepieces are to be fit tested in the negative pressure mode regardless of the mode in which they will be used.

Section 336.321(a)(4) is proposed to be deleted because it is not needed. All of the elements that were required to be in the policy statement are already found in Subchapter D and in the requirement for licensees to have and implement written procedures in §336.321(3)(D).

Newly renumbered §336.321(a)(5) is proposed to be clarified and expanded to emphasize the existing requirements that provisions be made for vision correction, adequate communications, and low-temperature work environments. A licensee is required to account for the effects of adverse environmental conditions on the equipment and the wearer. The NRC considers the inability of the respirator wearer to read postings, to operate equipment and/or instrumentation, and to properly identify hazards to be an unacceptable degradation of personnel safety. Also, a requirement for licensees to consider low-temperature work environments when selecting respiratory protection devices is added. The NRC believes that this requirement is needed because the moisture from exhaled air when temperatures are below freezing could cause the exhalation valve on negative pressure respirators to freeze in the open position. The open valve would provide a pathway for unfiltered air into the respirator inlet covering without the user being aware of the malfunction. Lens fogging that reduces vision in a full facepiece respirator is another problem that can be caused by low temperature. The reference to adequate skin protection has been removed. The NRC does not consider skin protection to be an appropriate reason for the use of respirators (with the exception of air supplied suits). Limitation of skin dose is currently dealt with elsewhere in the regulations (in §336.305). It may be inconsistent with maintaining the dose as low as reasonably achievable to use tight fitting respirators solely to prevent facial contamination. Other protective measures such as the use of faceshields instead of respirators or decontamination should be considered.

Section 336.321(b) is proposed to be amended by deleting existing obsolete language in subsection (b)(1), by moving the language in subsection (b)(2) to new subsection (f), and by adding a new requirement for standby rescue persons. This new language requires standby rescue persons to be present whenever one-piece atmosphere-supplying suits, or any other combination of supplied air respirator device and protective equipment is used that is difficult for the wearer to take off without assistance. Standby rescue persons would also need to be in continuous communication with the workers, be equipped with appropriate protective clothing and devices and be immediately available to provide needed assistance if the air supply fails. Without continuous air supply, unconsciousness can occur within seconds to minutes.

Section 336.321(c) is proposed to be amended by deleting existing obsolete language and adding new language. The new language specifies the minimum quality of supplied breathing air, as defined by the Compressed Gas Association (CGA) in their publication G-7.1, "Commodity Specification for Air," 1997, that must be provided whenever atmosphere-supplying respirators are used. This change, which recognizes the CGA recommendations for air quality, was initiated by NIOSH and endorsed by ANSI. The quantity of air supplied, as a function of air pressure

or flow rate, would be specified in the NIOSH approval certificate for each particular device and is not addressed in the rule.

Section 336.321(d) is proposed to be amended by deleting existing obsolete language and adding new language. The new language prohibits the use of respirators whenever any objects, materials, or substances such as facial hair, or any other conditions interfere with the seal of the respirator. The intent of this provision is to prevent the presence of facial hair, cosmetics, spectacle earpieces, surgeon's caps, and other things from interfering with the respirator seal, exhalation valves, and/or proper operation of the respirator.

New §336.321(e) is proposed to provide the provisions for changing intake estimates if later, more accurate measurements show that intake was greater or less than initially estimated. Protection factors for use in these calculations are specified in §336.358 (relating to Appendix A. Assigned Protection Factors for Respirators).

New §336.321(f) is proposed to contain language moved from deleted §336.321(b)(2) with slight modification, such as changing "commission" to "executive director." This proposed amendment provides compatibility with NRC regulations in 10 CFR §20.1705 in that the authorization for a licensee to assign respiratory protection factors in excess of those specified in §336.358 does not require an amendment of the license. The proposed amendment clarifies that the authorization may be approved by the executive director. The licensee may file with the chief clerk a motion to overturn, under §50.139(b) - (g) of this title (relating to Motion to Overturn Executive Director's Decision), of the executive director's decision on an application for authorization to use higher assigned protection factors.

Section 336.322(1), Further Restrictions on the Use of Respiratory Protection Equipment, is proposed to be amended to clarify that the commission will use "keeping doses as low as reasonably achievable" considerations in any additional restrictions imposed by the commission on the use of respiratory protection equipment for the purpose of limiting exposures of individuals to airborne radioactive materials. This amendment will also make this section consistent with the latest version of 10 CFR §20.1704.

Section 336.335, Reporting Requirements for Incidents, is proposed to be amended to make it consistent with the latest version of 10 CFR §20.2202. Subsections (a)(1)(B) and (b)(1)(B) are proposed to be amended by changing "eye dose equivalent" to "lens dose equivalent" to be consistent with previous similar changes.

Section 336.341, General Record keeping Requirements for Licensees, is proposed to be amended to make it consistent with the latest version of 10 CFR §20.2101. A new subsection (b) is added to permit licensees to add the new International System of Units (SI) units to the old (special) units of dose on records required by this chapter. Each of the recorded dose quantities is to be recorded in the appropriate special unit and, if so desired, followed by the appropriate SI unit in parentheses. Also, in newly designated subsection (d), "eye dose equivalent" is proposed to be replaced by "lens dose equivalent" to be consistent with previous similar changes. Subsequent subsections are renumbered to account for the addition of the new subsection and in new subsection (c) the SI acronym is now used rather than first defining the SI acronym here.

Section 336.346, Records of Individual Monitoring Results, is proposed to be amended to make it consistent with the latest version of 10 CFR §20.2106. In subsection (a)(1), "eye dose equivalent" is changed to "lens dose equivalent" to be consistent with previous similar changes. Also, in subsection (a)(2) and (3), the words "or body burden" are deleted because this expression is now obsolete. Subsection (a)(4) is proposed to be amended by adding a reference to §336.308(a), that requires licensees to take measurements of: 1.) concentrations of radioactive materials in air in work areas; or 2.) quantities of radionuclides in the body; or 3.) quantities of radionuclides excreted from the body; or 4.) combinations of these measurements to determine internal dose. This, in effect, uses recorded concentrations of radioactive material in the air, quantities of radioactive material determined to be in the body or excreta, or any combination of these that would be needed, for assessing the committed effective dose equivalent (CEDE). The NRC believes that this information is necessary to support the recorded results of the licensee's calculation of CEDE. Adding this reference would not impose any additional record keeping burden on licensees because they are required to obtain this information to calculate CEDE under §336.308. Section 336.316 is also proposed to be added as a reference to indicate when assessment of committed effective dose is required.

Section 336.358, Appendix A, Protection Factors for Respirators, is proposed to be amended to make it consistent with the latest version of 10 CFR Part 20, Appendix A. The title is proposed to be amended to add "Assigned" before "Protection Factors." A new version of the figure contained in §336.358, Appendix A, which has been modified extensively, is then proposed to be substituted for the old version. In the new figure, new devices are recognized, assigned protection factors are revised to be consistent with current ANSI guidance and technical knowledge, and the footnotes to Appendix A are moved elsewhere in the rule, deleted, revised, or adjusted so that only those necessary to explain the table remain.

Section 336.359, Appendix B. Annual Limits on Intake (ALI) and Derived Air Concentrations (DAC) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sanitary Sewerage, is proposed to be amended. In the section title, a period is added after "Appendix B" for punctuation consistency throughout the chapter. Subsection (d) is proposed to be amended to update the cross-reference to §336.333 to §336.215 because the requirements in §336.333 were moved to §336.215 in a previous rulemaking.

Subchapter G, Decommissioning Standards

Section 336.611, Public Notification and Public Participation, is proposed to be amended to update the reference to §39.313 to §39.713 because §39.313 was repealed in a previous rulemaking and its requirements moved to §39.713.

Subchapter I, Financial Assurance

Subchapter I is proposed to be repealed because its requirements were moved to Chapter 37, Subchapters S and T in a previous rulemaking.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed amendments are in effect there will be no significant fiscal implications to units of state or local government as a result of implementation of the proposed amendments.

The proposal would incorporate rule updates adopted by the NRC between 1996 and 2000. The proposed amendments are intended to clarify existing rules, implement changes in federal respiratory protection requirements, update cross references, repeal the requirement for reports from owners and operators of affected facilities to the executive director regarding initial use of respiratory equipment, and allow more flexibility for owners and operators when choosing the type of respiratory equipment to be used at a site.

Texas is an Agreement State authorized by the NRC to administer a radiation control program under the Atomic Energy Act (AEA). To continue to administer the state's radiation control program, these NRC requirements must be incorporated in rule by the commission. Provisions in this rulemaking are procedural and administrative in nature and only affect active radioactive material burial sites.

There are four sites with radioactive materials buried on them where units of state or local government may be wholly or partially responsible for their cleanup. However, these sites are not operational disposal facilities. The commission estimates there will be no fiscal impacts to units of state or local government because the proposed amendments only apply to operational disposal facilities.

PUBLIC BENEFIT AND COSTS

Mr. Davis also has determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated from enforcement of and compliance with the proposed rulemaking will be the clarification of radioactive substance rules, which is intended to facilitate increased compliance and protection of the environment and human health.

The proposed amendments would incorporate rule updates adopted by the NRC between 1996 and 2000. The proposed rulemaking is intended to clarify existing rules, implement changes in federal respiratory protection requirements, update cross-references, repeal the requirement for reports from owners and operators of affected facilities to the executive director regarding initial use of respiratory equipment, and allow more flexibility for owners and operators when choosing the type of respiratory equipment to be used at a site.

Provisions in this rulemaking are procedural and administrative in nature and will not result in significant fiscal implications for the one active privately owned and operated radioactive material burial site that would be affected by the proposed amendments.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse economic effects are anticipated to any small or micro-businesses as a result of implementing the proposed changes because there are no known small or micro-businesses that own or operate radioactive material burial sites affected by the proposed amendments. The commission has identified one industrial site affected by the proposed amendments that is not considered a small or micro- business.

The proposed amendments would incorporate rule updates adopted by the NRC between 1996 and 2000. The proposed rulemaking is intended to clarify existing rules, implement changes in federal respiratory protection requirements, update cross references, repeal the requirement for reports from owners and operators of affected facilities to the executive director regarding initial use of respiratory equipment, and allow more flexibility for owners and operators when choosing the type of respiratory equipment to be used at a site.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the act. "Major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments to Chapter 336 are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because there are no significant requirements added to radioactive material disposal facilities. The proposed rulemaking maintains consistency with NRC requirements and provides clarity to existing rules by updating cross-references and deleting obsolete financial assurance provisions.

Furthermore, the proposed rulemaking does not meet any of the four applicability requirements listed in §2001.0225(a). Section 2001.0225 only applies to a major environmental rule, the result of which is to: 1.) exceed a standard set by federal law, unless the rule is specifically required by state law; 2.) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3.) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4.) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking does not exceed a standard set by federal law, an express requirement of state law, a requirement of a delegation agreement, nor adopt a rule solely under the general powers of the agency.

The Texas Health and Safety Code (THSC), Texas Radiation Control Act (TRCA), Chapter 401, authorizes the commission to regulate the disposal of most radioactive material in Texas. Sections 401.051, 401.103, and 401.104 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive materials. In addition, the state of Texas is an "Agreement State," authorized by the NRC to administer a radiation control program under the AEA. The NRC requirements must be implemented by the commission to preserve the status as an Agreement State. The commission believes that the proposed rules do not exceed the standards set by federal law. The proposed rulemaking clarifies existing rules, implements changes in federal respiratory protection requirements and modifies threshold monitoring requirements for minors and declared pregnant women.

The commission believes that the proposed rules do not exceed an express requirement of state law. The THSC, TRCA, Chapter 401, establishes general requirements for the licensing and disposal of radioactive materials. However, the TRCA does not provide specific requirements or technical limitations for respiratory protection or threshold monitoring requirements.

The commission has also determined that the proposed rules do not exceed a requirement of a delegation agreement or contract between the state and an agency of the federal government. The State of Texas has been designated as an Agreement State by the Nuclear Regulatory Commission under the authority of the

AEA. The AEA requires that the NRC find that the state radiation control program is compatible with the NRC's requirements for the regulation of radioactive materials and is adequate to protect health and safety. The commission believes that the proposed rules do not exceed the NRC's requirements nor exceed the requirements for retaining status as an "Agreement State."

The commission also believes that these rules are proposed under specific authority of the THSC, TRCA, Chapter 401. Sections 401.051, 401.103, and 401.104 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive materials.

The commission invites public comment of the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed a preliminary assessment of whether Texas Government Code, Chapter 2007 is applicable. The commission's preliminary assessment indicates that Texas Government code, Chapter 2007 does not apply to these proposed rules because this is an action that is reasonably taken to fulfill an obligation mandated by federal law, which is exempt under Texas Government Code, §2007.003(b)(4). The State of Texas has received authorization as an Agreement State from the NRC to administer a radiation control program under the AEA. The AEA requires the NRC to find that the state's program is compatible with NRC requirements for the regulation of radioactive materials and is adequate to prefer health and safety. The proposed rulemaking will provide consistency with federal regulations.

Nevertheless, the commission further evaluated these proposed rules and performed a preliminary assessment of whether these proposed rules constitute a taking under Texas Government Code, Chapter 2007. The following is a summary of that evaluation and preliminary assessment. The primary purpose of these proposed rules is to implement changes to federal requirements for the regulation and licensing of radioactive material. The proposed rules would substantially advance this purpose by clarifying existing rules, implementing new federal requirements for respiratory protection and modifying threshold monitoring requirements for minors and declared pregnant women.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. The subject proposed regulations do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally), nor restrict or limit, the owner's right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the regulations. The proposed rules primarily implement clarifications to existing rules. In addition, the proposed rules reduce burdens on licensees for respiratory protection and threshold monitoring requirements.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the proposed rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposal is not subject to the CMP.

SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, 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 1999-057-336-WS. Comments must be received by 5:00 p.m., July 9, 2001. For further information or questions concerning this proposal, please contact Auburn Mitchell, Office of Environmental Policy, Analysis, and Assessment, (512) 239-1873.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §336.2

STATUTORY AUTHORITY

The amendment is proposed under the THSC, TRCA, Chapter 401; THSC, §401.011, which provides the commission the authority to regulate and license the disposal of radioactive substances; §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive material; §401.201, which provides authority to the commission to regulate the disposal of low-level radioactive waste; and §401.412, which provides authority to the commission to regulate licenses for the disposal of radioactive substances. The proposed amendment is also authorized by the TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state.

The amendment implements THSC, Chapter 401, relating to Radioactive Materials and Other Sources of Radiation, including §401.011, relating to Radiation Control Agency; §401.051, relating to Adoption of Rules and Guidelines; §401.057, relating to Records; §401.059, relating to Program Development; §401.103, relating to Rules and Guidelines for Licensing and Registration; §401.104, relating to Licensing and Registration Rules; §401.151, relating to Compatibility with Federal Standards; §401.201, relating to Regulation of Low-Level Radioactive Waste Disposal; and §401.412, relating to Commission Licensing Authority.

§336.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, or as described in Chapter 3 of this title (relating to Definitions), unless the context clearly indicates otherwise. Additional definitions used only in a certain subchapter will be found in that subchapter.

(1)-(7) (No change.)

(8) Air-purifying respirator--A respirator with an air-purifying filter, cartridge, or canister that removes specific air contaminants by passing ambient air through the air-purifying element.

(9) [~~(8)~~] Annual limit on intake (ALI)--The derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in a year by the "reference man" that would result in a committed effective dose equivalent of 5 rems (0.05 sievert) or a committed dose equivalent of 50 rems (0.5 sievert) to any individual organ or tissue. ALI values for intake by ingestion and by inhalation of selected radionuclides are given in Table I, Columns 1 and 2, of §336.359, Appendix B, of this title.

(10) [~~(9)~~] As low as is reasonably achievable (ALARA)--Making every reasonable effort to maintain exposures to radiation as far below the dose limits in this chapter as is practical, consistent with the purpose for which the licensed activity is undertaken, taking into account the state of technology, the economics of improvements in relation to the state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of ionizing radiation and licensed radioactive materials in the public interest.

(11) Assigned protection factor (APF)--The expected workplace level of respiratory protection that would be provided by a properly functioning respirator or a class of respirators to properly fitted and trained users. Operationally, the inhaled concentration can be estimated by dividing the ambient airborne concentration by the APF.

(12) Atmosphere-supplying respirator--A respirator that supplies the respirator user with breathing air from a source independent of the ambient atmosphere, and includes supplied-air respirators (SARs) and self-contained breathing apparatus (SCBA) units.

(13) [~~(10)~~] Background radiation--Radiation from cosmic sources; non-technologically enhanced naturally-occurring radioactive material, including radon (except as a decay product of source or special nuclear material) and global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under the control of the licensee. "Background radiation" does not include radiation from radioactive materials regulated by the commission, Texas Department of Health, NRC, or an Agreement State.

(14) [~~(11)~~] Becquerel (Bq)--See §336.4 of this title (relating to Units of Radioactivity).

(15) [~~(12)~~] Bioassay--The determination of kinds, quantities, or concentrations, and, in some cases, the locations of radioactive material in the human body, whether by direct measurement (in vivo counting) or by analysis and evaluation of materials excreted or removed from the human body. For purposes of the rules in this chapter, "radiobioassay" is an equivalent term.

(16) [~~(13)~~] Byproduct material--

(A) A radioactive material, other than special nuclear material, that is produced in or made radioactive by exposure to radiation incident to the process of producing or using special nuclear material; or

(B) The tailings or wastes produced by or resulting from the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes, and other tailings having similar radiological characteristics. Underground ore bodies depleted by these solution extraction processes do not constitute "byproduct material" within this definition.

(17) [~~(14)~~] CFR--Code of Federal Regulations.

(18) [~~(15)~~] Class--A classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. Materials are classified as D, W, or Y, which applies to a range of clearance half-times: for Class D (Days) of less than ten days, for Class W (Weeks) from 10 to 100 days, and for Class Y (Years) of greater than 100 days. For purposes of the rules in this chapter, "lung class" and "inhalation class" are equivalent terms.

(19) [~~(16)~~] Collective dose--The sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

(20) [~~(17)~~] Committed dose equivalent ($H_{T,50}$) (CDE)--The dose equivalent to organs or tissues of reference (T) that will be received from an intake of radioactive material by an individual during the 50-year period following the intake.

(21) [~~(18)~~] Committed effective dose equivalent ($H_{E,50}$) (CEDE)--The sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to each of these organs or tissues.

(22) Constraint (dose constraint)--A value above which specified licensee actions are required.

(23) [~~(19)~~] Critical group--The group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.

(24) [~~(20)~~] Curie (Ci)--See §336.4 of this title.

(25) [~~(21)~~] Declared pregnant woman--A woman who has voluntarily informed the licensee [~~her employer~~], in writing, of her pregnancy and the estimated date of conception. The declaration remains in effect until the declared pregnant woman withdraws the declaration in writing or is no longer pregnant.

(26) [~~(22)~~] Decommission--To remove (as a facility) safely from service and reduce residual radioactivity to a level that permits:

(A) release of the property for unrestricted use and termination of license; or

(B) release of the property under restricted conditions and termination of the license.

(27) [~~(23)~~] Deep-dose equivalent (H_d) (which applies to external whole-body exposure)--The dose equivalent at a tissue depth of one centimeter (1,000 milligrams/square centimeter).

(28) Demand respirator--An atmosphere-supplying respirator that admits breathing air to the facepiece only when a negative pressure is created inside the facepiece by inhalation.

(29) [~~(24)~~] Depleted uranium--The source material uranium in which the isotope uranium- 235 is less than 0.711%, by weight, of the total uranium present. Depleted uranium does not include special nuclear material.

(30) [~~(25)~~] Derived air concentration (DAC)--The concentration of a given radionuclide in air which, if breathed by the "reference man" for a working year of 2,000 hours under conditions of light work (inhalation rate of 1.2 cubic meters of air/hour), results in an intake of one ALI. DAC values are given in Table I, Column 3, of §336.359, Appendix B, of this title.

(31) [~~(26)~~] Derived air concentration-hour (DAC-hour)--The product of the concentration of radioactive material in air (expressed as a fraction or multiple of the derived air concentration for each radionuclide) and the time of exposure to that radionuclide, in hours. A licensee shall take 2,000 DAC-hours to represent one ALI, equivalent to a committed effective dose equivalent of five rems (0.05 sievert).

(32) [~~(27)~~] Disposal--With regard to low-level radioactive waste, the isolation or removal of low-level radioactive waste from mankind and mankind's environment without intent to retrieve that low-level radioactive waste later.

(33) Disposable respirator--A respirator for which maintenance is not intended and that is designed to be discarded after excessive breathing resistance, sorbent exhaustion, physical damage, or end- of-service-life renders it unsuitable for use. Examples of this type

of respirator are a disposable half-mask respirator or a disposable escape-only self-contained breathing apparatus (SCBA).

(34) [~~(28)~~] Distinguishable from background--The detectable concentration of a radionuclide is statistically different from the background concentration of that radionuclide in the vicinity of the site or, in the case of structures, in similar materials using adequate measurement technology, survey, and statistical techniques.

(35) [~~(29)~~] Dose--A generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, total organ dose equivalent, or total effective dose equivalent. For purposes of the rules in this chapter, "radiation dose" is an equivalent term.

(36) [~~(30)~~] Dose equivalent (H_T)--The product of the absorbed dose in tissue, quality factor, and all other necessary modifying factors at the location of interest. The units of dose equivalent are the rem and sievert (Sv).

(37) [~~(31)~~] Dose limits--The permissible upper bounds of radiation doses established in accordance with the rules in this chapter. For purposes of the rules in this chapter, "limits" is an equivalent term.

(38) [~~(32)~~] Dosimetry processor--An individual or organization that processes and evaluates individual monitoring devices in order to determine the radiation dose delivered to the monitoring devices.

(39) [~~(33)~~] Effective dose equivalent (H_E)--The sum of the products of the dose equivalent to each organ or tissue (H_T) and the weighting factor (w_T) applicable to each of the body organs or tissues that are irradiated.

(40) [~~(34)~~] Embryo/fetus--The developing human organism from conception until the time of birth.

(41) [~~(35)~~] Entrance or access point--Any opening through which an individual or extremity of an individual could gain access to radiation areas or to licensed radioactive materials. This includes portals of sufficient size to permit human access, irrespective of their intended use.

(42) [~~(36)~~] Exposure--Being exposed to ionizing radiation or to radioactive material.

(43) [~~(37)~~] Exposure rate--The exposure per unit of time.

(44) [~~(38)~~] External dose--That portion of the dose equivalent received from any source of radiation outside the body.

(45) [~~(39)~~] Extremity--Hand, elbow, arm below the elbow, foot, knee, and leg below the knee. The arm above the elbow and the leg above the knee are considered part of the whole body.

~~[(40) Eye dose equivalent--The external dose equivalent to the lens of the eye at a tissue depth of 0.3 centimeter (300 milligrams/square centimeter).]~~

(46) Filtering facepiece (dust mask)--A negative pressure particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium, not equipped with elastomeric sealing surfaces and adjustable straps.

(47) Fit factor--A quantitative estimate of the fit of a particular respirator to a specific individual, and typically estimates the ratio of the concentration of a substance in ambient air to its concentration inside the respirator when worn.

(48) Fit test--The use of a protocol to qualitatively or quantitatively evaluate the fit of a respirator on an individual.

(49) [~~(41)~~] General license--An authorization granted by an agency under its rules which is effective without the filing of an application with that agency or the issuance of a licensing document to the particular person.

(50) [~~(42)~~] Generally applicable environmental radiation standards--Standards issued by the EPA under the authority of the Atomic Energy Act of 1954, as amended through October 4, 1996, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

(51) [~~(43)~~] Gray (Gy)--See §336.3 of this title (relating to Units of Radiation Exposure and Dose).

(52) Helmet--A rigid respiratory inlet covering that also provides head protection against impact and penetration.

(53) [~~(44)~~] High radiation area--An area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving a dose equivalent in excess of 0.1 rem (1 millisievert) in one hour at 30 centimeters from the radiation [~~any~~] source [~~of radiation~~] or 30 centimeters from any surface that the radiation penetrates.

(54) Hood--A respiratory inlet covering that completely covers the head and neck and may also cover portions of the shoulders and torso.

(55) [~~(45)~~] Individual--Any human being.

(56) [~~(46)~~] Individual monitoring--The assessment of:

(A) dose equivalent by the use of individual monitoring devices; or

(B) committed effective dose equivalent by bioassay or by determination of the time-weighted air concentrations to which an individual has been exposed, that is, DAC-hours; or

(C) dose equivalent by the use of survey data.

(57) [~~(47)~~] Individual monitoring devices--Devices designed to be worn by a single individual for the assessment of dose equivalent such as[~~. For purposes of the rules in this chapter, "individual monitoring equipment," "personnel dosimeter," and "dosimeter" are equivalent terms. Examples of individual monitoring devices are~~] film badges, thermoluminescence [~~thermoluminescent~~] dosimeters (TLDs), pocket ionization chambers, and personal ("lapel") air sampling devices.

(58) [~~(48)~~] Inhalation class--See "Class."

(59) [~~(49)~~] Inspection--An official examination and/or observation including, but not limited to, records, tests, surveys, and monitoring to determine compliance with the Texas Radiation Control Act (TRCA) and rules, orders, and license conditions of the commission.

(60) [~~(50)~~] Internal dose--That portion of the dose equivalent received from radioactive material taken into the body.

(61) [~~(51)~~] Land disposal facility--The land, buildings and structures, and equipment which are intended to be used for the disposal of low-level radioactive wastes into the subsurface of the land. For purposes of this chapter, a "geologic repository" as defined in 10 CFR §60.2 as amended through October 27, 1988 (53 FedReg 43421) (relating to Definitions - high-level radioactive wastes in geologic repositories) is not considered a "land disposal facility."

(62) Lens dose equivalent (LDE)--The external exposure of the lens of the eye and is taken as the dose equivalent at a tissue depth of 0.3 centimeter (300 mg/cm^2).

(63) [~~(52)~~] License--See "Specific license."

(64) [~~(53)~~] Licensed material--Radioactive material received, possessed, used, processed, transferred, or disposed of under a license issued by the commission.

(65) [~~(54)~~] Licensee--Any person who holds a license issued by the commission in accordance with the TRCA and the rules in this chapter. For purposes of the rules in this chapter, "radioactive material licensee" is an equivalent term. Unless stated otherwise, "licensee" as used in the rules of this chapter means the holder of a "specific license."

(66) [~~(55)~~] Licensing state--Any state with rules equivalent to the Suggested State Regulations for Control of Radiation relating to, and having an effective program for, the regulatory control of naturally occurring or accelerator-produced radioactive material (NARM) and which has been designated as such by the Conference of Radiation Control Program Directors, Inc.

(67) Loose-fitting facepiece--A respiratory inlet covering that is designed to form a partial seal with the face.

(68) [~~(56)~~] Lost or missing licensed radioactive material--Licensed material whose location is unknown. This definition includes material that has been shipped but has not reached its planned destination and whose location cannot be readily traced in the transportation system.

(69) [~~(57)~~] Low-level radioactive waste--

(A) Except as provided by subparagraph (B) of this paragraph, low-level radioactive waste means radioactive material that:

(i) is discarded or unwanted and is not exempt by a Texas Department of Health rule adopted under the Texas Health and Safety Code, §401.106;

(ii) is waste, as that term is defined by 10 CFR §61.2; and

(iii) is subject to:

(I) concentration limits established under this chapter; and

(II) disposal criteria established under this chapter.

(B) Low-level radioactive waste does not include:

(i) high-level radioactive waste defined by 10 CFR §60.2;

(ii) spent nuclear fuel as defined by 10 CFR §72.3;

(iii) transuranic waste as defined by paragraph (128) [~~(107)~~] of this section;

(iv) byproduct material as defined by paragraph (16)(B) [~~(13)(B)~~] of this section;

(v) naturally occurring radioactive material (NORM) waste; or

(vi) oil and gas NORM waste.

(C) When used in this section, the references to 10 CFR sections mean those CFR sections as they existed on September 1, 1999, as required by Texas Health and Safety Code, §401.005.

(70) [~~(58)~~] Lung class--See "Class."

(71) [~~(59)~~] Member of the public--Any individual except when that individual is receiving an occupational dose.

(72) [~~(60)~~] Minor--An individual less than 18 years of age.

(73) [~~(61)~~] Monitoring--The measurement of radiation levels, radioactive material concentrations, surface area activities, or quantities of radioactive material and the use of the results of these measurements to evaluate potential exposures and doses. For purposes of the rules in this chapter, "radiation monitoring" and "radiation protection monitoring" are equivalent terms.

(74) [~~(62)~~] Naturally occurring or accelerator-produced radioactive material (NARM)--Any naturally occurring or accelerator-produced radioactive material except source material or special nuclear material.

(75) [~~(63)~~] Naturally occurring radioactive material (NORM) waste--Solid, liquid, or gaseous material or combination of materials, excluding source material, special nuclear material, and byproduct material, that:

(A) in its natural physical state spontaneously emits radiation;

(B) is discarded or unwanted; and

(C) is not exempt under rules of the Texas Department of Health adopted under Texas Health and Safety Code, §401.106.

(76) [~~(64)~~] Near-surface disposal facility--A land disposal facility in which low-level radioactive waste is disposed of in or within the upper 30 meters of the earth's surface.

(77) Negative pressure respirator (tight fitting)--A respirator in which the air pressure inside the facepiece is negative during inhalation with respect to the ambient air pressure outside the respirator.

(78) [~~(65)~~] Nonstochastic effect--A health effect, the severity of which varies with the dose and for which a threshold is believed to exist. Radiation-induced cataract formation is an example of a nonstochastic effect. For purposes of the rules in this chapter, "deterministic effect" is an equivalent term.

(79) [~~(66)~~] Occupational dose--The dose received by an individual in the course of employment in which the individual's assigned duties involve exposure to radiation and/or to radioactive material from licensed and unlicensed sources of radiation, whether in the possession of the licensee or other person. Occupational dose does not include dose received from background radiation, as a patient from medical practices, from voluntary participation in medical research programs, or as a member of the public.

(80) [~~(67)~~] Oil and gas naturally occurring radioactive material (NORM) waste--Naturally occurring radioactive material (NORM) waste that constitutes, is contained in, or has contaminated oil and gas waste as that term is defined in the Texas Natural Resources Code, §91.1011.

(81) [~~(68)~~] On-site--The same or geographically contiguous property that may be divided by public or private rights-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along, the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way that the property owner controls and to which the public does not have access, is also considered on-site property.

(82) [~~(69)~~] Personnel monitoring equipment--See "Individual monitoring devices."

(83) [~~(70)~~] Planned special exposure--An infrequent exposure to radiation, separate from and in addition to the annual occupational dose limits.

(84) Positive pressure respirator--A respirator in which the pressure inside the respiratory inlet covering exceeds the ambient air pressure outside the respirator.

(85) Powered air-purifying respirator (PAPR)--An air-purifying respirator that uses a blower to force the ambient air through air-purifying elements to the inlet covering.

(86) Pressure demand respirator--A positive pressure atmosphere-supplying respirator that admits breathing air to the facepiece when the positive pressure is reduced inside the facepiece by inhalation.

(87) [~~(71)~~] Principal activities--Activities authorized by the license which are essential to achieving the purpose(s) for which the license is issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

(88) [~~(72)~~] Public dose--The dose received by a member of the public from exposure to radiation and/or radioactive material released by a licensee, or to any other source of radiation under the control of the licensee. It does not include occupational dose or doses received from background radiation, as a patient from medical practices, or from voluntary participation in medical research programs.

(89) Qualitative fit test (QLFT)--A pass/fail test to assess the adequacy of respirator fit that relies on the individual's response to the test agent.

(90) [~~(73)~~] Quality factor (Q)--The modifying factor listed in Table I or II of §336.3 of this title that is used to derive dose equivalent from absorbed dose.

(91) Quantitative fit test (QNFT)--An assessment of the adequacy of respirator fit by numerically measuring the amount of leakage into the respirator.

(92) [~~(74)~~] Quarter (Calendar quarter)--A period of time equal to one-fourth of the year observed by the licensee (approximately 13 consecutive weeks), providing that the beginning of the first quarter in a year coincides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.

(93) [~~(75)~~] Rad--See §336.3 of this title.

(94) [~~(76)~~] Radiation--Alpha particles, beta particles, gamma rays, x-rays, neutrons, high- speed electrons, high-speed protons, and other particles capable of producing ions. For purposes of the rules in this chapter, "ionizing radiation" is an equivalent term. Radiation, as used in this chapter, does not include non-ionizing radiation, such as radio- or microwaves or visible, infrared, or ultraviolet light.

(95) [~~(77)~~] Radiation and Perpetual Care Fund--A fund established in the treasury of the State of Texas for the purposes set forth in the TRCA, §401.305.

(96) [~~(78)~~] Radiation area--Any area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.005 rem (0.05 millisievert) in one hour at 30 centimeters from the source of radiation or from any surface that the radiation penetrates.

(97) [~~(79)~~] Radiation machine--Any device capable of producing ionizing radiation except those devices with radioactive material as the only source of radiation.

(98) [~~(80)~~] Radioactive material--A naturally-occurring or artificially-produced solid, liquid, or gas that emits radiation spontaneously.

(99) [~~(81)~~] Radioactive substance--Includes byproduct material, radioactive material, low- level radioactive waste, source material, special nuclear material, source of radiation, and NORM waste, excluding oil and gas NORM waste.

(100) [~~(82)~~] Radioactivity--The disintegration of unstable atomic nuclei with the emission of radiation.

(101) [~~(83)~~] Radiobioassay--See "Bioassay."

(102) [~~(84)~~] Reference man--A hypothetical aggregation of human physical and physiological characteristics determined by international consensus. These characteristics shall be used by researchers and public health workers to standardize results of experiments and to relate biological insult to a common base. A description of "reference man" is contained in the International Commission on Radiological Protection report, ICRP Publication 23, "Report of the Task Group on Reference Man."

(103) [~~(85)~~] Rem--See §336.3 of this title.

(104) [~~(86)~~] Residual radioactivity--Radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee's control. This includes radioactivity from all licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive materials remaining at the site as a result of routine or accidental releases of radioactive material at the site and previous burials at the site, even if those burials were made in accordance with the provisions of 10 CFR Part 20.

(105) [~~(87)~~] Respiratory protection equipment--An apparatus, such as a respirator, used to reduce an individual's intake of airborne radioactive materials. For purposes of the rules in this chapter, "respiratory protective device" is an equivalent term.

(106) [~~(88)~~] Restricted area--An area, access to which is limited by the licensee for the purpose of protecting individuals against undue risks from exposure to radiation and radioactive materials. Restricted area does not include areas used as residential quarters, but separate rooms in a residential building shall be set apart as a restricted area.

(107) [~~(89)~~] Roentgen (R)--See §336.3 of this title.

(108) [~~(90)~~] Sanitary sewerage--A system of public sewers for carrying off waste water and refuse, but excluding sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee.

(109) [~~(91)~~] Sealed source--Radioactive material that is permanently bonded or fixed in a capsule or matrix designed to prevent release and dispersal of the radioactive material under the most severe conditions that are likely to be encountered in normal use and handling.

(110) Self-contained breathing apparatus (SCBA)--An atmosphere-supplying respirator for which the breathing air source is designed to be carried by the user.

(111) [~~(92)~~] Shallow-dose equivalent (H_s) (which applies to the external exposure of the skin or an extremity)--The dose equivalent at a tissue depth of 0.007 centimeter (seven milligrams/square centimeter) averaged over an area of one square centimeter.

(112) [~~(93)~~] SI--The abbreviation for the International System of Units.

(113) [~~(94)~~] Sievert (Sv)--See §336.3 of this title.

(114) [~~(95)~~] Site boundary--That line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee.

(115) [~~(96)~~] Source material--

(A) Uranium or thorium, or any combination thereof, in any physical or chemical form; or

(B) ores that contain, by weight, 0.05% or more of uranium, thorium, or any combination thereof. Source material does not include special nuclear material.

(116) [~~(97)~~] Special form radioactive material--Radioactive material which is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule and which has at least one dimension not less than five millimeters and which satisfies the test requirements of 10 CFR §71.75 [~~71.75~~] as amended through September 28, 1995 (60 FedReg 50264) (Transportation of License Material).

(117) [~~(98)~~] Special nuclear material--

(A) Plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and any other material that the NRC, under the provisions of the Atomic Energy Act of 1954, §51, as amended through November 2, 1994 (Public Law 103-437), determines to be special nuclear material, but does not include source material; or

(B) any material artificially enriched by any of the foregoing, but does not include source material.

(118) [~~(99)~~] Special nuclear material in quantities not sufficient to form a critical mass--Uranium enriched in the isotope 235 in quantities not exceeding 350 grams of contained uranium-235; uranium-233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams; or any combination of these in accordance with the following formula: For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all of the kinds of special nuclear material in combination shall not exceed 1. For example, the following quantities in combination would not exceed the limitation: (175 grams contained U-235/350 grams) + (50 grams U-233/200 grams) + (50 grams Pu/200 grams) = 1.

(119) [~~(100)~~] Specific license--A licensing document issued by an agency upon an application filed under its rules. For purposes of the rules in this chapter, "radioactive material license" is an equivalent term. Unless stated otherwise, "license" as used in this chapter means a "specific license."

(120) [~~(101)~~] State--The State of Texas.

(121) [~~(102)~~] Stochastic effect--A health effect that occurs randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose without threshold. Hereditary effects and cancer incidence are examples of stochastic effects. For purposes of the rules in this chapter, "probabilistic effect" is an equivalent term.

(122) Supplied-air respirator (SAR) or airline respirator--An atmosphere-supplying respirator for which the source of breathing air is not designed to be carried by the user.

(123) [~~(103)~~] Survey--An evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, and/or presence of radioactive materials or other sources of radiation. When appropriate, this evaluation includes, but is not limited to, physical examination of the location of radioactive material and measurements or calculations of levels of radiation or concentrations or quantities of radioactive material present.

(124) [~~(104)~~] Termination--As applied to a license, a release by the commission of the obligations and authorizations of the licensee under the terms of the license. It does not relieve a person of duties and responsibilities imposed by law.

(125) Tight-fitting facepiece--A respiratory inlet covering that forms a complete seal with the face.

(126) [~~(105)~~] Total effective dose equivalent (TEDE)--The sum of the deep-dose equivalent for external exposures and the committed effective dose equivalent for internal exposures.

(127) [~~(106)~~] Total organ dose equivalent (TODE)--The sum of the deep-dose equivalent and the committed dose equivalent to the organ receiving the highest dose as described in §336.346(a)(6) of this title (relating to Records of Individual Monitoring Results).

(128) [~~(107)~~] Transuranic waste--For the purposes of this chapter, wastes containing alpha emitting transuranic radionuclides with a half-life greater than five years at concentrations greater than 100 nanocuries/gram.

(129) [~~(108)~~] Type A quantity (for packaging)--A quantity of radioactive material, the aggregate radioactivity of which does not exceed A_1 for special form radioactive material or A_2 for normal form radioactive material, where A_1 and A_2 are given in or shall be determined by procedures in Appendix A to 10 CFR Part 71 as amended through September 28, 1995 (60 FedReg 50264) (Packaging and Transportation of Radioactive Material).

(130) [~~(109)~~] Type B quantity (for packaging)--A quantity of radioactive material greater than a Type A quantity.

(131) [~~(110)~~] Unrefined and unprocessed ore--Ore in its natural form before any processing, such as grinding, roasting, beneficiating, or refining.

(132) [~~(111)~~] Unrestricted area--Any area that is not a restricted area.

(133) User seal check (fit check)--An action conducted by the respirator user to determine if the respirator is properly seated to the face. Examples include negative pressure check, positive pressure check, irritant smoke check, or isoamyl acetate check.

(134) [~~(112)~~] Very high radiation area--An area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving an absorbed dose in excess of 500 rads (five grays) in one hour at one meter from a source of radiation or one meter from any surface that the radiation penetrates. [~~(At very high doses received at high dose rates, units of absorbed dose (rad and gray) are appropriate, rather than units of dose equivalent (rem and sievert).)~~]

(135) [~~(113)~~] Violation--An infringement of any provision of the TRCA or of any rule, order, or license condition of the commission issued under the TRCA or this chapter.

(136) [~~(114)~~] Week--Seven consecutive days starting on Sunday.

(137) [~~(115)~~] Weighting factor (w_T) for an organ or tissue (T)--The proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects when the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of w_T are:

Figure: 30 TAC §336.2(137)
[~~Figure: 30 TAC §336.2(115)~~]

(138) [~~(116)~~] Whole body--For purposes of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knee.

(139) [~~(117)~~] Worker--An individual engaged in activities under a license issued by the commission and controlled by a licensee, but does not include the licensee.

(140) [~~(118)~~] Working level (WL)--Any combination of short-lived radon daughters in one liter of air that will result in the ultimate emission of 1.3×10^5 million electron volts (MeV) of potential alpha particle energy. The short-lived radon daughters are: for radon-222: polonium- 218, lead-214, bismuth-214, and polonium-214; and for radon-220: polonium-216, lead-212, bismuth- 212, and polonium-212.

(141) [~~(119)~~] Working level month (WLM)--An exposure to one working level for 170 hours (2,000 working hours per year divided by 12 months per year is approximately equal to 170 hours per month).

(142) [~~(120)~~] Year--The period of time beginning in January used to determine compliance with the provisions of the rules in this chapter. The licensee shall change the starting date of the year used to determine compliance by the licensee provided that the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

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

Filed with the Office of the Secretary of State, on May 24, 2001.

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239-6087

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SUBCHAPTER D. STANDARDS FOR PROTECTION AGAINST RADIATION

30 TAC §§336.305, 336.307, 336.310, 336.312, 336.315, 336.316, 336.319 - 336.322, 336.335, 336.341, 336.346, 336.358, 336.359

STATUTORY AUTHORITY

The amendments are proposed under the THSC, TRCA, Chapter 401; THSC, §401.011, which provides the commission the authority to regulate and license the disposal of radioactive substances; §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive material; §401.201, which provides authority to the commission to regulate the disposal of low-level radioactive waste; and §401.412, which provides authority to the commission to regulate licenses for the disposal of radioactive substances. The proposed amendments are also authorized by the TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state.

The amendments implement THSC, Chapter 401, relating to Radioactive Materials and Other Sources of Radiation, including §401.011, relating to Radiation Control Agency; §401.051, relating to Adoption of Rules and Guidelines; §401.057, relating to Records; §401.059, relating to Program Development; §401.103, relating to Rules and Guidelines for Licensing and Registration; §401.104, relating to Licensing and Registration Rules; §401.151, relating to Compatibility with Federal Standards; §401.201, relating to Regulation of Low-Level Radioactive Waste Disposal; and §401.412, relating to Commission Licensing Authority.

§336.305. Occupational Dose Limits for Adults.

(a) The licensee shall control the occupational dose to individual adults, except for planned special exposures under §336.310 of this title (relating to Planned Special Exposures), to the following dose limits:

(1) (No change.)

(2) the annual limits to the lens of the eye, to the skin, and to the extremities which are:

(A) a lens [~~an eye~~] dose equivalent of 15 rems (0.15 sievert), and

(B) (No change.)

(b) (No change.)

(c) The assigned deep-dose equivalent and shallow-dose equivalent must [~~shall~~] be for the part of the body receiving the highest exposure. The deep-dose equivalent, lens [~~eye~~] dose equivalent, and shallow-dose equivalent may be assessed from surveys or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits, if the individual monitoring device was not in the region of highest potential exposure or the results of individual monitoring are unavailable.

(d)-(f) (No change.)

§336.307. Determination of External Dose from Airborne Radioactive Material.

(a) Licensees shall, when determining the dose from airborne radioactive material, include the contribution to the deep-dose equivalent, lens [~~eye~~] dose equivalent, and shallow-dose equivalent from external exposure to the radioactive cloud. See notes 1 and 2 of §336.359, Appendix B, of this title (relating to Annual Limits on Intake (ALI) and Derived Air Concentrations (DAC) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sanitary Sewerage).

(b) (No change.)

§336.310. Planned Special Exposures.

A licensee may authorize an adult worker to receive doses in addition to and accounted for separately from the doses received under the limits specified in §336.305 of this title (relating to Occupational Dose Limits for Adults) provided that each of the following conditions is satisfied:

(1) The licensee authorizes a planned special exposure only in an exceptional situation when alternatives that might avoid the dose estimated to result from the planned special [~~higher~~] exposure are unavailable or impractical.

(2)-(7) (No change.)

§336.312. Dose Equivalent to an Embryo/Fetus.

(a)-(b) (No change.)

(c) The dose to an embryo/fetus shall be taken as the sum of:

(1) (No change.)

(2) the dose to the embryo/fetus resulting from radionuclides in the embryo/fetus and radionuclides in the declared pregnant woman.

(d) If [~~by the time the woman declares pregnancy to the licensee~~] the dose equivalent to the embryo/fetus is found to have [~~has~~] exceeded 0.5 rem (5 millisieverts) or is within 0.05 rem (0.5 millisievert) of this dose, by the time the woman declares the pregnancy to the licensee, the licensee shall be deemed to be in compliance with subsection (a) of this section if the additional dose equivalent to the embryo/fetus does not exceed 0.05 rem (0.5 millisievert) during the remainder of the pregnancy.

§336.315. General Requirements for Surveys and Monitoring.

(a) Each licensee shall make, or cause to be made, surveys that:

(1) (No change.)

(2) are reasonable under the circumstances to evaluate:

(A) the magnitude and extent of radiation levels;

(B) (No change.)

(C) the potential radiological hazards [~~that could be present~~].

(b)-(d) (No change.)

§336.316. Conditions Requiring Individual Monitoring of External and Internal Occupational Dose.

Each licensee shall monitor exposures to radiation and radioactive material at levels sufficient to demonstrate compliance with the occupational dose limits of this subchapter. As a minimum, the following monitoring is required:

(1) Each licensee shall monitor occupational exposure to radiation from licensed and unlicensed radiation sources under the control of the licensee and shall supply and require the use of individual monitoring devices by:

(A) (No change.)

(B) minors [~~and declared pregnant women~~] likely to receive, in one year [~~1 year~~] from sources external to the body, a deep dose equivalent in excess of 0.1 rem (one millisievert), a lens dose equivalent in excess of 0.15 rem(1.5 millisievert), [~~10% of any of the applicable limits in §336.311 of this title (relating to Occupational Dose Limits for Minors)~~] or a shallow dose equivalent to the skin or to the extremities in excess of 0.5 rem (five millisievert) [~~§336.312 of this title (relating to Dose to an Embryo/Fetus)~~]; [~~and~~]

(C) declared pregnant women likely to receive during the entire pregnancy, from radiation sources external to the body, a deep dose equivalent in excess of 0.1 rem (one millisievert); and

(D) [~~(C)~~] individuals entering a high or very high radiation area.

(2) Each licensee shall monitor (see §336.308 of this title (relating to Determination of Internal Exposure)) the occupational intake of radioactive material by and assess the committed effective dose equivalent to:

(A) (No change.)

(B) minors [~~and declared pregnant women~~] likely to receive, in one-year [~~1 year~~], a committed effective dose equivalent in excess of 0.1 [~~0.05~~] rem (one [~~0.5~~] millisievert); and[~~.~~]

(C) declared pregnant women likely to receive, during the entire pregnancy, a committed effective dose equivalent in excess of 0.1 rem (one millisievert).

§336.319. Use of Process or Other Engineering Controls.

The licensee shall use, to the extent practical, process or other engineering controls (e.g., containment, decontamination, or ventilation) to control the concentrations of radioactive material in air.

§336.320. Use of Other Controls.

(a) When it is not practical to apply process or other engineering controls to control the concentrations of radioactive material in air to values below those that define an airborne radioactivity area, the licensee shall, consistent with maintaining the total effective dose equivalent as low as is reasonably achievable (ALARA), increase monitoring and limit intakes by one or more of the following means:

(1) control of access;

(2) limitation of exposure times;

(3) use of respiratory protection equipment; or

(4) other controls.

(b) If the licensee performs an ALARA analysis to determine whether or not respirators should be used, the licensee may consider safety factors other than radiological factors. The licensee should also consider the impact of respirator use on workers' industrial health and safety.

§336.321. Use of Individual Respiratory Protection Equipment.

(a) If the licensee assigns or permits the use of [~~uses~~] respiratory protection equipment to limit the intake of radioactive material [~~intakes under §336.320 of this title (relating to Use of Other Controls)~~]:

(1) The licensee shall use only respiratory protection equipment that is tested and certified [~~or had certification extended~~] by the National Institute for Occupational Safety and Health (NIOSH) [~~and the Mine Safety and Health Administration (NIOSH/MSHA)~~], except as provided in paragraph (2) of this subsection.

(2) If the licensee wishes to use equipment that has not been tested or certified by NIOSH [~~NIOSH/MSHA, or has not had certification extended by NIOSH/MSHA~~], or for which there is no schedule for testing or certification, the licensee shall submit an application for authorized use of this [~~that~~] equipment, except as provided in this section [~~including a demonstration by testing, or a demonstration on the basis of reliable test information, that the material and performance characteristics of the equipment are capable of providing the proposed degree of protection under anticipated conditions of use~~]. The application must include evidence that the material and performance characteristics of the equipment are capable of providing the proposed degree of protection under anticipated conditions of use. This must be demonstrated either by licensee testing or on the basis of reliable test information.

(3) The licensee shall implement and maintain a respiratory protection program that includes:

(A) air sampling sufficient to identify the potential hazard, permit proper equipment selection, and estimate doses [~~exposures~~];

(B) surveys and bioassays, as necessary [~~appropriate~~], to evaluate actual intakes;

(C) testing of respirators for operability (user seal check for face sealing devices and functional check for others) immediately before each use;

(D) written procedures regarding [~~selection, fitting, issuance, maintenance, and testing of respirators, including testing for operability immediately before each use; supervision and training of personnel; monitoring, including air sampling and bioassays; and record keeping; and~~] :

(i) monitoring, including air sampling and bioassays;

(ii) supervision and training of respirator users;

(iii) fit testing;

(iv) respirator selection;

(v) breathing air quality;

(vi) inventory and control:

(vii) storage, issuance, maintenance, repair, testing, and quality assurance of respiratory protection equipment;

(viii) recordkeeping; and

(ix) limitations on periods of respirator use and relief from respirator use;

(E) determination by a physician [~~before initial fitting of respirators, and at least every 12 months thereafter or periodically at a frequency determined by a physician,~~] that the individual user is medically fit to use [~~the~~] respiratory protection equipment before: [~~.~~]

(i) the initial fitting of a face sealing respirator;

(ii) the first field use of non-face sealing respirators; and

(iii) either every 12 months thereafter, or periodically at a frequency determined by a physician.

(F) fit testing, with fit factor greater than or equal to ten times the assigned protection factor for negative pressure devices, and a fit factor greater than or equal to 500 for any positive pressure, continuous flow, and pressure-demand devices, before the first field use of tight fitting, face-sealing repirators and periodically thereafter at a frequency not to exceed one year. Fit testing must be performed with the facepiece operating in the negative pressure mode.

~~[(4) The licensee shall issue a written policy statement on respirator usage covering:]~~

~~[(A) the use of process or other engineering controls, instead of respirators;]~~

~~[(B) the routine, nonroutine, and emergency use of respirators; and]~~

~~[(C) the length of periods of respirator use and relief from respirator use.]~~

(4) [~~(5)~~] The licensee shall advise each respirator user that the user may leave the area at any time for relief from respirator use in the event of equipment malfunction, physical or psychological distress, procedural or communication failure, significant deterioration of operating conditions, or any other conditions that might require this relief.

(5) [~~(6)~~] The licensee shall also consider limitations appropriate to the [~~use respiratory protection equipment within limitations for~~] type and mode of use [~~and shall provide proper visual, communication, and other special capabilities, such as adequate skin protection, when needed~~]. When selecting respiratory devices, the licensee shall provide for vision correction, adequate communication, low-temperature work environments, and the concurrent use of other safety or radiological protection equipment. The licensee shall use equipment in such a way as not to interfere with the proper operation of the respirator.

(b) Standby rescue persons are required whenever one-piece atmosphere-supplying suits, or any combination of supplied air respiratory protection device and personnel protective equipment are used from which an unaided individual would have difficulty extricating himself or herself. The standby persons must be equipped with respiratory protection devices or other apparatus appropriate for the potential hazards. The standby rescue persons shall observe or otherwise maintain continuous communication with the workers (visual, voice, signal line, telephone, radio or other suitable means), and be immediately available to assist them in case of a failure of the air supply or for any other reason that requires relief from distress. A sufficient number of standby rescue persons must be immediately available to assist all users of this type of equipment and to provide effective emergency rescue if needed. [~~When estimating exposure of individuals to airborne radioactive materials, the licensee may make allowance for respiratory protection equipment used to limit intakes under §336.320 of this title, provided that the following conditions, in addition to those in subsection (a) of this section, are satisfied:~~]

~~[(1) The licensee selects respiratory protection equipment that provides a protection factor (see §336.358, Appendix A, of this title (relating to Protection Factors for Respirators)) greater than the multiple by which peak concentrations of airborne radioactive materials in the working area are expected to exceed the values specified in §336.359, Appendix B, Table I, Column 3, of this title (relating to Annual Limits on Intake (ALI) and Derived Air Concentrations (DAC) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sanitary Sewerage). However, if the selection of respiratory protection equipment with a protection factor greater than the multiple defined in the preceding sentence is inconsistent with the goal specified in §336.320 of this title of keeping the total effective dose equivalent as low as is reasonably achievable (ALARA), the licensee may select respiratory protection equipment with a lower protection factor only if such a selection would result in keeping the total effective dose equivalent ALARA. The concentration of radioactive material in the air that is inhaled when respirators are worn may be initially estimated by dividing the average concentration in air, during each period of uninterrupted use, by the protection factor. If the exposure is later found to be greater than initially estimated, the corrected value shall be used; if the exposure is later found to be less than initially estimated, the corrected value may be used.]~~

~~[(2) The licensee shall obtain authorization from the commission by license amendment before assigning respiratory protection factors in excess of those specified in §336.358, Appendix A, of this title. The commission may authorize a licensee to use higher protection factors on receipt of an application that:]~~

~~[(A) describes the situation for which a need exists for higher protection factors; and]~~

~~[(B) demonstrates that the respiratory protection equipment provides these higher protection factors under the proposed conditions of use.]~~

(c) Atmosphere-supplying respirators must be supplied with respirable air of Grade D quality or better as defined by the Compressed Gas Association in publication G-7.1, "Commodity Specification for Air," 1997 and included in the regulations of the Occupational Safety and Health Administration (Title 29 Code of Federal Regulations §1910.134(i)(1)(ii)(A) - (E)). Grade D quality air criteria include:

[~~In an emergency, the licensee shall use as emergency equipment only respiratory protection equipment that has been specifically certified or had certification extended for emergency use by the NIOSH/MSHA.~~]

(1) oxygen content (v/v) of 19.5-23.5%;

(2) hydrocarbon (condensed) content of five milligrams per cubic meter of air or less:

(3) carbon monoxide (CO) content of ten parts per million (ppm) or less;

(4) carbon dioxide content of 1,000 ppm or less; and

(5) lack of noticeable odor.

(d) The licensee shall ensure that no objects, materials, or substances, such as facial hair, or any conditions that interfere with the face-facepiece seal or valve function, and that are under the control of the respirator wearer, are present between the skin of the wearer's face and the sealing surface of a tight-fitting respirator facepiece. [~~The licensee shall notify the executive director in writing at least 30 days before the date that respiratory protection equipment is first used under the provisions of either subsection (a) or (b) of this section.~~]

(e) In estimating the dose to individuals from intake of airborne radioactive materials, the concentration of radioactive material in the air that is inhaled when respirators are worn is initially assumed to be the ambient concentration in air without respiratory protection, divided by the assigned protection factor specified in §336.358 of this title (relating to Appendix A. Assigned Protection Factors for Respirators). If the dose is later found to be greater than the estimated dose, the corrected value must be used. If the dose is later found to be less than the estimated dose, the corrected value may be used.

(f) The licensee shall obtain authorization from the executive director before using assigned protection factors in excess of those specified in §336.358 of this title (relating to Appendix A. Assigned Protection Factors for Respirators). The executive director may authorize a licensee to use higher assigned protection factors on receipt of an application that:

(1) describes the situation for which a need exists for higher protection factors; and

(2) demonstrates that the respiratory protection equipment provides these higher protection factors under the proposed conditions of use.

§336.322. Further Restrictions on the Use of Respiratory Protection Equipment.

The commission may impose restrictions in addition to those in §336.320 of this title (relating to Use of Other Controls), §336.321 of this title (relating to Use of Individual Respiratory Protection Equipment), and §336.358, Appendix A, of this title (relating to Protection Factors for Respirators) to:

(1) ensure that the respiratory protection program of the licensee is adequate to limit doses to [~~exposures of~~] individuals from intakes of [~~to~~] airborne radioactive materials consistent with maintaining the total effective dose equivalent as low as reasonably achievable; and

(2) (No change.)

§336.335. Reporting Requirements for Incidents.

(a) Immediate notification. Each licensee shall notify the executive director as soon as possible, but not later than four hours after the discovery of an event that prevents immediate protective actions necessary to avoid exposures to radiation or radioactive materials that could exceed regulatory limits or releases of radioactive materials that could exceed limits (e.g., events may include fires, explosions, toxic gas releases, etc.). Notwithstanding any other requirements for notification, each licensee shall immediately report to the executive director each event involving licensed radioactive material possessed by the licensee that may have caused or threatens to cause any of the following conditions:

(1) an individual to receive:

(A) (No change.)

(B) a lens [~~an eye~~] dose equivalent of 75 rems (0.75 sievert) or more; or

(C) (No change.)

(2) (No change.)

(b) Twenty-four hour notification. Each licensee shall, within 24 hours of discovery of the event, report to the executive director any event involving loss of control of licensed material possessed by the licensee that may have caused, or threatens to cause, any of the following conditions:

(1) an individual to receive, in a period of 24 hours:

(A) (No change.)

(B) a lens [~~an eye~~] dose equivalent exceeding 15 rems (0.15 sievert); or

(C) (No change.)

(2)-(6) (No change.)

(c)- (e) (No change.)

§336.341. General Recordkeeping Requirements for Licensees.

(a) (No change.)

(b) In the records required by this chapter, the licensee may record quantities in International System of Units (SI) units in parentheses following each of the units specified in subsection (a) of this section. However, all quantities must be recorded as stated in subsection (a) of this section.

(c) [~~(b)~~] Notwithstanding the requirements of subsection (a) of this section, information on shipment manifests for wastes received at a licensed land disposal facility, as required by §336.331(h) of this title (relating to Transfer of Radioactive Material), shall be recorded in SI [~~International System of Units (SI)~~] units (becquerel, gray, and sievert) or in SI and units as specified in subsection (a) of this section.

(d) [~~(c)~~] The licensee shall make a clear distinction among the quantities entered on the records required by this subchapter, such as total effective dose equivalent, shallow-dose equivalent, lens [~~eye~~] dose equivalent, deep-dose equivalent, and committed effective dose equivalent.

(e) [~~(d)~~] Each licensee shall maintain records showing the receipt, transfer, and disposal of all source material, byproduct material, or other licensed radioactive material. Each licensee shall also maintain any records and make any reports as may be required by the conditions of the license, by the rules in this chapter, or by orders of the commission. Copies of any records or reports required by the license, rules, or orders shall be submitted to the executive director or commission on request. All records and reports required by the license, rules, or orders shall be complete and accurate.

(f) [~~(e)~~] The licensee shall retain each record that is required by the rules in this chapter or by license conditions for the period specified by the appropriate rule or license condition. If a retention period is

not otherwise specified, each record shall be maintained until the commission terminates each pertinent license requiring the record.

(g) [~~(f)~~] If there is a conflict between the commission's rules, license condition, or other written approval or authorization from the executive director pertaining to the retention period for the same type of record, the longest retention period specified takes precedence.

(h) [~~(g)~~] The executive director may require the licensee to provide the commission with copies of all records prior to termination of the license.

§336.346. Records of Individual Monitoring Results.

(a) Record keeping requirement. Each licensee shall maintain records of doses received by all individuals for whom monitoring was required under §336.316 of this title (relating to Conditions Requiring Individual Monitoring of External and Internal Occupational Dose) and records of doses received during planned special exposures, accidents, and emergency conditions. Assessments of dose equivalent and records made using units in effect before January 1, 1994, need not be changed. These records shall include, when applicable:

(1) the deep-dose equivalent to the whole body, lens [~~eye~~] dose equivalent, shallow-dose equivalent to the skin, and shallow-dose equivalent to the extremities;

(2) the estimated intake [~~or body burden~~] of radionuclides (see §336.306 of this title (relating to Compliance with Requirements for Summation of External and Internal Doses));

(3) the committed effective dose equivalent assigned to the intake [~~or body burden~~] of radionuclides;

(4) the specific information used to assess [~~calculate~~] the committed effective dose equivalent under §336.308(a) and (c) [~~§336.308(c)~~] of this title (relating to Determination of Internal Exposure), and when required by §336.316 of this title (relating to Conditions Requiring Individual Monitoring of External and Internal Occupational Dose);

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

(b)-(e) (No change.)

§336.358. Appendix A. Assigned Protection Factors for Respirators.

Assigned Protection factors are as follows.

Figure: 30 TAC §336.358

[~~Figure: 30 TAC §336.358, Appendix A~~]

§336.359. Appendix B. Annual Limits on Intake (ALI) and Derived Air Concentrations (DAC) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sanitary Sewerage.

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

(d) Table III, "releases to sewers." The monthly average concentrations for release to sanitary sewerage are applicable to the provisions in §336.215 [~~§336.333~~] of this title (relating to Disposal by Release into Sanitary Sewerage). The concentration values were derived by taking the most restrictive occupational stochastic oral ingestion ALI and dividing by 7.3×10^6 ml. The factor of 7.3×10^6 ml is composed of a factor of 7.3×10^5 ml, the annual water intake by "reference man," and a factor of 10, such that the concentrations, if the sewage released by the licensee were the only source of water ingested by a "reference man" during a year, would result in a committed effective dose equivalent of 0.5 rem (5 millisieverts).

Figure: 30 TAC §336.359(d)(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.

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Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Earliest possible date of adoption: July 8, 2001

For further information, please call: (512) 239-6087

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SUBCHAPTER G. DECOMMISSIONING STANDARDS

30 TAC §336.611

STATUTORY AUTHORITY

The amendment is proposed under the THSC, TRCA, Chapter 401; THSC, §401.011, which provides the commission the authority to regulate and license the disposal of radioactive substances; §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive material; §401.201, which provides authority to the commission to regulate the disposal of low-level radioactive waste; and §401.412, which provides authority to the commission to regulate licenses for the disposal of radioactive substances. The proposed amendment is also authorized by the TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state.

The amendment implements THSC, Chapter 401, relating to Radioactive Materials and Other Sources of Radiation, including §401.011, relating to Radiation Control Agency; §401.051, relating to Adoption of Rules and Guidelines; §401.057, relating to Records; §401.059, relating to Program Development; §401.103, relating to Rules and Guidelines for Licensing and Registration; §401.104, relating to Licensing and Registration Rules; §401.151, relating to Compatibility with Federal Standards; §401.201, relating to Regulation of Low-Level Radioactive Waste Disposal; and §401.412, relating to Commission Licensing Authority.

§336.611. Public Notification and Public Participation.

Upon the receipt of a decommissioning plan from the licensee, or a proposal by the licensee for release of a site under §336.607 of this title (relating to Criteria for License Termination under Restricted Conditions) or §336.609 of this title (relating to Alternate Criteria for License Termination), or whenever the commission deems notice to be in the public interest, the commission shall publish notice in accordance with §39.713 [~~§39.313~~] of this title (relating to Public Notification and Public Participation).

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

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239-6087

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SUBCHAPTER I. FINANCIAL ASSURANCE

30 TAC §§336.801 - 336.807

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

STATUTORY AUTHORITY

The repeals are proposed under the THSC, TRCA; §§401.011, 401.051, 501.057, 501.101, 401.103(b) and (c), 401.104(b) - (e), 401.106(b) and (c), 401.201 - 401.203, 401.303, 401.412, and 401.413; Texas Government Code, §2001.004(1); and TWC, §5.103.

There are no other statutes, articles, or codes affected/implemented by the repeals.

§336.801. Purpose and Scope.

§336.802. Definitions.

§336.803. Financial Assurance Requirements.

§336.804. Financial Assurance Mechanisms.

§336.805. Long-Term Care Requirements.

§336.806. Wording of Financial Assurance Mechanisms.

§336.807. Appendix A. Wording of Financial Assurance Instruments.

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

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Margaret Hoffman
Director, Environmental Law Division
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For further information, please call: (512) 239-6087

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 1. CENTRAL ADMINISTRATION

SUBCHAPTER A. PRACTICE AND PROCEDURES

DIVISION 1. PRACTICE AND PROCEDURES

34 TAC §1.6

The Comptroller of Public Accounts proposes an amendment to §1.6, concerning extensions of time. The rule is being amended to reflect current job titles that are assigned to attorneys in the comptroller's Administrative Hearings Section.

James LeBas, Chief Revenue Estimator, has determined that for the first five-year period the amendment will be in effect there will be no significant revenue impact on the state or local government.

Mr. LeBas also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of adopting the amendment will be in clarifying for the public who within the Comptroller's office may approve an extension of time. This amendment is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to Ken Nordeman, Deputy General Counsel for Administrative Hearings, General Counsel Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements the Tax Code, §111.009 and §111.105.

§1.6. Extensions of Time.

(a) (No change.)

(b) A motion for an extension of any other deadline in these sections will not be granted unless good cause is established and the need for the extension is not due to the moving party's neglect, indifference, or lack of diligence. A motion must be made in writing at least seven days prior to the expiration of the time period. In the event of an emergency, a motion may be accepted if it is postmarked, sent by facsimile transmission, or deposited with a private mail or courier service, postage or delivery charges paid, not later than the date of the original deadline. Prior to the setting of a hearing the assistant general counsel [~~hearings attorney~~] may approve one extension of the time to reply to a position letter of not more than 14 days. Any additional extension may be granted, for good cause shown, only by the general counsel or his designee. After a hearing is set, a motion for an extension of filing deadlines should be addressed to the assigned administrative law judge and will be ruled upon by him. A copy of a motion for extension of a filing deadline must be provided to all parties.

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

Filed with the Office of the Secretary of State, on May 23, 2001.

TRD-200102893
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: July 8, 2001
For further information, please call: (512) 463-4062

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34 TAC §1.9

The Comptroller of Public Accounts proposes an amendment to §1.9, concerning position letters. The rule is being amended

to reflect current job titles that are assigned to attorneys in the comptroller's Administrative Hearings Section.

James LeBas, Chief Revenue Estimator, has determined that for the first five-year period the amendment will be in effect there will be no significant revenue impact on the state or local government.

Mr. LeBas also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of adopting the amendment will be in clarifying for the public whose findings will be included in position letters. This amendment is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to Ken Nordeman, Deputy General Counsel for Administrative Hearings, General Counsel Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements Tax Code, Chapter 111.

§1.9. Position Letter

(a) Following receipt of the taxpayer's statement of grounds, documentary evidence, and any additional evidence requested by the assistant general counsel [~~hearings attorney~~], a position letter will be sent to the taxpayer. The position letter will accept or reject, in whole or in part, each contention of the taxpayer, and[~~. The position letter will~~] set forth what the assistant general counsel [~~hearings attorney~~] finds is properly subject to or exempt from taxation.

(b)-(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.

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Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
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For further information, please call: (512) 463-4062

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34 TAC §1.10

The Comptroller of Public Accounts proposes an amendment to §1.10, concerning acceptance or rejection of position letter; motion to dismiss petition or set for hearing. The rule is being amended to reflect the current title of the comptroller's Administrative Hearings Section.

James LeBas, Chief Revenue Estimator, has determined that for the first five-year period the amendment will be in effect there will be no significant revenue impact on the state or local government.

Mr. LeBas also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of adopting the amendment will be in providing new information regarding tax responsibilities. This amendment is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to Ken Nordeman, Deputy General Counsel for Administrative Hearings, General Counsel Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements Tax Code, Chapter 111.

§1.10. Acceptance or Rejection of Position Letter; Motion To Dismiss Petition or Set for Hearing

(a) The taxpayer must accept or reject, in whole or in part, the position letter within 15 days after the day the position letter is dated; however, note the extension exception in §1.6(b) of this title (relating to Extensions of Time). A form for this purpose will be enclosed with the position letter. Expiration of the 15-day period without the taxpayer filing a motion to set or dismiss will result in the filing of a motion to dismiss the hearing and dispose of the case according to the [~~tax division's~~] position of the Administrative Hearings Section.

(b)-(e) (No change.)

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

Filed with the Office of the Secretary of State, on May 23, 2001.

TRD-200102903
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: July 8, 2001
For further information, please call: (512) 463-4062

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34 TAC §1.11

The Comptroller of Public Accounts proposes an amendment to §1.11, concerning modification of the position letter. The rule is being amended to reflect current job titles that are assigned to attorneys in the comptroller's Administrative Hearings Section.

James LeBas, Chief Revenue Estimator, has determined that for the first five-year period the amendment will be in effect there will be no significant revenue impact on the state or local government.

Mr. LeBas also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of adopting the amendment will be in clarifying for the public who is responsible for reducing to writing any modifications to the position letter. This amendment is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to Ken Nordeman, Deputy General Counsel for Administrative Hearings, General Counsel Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements Tax Code, Chapter 111.

§1.11. Modification of the Position Letter.
The position letter may be modified. Any modifications to the position letter will be reduced to writing by the assistant general counsel [~~hearings attorney~~] and sent to the taxpayer. A new 15-day period for acceptance or rejection by the taxpayer begins on the day the modified position letter is dated if it is issued prior to the notice of setting being issued.

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

Filed with the Office of the Secretary of State, on May 23, 2001.

TRD-200102904
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: July 8, 2001
For further information, please call: (512) 463-4062

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34 TAC §1.13

The Comptroller of Public Accounts proposes an amendment to §1.13, concerning initiation of an expedited hearing. The rule is being amended to reflect the current title of the comptroller's Administrative Hearings Section.

James LeBas, Chief Revenue Estimator, has determined that for the first five-year period the amendment will be in effect there will be no significant revenue impact on the state or local government.

Mr. LeBas also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of adopting the amendment will be in providing new information regarding tax responsibilities. This amendment is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to Ken Nordeman, Deputy General Counsel for Administrative Hearings, General Counsel Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements Tax Code, Chapter 111.

§1.13. Initiation of an Expedited Hearing.

(a) A taxpayer may request an expedited hearing at the time a petition for redetermination or written request for refund hearing is filed. An expedited hearing is one conducted under the accelerated prehearing and hearing timetable set forth in this section.

(b) To obtain an expedited hearing, a taxpayer must do the following at the time the petition for redetermination or written request for refund hearing is filed:

(1) request in writing the election of the expedited procedure and specify whether an oral hearing or a hearing on written submissions is preferred;

(2) pre-file its statement of grounds and all evidence (other than resale and exemption certificates) on which it intends to rely at the hearing, including summaries of testimony of witnesses expected to be called at an oral hearing. Contentions and evidence not pre-filed by the taxpayer shall be deemed inadmissible;

(3) agree to abbreviated discovery timetables in the event the tax division should initiate discovery during the pre-hearing phase;

(4) request an extended oral hearing, if desired;

(5) agree to file resale and exemption certificates no later than the date of hearing or by the 60th day from the date of the hearing request, whichever occurs first, and to waive in writing the requirement of written notice and the 60-day period for the presentation of certificates as provided in Tax Code, §151.054(e); and

(6) waive in writing the issuance of a proposed decision.

(c) The general counsel or his designee shall, within ten days of his receipt of a request for an expedited hearing, make a determination as to whether the request qualifies for an expedited hearing. If it does not, the taxpayer will be so notified in writing, and advised that either with the filing of additional curative documentation the case can proceed on an expedited basis or that the case will be placed on the agency's regular hearings docket.

(d) For good cause shown, a request for an expedited hearing may be withdrawn; however, the waiver of the 60-day period pursuant to subsection (b)(5) of this section cannot be withdrawn. A taxpayer's request for continuance, or a request for an extended oral hearing filed after the initial request for an expedited hearing, shall not be granted unless there is a showing of good cause. Withdrawal of the request for an expedited hearing, or the granting of a motion for continuance or an extended oral hearing, shall cause the hearing to be set on the agency's regular hearings docket.

(e) The Administrative Hearings Section [~~tax division~~] may petition the Administrative Law Judge for conversion from an expedited to a regular hearing for good cause shown, including, but not limited to, the need for additional policy consideration of issues raised, the need for extended discovery, for reasons of agency policy or court case hold, or for extended examination of records presented by the taxpayer. The Administrative Law Judge shall rule on such motion on the basis of written pleadings submitted by the parties.

(f) A compliant expedited hearing request shall be set and decided on the following timetable:

(1) within 20 days of receipt of the request by the general counsel or his designee an oral hearing or written submission closing date not to exceed 60 days from the date of receipt of the request shall be set by the Chief Administrative Law Judge;

(2) a date, not to exceed 50 days from the date of receipt of the request by the general counsel or his designee, shall be set as a deadline for the Tax Division to file a written response to the taxpayer's statement of grounds and pre-filed evidence;

(3) a final decision shall be issued as follows:

(A) if no audit amendment is required in order to issue the final decision, within 45 days of the date of the oral hearing or the date the written submission record closes; or

(B) if an audit amendment is required in order to issue the final decision, within 75 days of the date of the oral hearing or the date the written submission record closes; and

(4) a motion for rehearing may be filed as provided in §1.29 of this title (relating to Motion for Rehearing).

(g) Hearings conducted pursuant to the expedited timetable established in this section shall not be subject to the provisions of §§1.9, 1.10, 1.11, 1.14, 1.15, 1.16, 1.20, and 1.27 of this title (relating to Rules of Practice and Procedure).

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

Filed with the Office of the Secretary of State, on May 23, 2001.

TRD-200102894
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: July 8, 2001
For further information, please call: (512) 463-4062

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34 TAC §1.14

The Comptroller of Public Accounts proposes an amendment to §1.14, concerning notice of setting. The rule is being amended to reflect current job titles that are assigned to attorneys in the comptroller's Administrative Hearings Section.

James LeBas, Chief Revenue Estimator, has determined that for the first five-year period the amendment will be in effect there will be no significant revenue impact on the state or local government.

Mr. LeBas also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of adopting the amendment will be in clarifying for the public who is responsible for responding to the taxpayer's reply to the position letter. This amendment is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed amendment.

Comments on the proposal may be submitted Ken Nordeman, Deputy General Counsel for Administrative Hearings, General Counsel Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements Tax Code, Chapter 111.

§1.14. Notice of Setting.

(a) Upon receipt of a motion to set, the assigned administrative law judge will send a notice to the parties giving:

(1) the date, time, and place of the oral hearing, the date the record will close in a written submission hearing, or other disposition of the hearing;

(2) the legal authority and jurisdiction under which the hearing is to be held;

(3) the date any legal brief or additional facts in reply to the position letter is due; and

(4) the date any response by the assistant general counsel [~~hearings~~ ~~attorney~~] to the taxpayer's reply to the position letter is due.

(b) The notice of setting for hearings pursuant to the Tax Code, §154.1142 or §155.0592, will include:

(1) the date, time, and place of the oral hearing;

(2) the legal authority and jurisdiction under which the hearing is to be held;

(3) the asserted factual basis for the alleged violation(s); and

(4) the date any legal brief or additional facts in reply to the notice of setting is due.

(c) All notices of setting issued pursuant to the Tax Code, Chapters 154 or 155, will be sent certified mail, return receipt requested; except for the notices of setting issued pursuant to the Tax Code, §§154.114(c), 154.309(d), 155.059(c) or §155.186(d), which will be sent by first class mail.

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

Filed with the Office of the Secretary of State, on May 23, 2001.

TRD-200102895
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: July 8, 2001
For further information, please call: (512) 463-4062

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34 TAC §1.16

The Comptroller of Public Accounts proposes an amendment to §1.16, concerning response to the administrative hearings section. The rule is being amended to reflect current job titles that are assigned to attorneys in the comptroller's Administrative Hearings Section.

James LeBas, Chief Revenue Estimator, has determined that for the first five-year period the amendment will be in effect there will be no significant revenue impact on the state or local government.

Mr. LeBas also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of adopting the amendment will be in clarifying for the public who within the Comptroller's office is responsible for the response of the Administrative Hearings Section. This amendment is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to Ken Nordeman, Deputy General Counsel for Administrative Hearings, General Counsel Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements Tax Code, Chapter 111.

§1.16. Response of the Administrative Hearings Section [~~Tax Division~~].

(a) If the taxpayer presents additional facts or legal arguments in a reply to the position letter, the assistant general counsel shall [~~hearings attorney should~~] file a response by the date specified in the notice of setting. If the taxpayer files a reply to the position letter containing no additional facts or legal arguments, the assistant general counsel [~~hearings attorney~~] is not required to file a response. Any response filed must state the legal position of the Administrative Hearings Section [~~tax division~~], and any factual disagreement, on each issue or argument raised by the taxpayer.

(b) For hearings pursuant to the Tax Code, §154.1142 or §155.0592, the Administrative Hearings Section [~~tax division~~] is not required to file a response. However, if the permit holder presents additional facts or legal arguments in its reply, the Administrative Hearings Section [~~tax division~~] may file a response no later than seven calendar days prior to the oral hearing.

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

Filed with the Office of the Secretary of State, on May 23, 2001.

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Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: July 8, 2001
For further information, please call: (512) 463-4062

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34 TAC §1.20

The Comptroller of Public Accounts proposes an amendment to §1.20, concerning continuances (postponement of hearings). The rule is being amended to reflect the current title of the comptroller's Administrative Hearings Section.

James LeBas, Chief Revenue Estimator, has determined that for the first five-year period the amendment will be in effect there will be no significant revenue impact on the state or local government.

Mr. LeBas also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of adopting the amendment will be in providing new information regarding tax responsibilities. This amendment is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to Ken Nordeman, Deputy General Counsel for Administrative Hearings, General Counsel Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements Tax Code, Chapter 111.

§1.20. Continuances (Postponement of Hearing).

A motion for continuance of a contested case set for oral hearing must be in writing and filed with the assigned administrative law judge at least seven days prior to the date that the matter is to be heard. If an emergency occurs less than seven days prior to the hearing date, a motion for continuance may be filed. The motion must show that there is good cause for the continuance and that the need is not caused by neglect, indifference, or lack of diligence. A copy of the motion must be served upon all other parties of record at the time of filing. If the Administrative Hearings Section [~~tax division~~] increases the amount of tax deficiency at or before the time of hearing, the taxpayer is entitled to a 30-day continuance to obtain and produce further evidence applicable to the items upon which the increase is based.

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

Filed with the Office of the Secretary of State, on May 23, 2001.

TRD-200102897
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: July 8, 2001
For further information, please call: (512) 463-4062

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34 TAC §1.33

The Comptroller of Public Accounts proposes an amendment to §1.33, concerning discovery. The rule is being amended to reflect current job titles that are assigned to attorneys in the comptroller's Administrative Hearings Section.

James LeBas, Chief Revenue Estimator, has determined that for the first five-year period the amendment will be in effect there will be no significant revenue impact on the state or local government.

Mr. LeBas also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of adopting the amendment will be in clarifying for the public who within the Comptroller's office may be assigned to a contested case. This amendment is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to Ken Nordeman, Deputy General Counsel for Administrative Hearings, General Counsel Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements Tax Code, Chapter 111.

§1.33. Discovery.

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

(f) Requests for disclosure. A party may obtain disclosure from another party of the information or material listed herein by serving the other party--at any time after a contested case has been assigned to an assistant general counsel [~~a hearings attorney~~] but no later than 90 days before the scheduled date of the oral hearing or the date on which the record of a written submission hearing is scheduled to close--the

following request: "Pursuant to §1.33(f) of this title (relating to Discovery), you are requested to disclose, within 30 days of service of this request, the information or material described in that section." A party may request disclosure of any or all of the following:

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

(g) (No change.)

(h) Interrogatories to parties. Any party may serve upon any other party written interrogatories to inquire about any matter within the scope of discovery except matters covered by subsection (g) of this section. An interrogatory may inquire whether a party makes a specific legal or factual contention and may ask the responding party to state the legal theories and to describe in general the factual bases for the party's claims or defenses, but interrogatories may not be used to require the responding party to marshal all of the available proof or the proof the party intends to offer at hearing. Written interrogatories are to be answered by the party served, or, if the party served is a public or private corporation or partnership or association, by an officer or agent who must furnish such information as is available to the party. Interrogatories may be served at any time after a contested case has been assigned to an assistant general counsel [~~a hearings attorney~~]. Interrogatories served upon the comptroller may be answered by the comptroller's designee who shall sign and verify the answers as required by subsection (h)(3) of this section.

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

(i) (No change.)

(j) Request for admission.

(1) At any time after a contested case has been assigned to an assistant general counsel [~~a hearings attorney~~], a party may serve upon any other party a written request for the admission, for purposes of the pending contested case only, of the truth of any matter within the scope of subsection (b) of this section set forth in the request that relates to statements or opinions of fact or the application of law to fact, including the genuineness of any documents described in the request. Copies of the documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Whenever a party is represented by an attorney or representative of record, service of a request for admissions shall be made on his attorney or representative. A true copy of any objection to the request together with a copy of the request shall be filed promptly in the administrative law judge clerk's office by the party making the objection. If no objection is filed to a request, the written answer and the request shall be filed with the assigned administrative law judge by the assistant general counsel [~~hearings attorney~~] no later than seven days prior to the date of the oral hearing or by the closing of the record of a written submission hearing.

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

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

Filed with the Office of the Secretary of State, on May 23, 2001.

TRD-200102898
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: July 8, 2001
For further information, please call: (512) 463-4062

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34 TAC §1.39

The Comptroller of Public Accounts proposes an amendment to §1.39, concerning dismissal of case. The rule is being amended to reflect current job titles that are assigned to attorneys in the comptroller's Administrative Hearings Section.

James LeBas, Chief Revenue Estimator, has determined that for the first five-year period the amendment will be in effect there will be no significant revenue impact on the state or local government.

Mr. LeBas also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of adopting the amendment will be in clarifying for the public who within the Comptroller's office has the responsibilities related to dismissing a case. This amendment is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to Ken Nordeman, Deputy General Counsel for Administrative Hearings, General Counsel Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements Tax Code, Chapter 111.

§1.39. Dismissal of Case.

If a motion to dismiss is filed by a taxpayer based upon agreement reached among the parties as reflected in the position letter or any supplement to it, or upon the taxpayer's decision to abandon the case, a decision will be issued which conforms with the position letter or the agreement reached among the parties. The assistant general counsel [~~hearings attorney~~] may move to dismiss a case based upon agreement reached among the parties, for want of prosecution, or for failure to state a claim upon which relief can be granted as required by §1.7 of this title (relating to Content of Statement of Grounds; Preliminary Conference) and §1.42 of this title (relating to Definitions). The motion must be served on all parties and their authorized representatives at their last known address. If there is no reply from the taxpayer within 15 days to the assistant general counsel's [~~hearings attorney's~~] motion to dismiss, a decision will be issued either dismissing the case and fixing the deficiency as the amount determined by the Administrative Hearings Section [~~tax division~~] or otherwise disposing of the case according to the position last taken by the Administrative Hearings Section [~~tax division~~]. All motions to dismiss that are based upon a representation that both parties have agreed to dismiss a contested case, on the basis that all issues have been settled, shall be in writing and signed by both parties or their authorized representatives.

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

Filed with the Office of the Secretary of State, on May 23, 2001.

TRD-200102899
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: July 8, 2001
For further information, please call: (512) 463-4062

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34 TAC §1.40

The Comptroller of Public Accounts proposes an amendment to §1.40, concerning burden of proof. The rule is being amended to reflect the current title of the comptroller's Administrative Hearings Section.

James LeBas, Chief Revenue Estimator, has determined that for the first five-year period the amendment will be in effect there will be no significant revenue impact on the state or local government.

Mr. LeBas also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of adopting the amendment will be in providing new information regarding tax responsibilities. This amendment is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to Ken Nordeman, Deputy General Counsel for Administrative Hearings, General Counsel Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements Tax Code, Chapter 111.

§1.40. Burden of Proof.

In a contested case:

(1) the burden of proof is on the Administrative Hearings Section [~~tax division~~]:

(A) by a preponderance of the evidence, if the issue is whether the suspension or revocation of a license is warranted; or

(B) by clear and convincing evidence, if the issue is whether the imposition of additional penalty for willful or fraudulent failure to pay tax is warranted;

(2) the burden of proof is on the taxpayer:

(A) by clear and convincing evidence, if he claims a transaction is exempt from taxation; or

(B) by a preponderance of the evidence, if he contends that an action, or proposed action, of the Administrative Hearings Section [~~tax division~~] is otherwise unwarranted.

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

Filed with the Office of the Secretary of State, on May 23, 2001.

TRD-200102900
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: July 8, 2001
For further information, please call: (512) 463-4062

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34 TAC §1.42

The Comptroller of Public Accounts proposes an amendment to §1.42, concerning definitions. The rule is being amended to reflect current job titles and duties that are assigned to attorneys in the comptroller's Administrative Hearings Section, and to add a reference to the statutory provisions that authorize settlements of contested tax matters.

James LeBas, Chief Revenue Estimator, has determined that for the first five-year period the amendment will be in effect there will be no significant revenue impact on the state or local government.

Mr. LeBas also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of adopting the amendment will be in defining which proceedings will be considered a "contested case" and are under the jurisdiction of an administrative law judge. This amendment is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to Ken Nordeman, Deputy General Counsel for Administrative Hearings, General Counsel Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements Tax Code, Chapter 111.

§1.42. Definitions.

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

(1) Administrative law judge--An individual appointed by the comptroller to conduct hearings on matters within the comptroller's jurisdiction and to prepare proposed decisions to properly resolve such matters.

(2) Agency--The Office of the Comptroller of Public Accounts.

(3) Applicant--A party seeking a license or permit from the agency, or seeking an exemption.

(4) Authorized representative--An individual who represents a party in a contested case and may be any individual other than the party.

(5) Contested case or case--A proceeding in which the legal rights, duties, or privileges of a party are to be determined by the agency after an opportunity for adjudicative hearing. It includes a request for redetermination or refund, as well as actions initiated by the agency to revoke or suspend permits or licenses administered by the agency on grounds other than failure to pay a final tax deficiency or failure to file a tax security. Contested cases are within the jurisdiction of the administrative law judges. Forfeitures of rights to do business, of certificates of authority, of articles of incorporation, penalties imposed under the Tax Code, §151.7031, the refusal or failure to settle under Tax Code, §111.101 or requests for or revocation of exemptions from taxation are not contested cases and are not within the jurisdiction of the administrative law judges.

(6) Determination--A written notice from the agency that a person is required to pay to the State of Texas a tax, fee, penalty, or interest.

(7) Assistant General Counsel [~~Hearings attorney~~]--An attorney from the Administrative Hearings Section who is assigned to present the agency's position [~~represent the tax division~~] in a contested case.

(8) Licensing--The agency process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a permit.

(9) Party--Any person filing a petition or claim with the agency or asked by the agency to respond; the agency, acting through its tax division; and any other person admitted as a party under §1.36 of this title (relating to Interested Parties).

(10) Permit--The whole or any part of a license, certificate, approval, registration, or similar form of permission, the issuance, renewal, amendment, suspension or revocation of which is within the jurisdiction of the agency.

(11) Permit holder--Includes a bonded agent, distributor, wholesaler, or retailer required to obtain a permit under the Tax Code, Chapters 154 or 155.

(12) Person--Any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character. It may also include an estate, trust, receiver, assignee for benefit of creditors, trustee, trustee in bankruptcy, assignee, or any other group or combination acting as a unit.

(13) Petition--A request for official action by the agency regarding the rights, duties or privileges accorded to the person making the request under a statute administered or enforced by the agency. If the request is made orally, it must subsequently be reduced to writing.

(14) Petitioner, claimant, or taxpayer--Any person who files a petition seeking redetermination of a liability, a refund of monies paid, or determination of rights under any license or permit granted by the agency.

(15) Pleading--Any document filed by a party concerning the position or assertions in a contested case.

(16) Respondent or taxpayer--Any person to whom a notice of a show cause hearing for the suspension or revocation of a license has been issued.

[~~(17) Tax division--The divisions within the agency responsible for the particular action or actions that are the subject of the contested case.~~]

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

Filed with the Office of the Secretary of State, on May 25, 2001.

TRD-200102986
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: July 8, 2001
For further information, please call: (512) 463-4062

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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 filling 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 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

CHAPTER 285. ON-SITE SEWAGE FACILITIES SUBCHAPTER B. LOCAL ADMINISTRATION OF THE OSSF PROGRAM

30 TAC §285.13

The Texas Natural Resource Conservation Commission has withdrawn from consideration proposed new §285.13 which appeared in the December 8, 2000, issue of the *Texas Register* (25 TexReg 12041).

Filed with the Office of the Secretary of State on May 24, 2001

TRD-200102957
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: May 24, 2001
For further information, please call: (512) 239-4712

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 2. MEDICALLY NEEDY PROGRAM SUBCHAPTER A. PROGRAM REQUIREMENTS

40 TAC §2.1002

The Texas Department of Human Services has withdrawn from consideration a proposed amendment to §2.1002, concerning application procedures in its Medically Needy Program chapter. The text of the proposed amendment appeared in the December 15, 2000, issue of the *Texas Register* (25 TexReg 12323).

Filed with the Office of the Secretary of State on May 25, 2001

TRD-200102983
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: May 25, 2001
For further information, please call: (512) 438-3108

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CHAPTER 4. MEDICAID PROGRAMS--CHILDREN AND PREGNANT WOMEN SUBCHAPTER A. ELIGIBILITY REQUIREMENTS

40 TAC §4.1002

The Texas Department of Human Services has withdrawn from consideration a proposed amendment to §4.1002, concerning application procedures in its Medicaid Programs--Children and Pregnant Women chapter. The text of the proposed amendment appeared in the December 15, 2000, issue of the *Texas Register* (25 TexReg 12324).

Filed with the Office of the Secretary of State on May 25, 2001

TRD-200102984
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: May 25, 2001
For further information, please call: (512) 438-3108

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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 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 69. CENTRAL PURCHASING SUBCHAPTER B. HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM

1 TAC §69.25

The Office of the Attorney General ("OAG") adopts new Subchapter B, §69.25, without changes to the proposed text as published in the February 23, 2001, issue of the *Texas Register* (26 TexReg 1619), relating to its historically underutilized business ("HUB") program. The purpose of the new subchapter is to comply with the Texas Government Code, Title 10, Subtitle D, Chapter 2161, §2161.003, which requires state agencies to adopt the General Services Commission ("GSC") rules governing their HUB program for construction projects and purchases of goods and services paid for with state-appropriated funds. The OAG adopts one addition to the text. The GSC rules are found at 1 Texas Administrative Code ("TAC"), Title 1 Administration, Part 5 General Services Commission, Chapter 111 Executive Administration Division, Subchapter B Historically Underutilized Business Program, §§111.11-111.28. ("TAC")

No comments were received regarding the adoption of this section.

The new subchapter is adopted under Texas Government Code, Title 10, Subtitle D, Chapter 2161, §2161.003, which directs state agencies to adopt the GSC's rules under §2161.002 as the agency's own rules. Those rules apply to agencies' construction projects and purchase of goods and services paid for with appropriated money.

This new subchapter implements the Texas Government Code, Title 10, Subtitle D, Chapter 2161, §2161.003.

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

Filed with the Office of the Secretary of State on May 24, 2001.

TRD-200102975

Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Effective date: June 13, 2001
Proposal publication date: February 23, 2001
For further information, please call: (512) 463-2110

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PART 5. GENERAL SERVICES COMMISSION

CHAPTER 113. CENTRAL PURCHASING DIVISION

The General Services Commission adopts the repeal of Title 1, TAC, Chapter 113, Subchapter A, §113.14 concerning the purchases of school districts; and Subchapter B, §113.23 concerning the purchase of school buses equipped with alternative fuel. The repeals are adopted without changes to the proposed text that was published in the April 13, 2001, issue of the *Texas Register* (26 TexReg 2799) The text will not be published.

The repeal of §§113.14 and 113.23 is adopted in accordance with Chapter 382 (The Clean Air Act), Subchapter F (Alternative Fuels Program, of the Health and Safety Code; and to delete obsolete language.

The adoption of the repeal of §§113.14 and 113.23 will delete obsolete rules concerning the purchase of school buses by school districts; and delete the requirement for school districts to use alternative fuel buses.

No comments were received regarding the repeal of §§113.14 and 113.23.

SUBCHAPTER A. PURCHASING

1 TAC §113.14

The repeal of §113.14 is adopted under the authority of Chapter 382 (Clean Air Act), Subchapter F (Alternative Fuels Program of the Health and Safety Code and Texas Government Code, §2152.003.

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

Filed with the Office of the Secretary of State on May 23, 2001.

TRD-200102908

Cynthia Hill
Acting General Counsel
General Services Commission
Effective date: June 12, 2001
Proposal publication date: April 13, 2001
For further information, please call: (512) 463-3960

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SUBCHAPTER B. PURCHASE OF ALTERNATIVE FUEL VEHICLES

1 TAC §113.23

Statutory Authority. The repeal of §113.23 is adopted under the authority of Chapter 382 (Clean Air Act), Subchapter F (Alternative Fuels Program of the Health and Safety Code and Texas Government Code, §2152.003.

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

Filed with the Office of the Secretary of State on May 23, 2001.

TRD-200102909
Cynthia Hill
Acting General Counsel
General Services Commission
Effective date: June 12, 2001
Proposal publication date: April 13, 2001
For further information, please call: (512) 463-3960

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CHAPTER 113. CENTRAL PURCHASING DIVISION

The General Services Commission adopts amendments to Title 1, Texas Administrative Code (TAC), Chapter 113, Subchapter C, §113.33 concerning school bus specifications; and Subchapter H, §113.137 concerning first choice product justification. The amendments are adopted without changes to the proposed text that was published on April 13, 2001 in the *Texas Register* (26 TexReg 2800). The text will not be republished.

The adoption of the amendments to §113,33 and §113.137 are adopted in order to provide clarification of Texas Education Code, §34.002, meet the requirement of the Texas Transportation code, §547.7015; and establish a justification limit to purchases of items designated as First Choice Products.

The adoption of the amendments to §113.33 and §113.137 will delete obsolete language, clarify the statutory intent of the Texas Education Code, §34,002 (relating to safety standards), meet the requirement of the Texas Transportation Code, §547.7015 (relating to rules for school buses), and will establish a justification limit for purchases of items designated in Title 1, TAC, §113.137 (relating to Identifying Recycled, Remanufactured or Environmentally Sensitive Commodities or Services for Procurements by State Agencies.)

No comments were received regarding amendments to Title 1, TAC, §113.33 and §113.137

SUBCHAPTER C. SPECIFICATION

1 TAC §113.33

The amendments to Title 1, TAC, §113.33 are adopted pursuant to the Texas Government Code, §2152.003, Texas Education Code, §34.002 and the Texas Transportation Code, §547,7015.

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

Filed with the Office of the Secretary of State on May 23, 2001.

TRD-200102905
Cynthia Hill
Acting General Counsel
General Services Commission
Effective date: June 12, 2001
Proposal publication date: April 13, 2001
For further information, please call: (512) 463-3960

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SUBCHAPTER H. RECYCLING MARKET DEVELOPMENT BOARD

1 TAC §113.137

The amendments to Title 1, TAC, §113.137 are adopted pursuant to the Texas Government Code, §2155.448.

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

Filed with the Office of the Secretary of State on May 23, 2001.

TRD-200102906
Cynthia Hill
Acting General Counsel
General Services Commission
Effective date: June 12, 2001
Proposal publication date: April 13, 2001
For further information, please call: (512) 463-3960

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CHAPTER 114. PAYMENT FOR GOODS AND SERVICES

1 TAC §114.10

The General Services Commission adopts new Title 1, TAC, Chapter 114, §114.10 concerning Collection of Debts. The new rule is adopted without changes to the proposed text that was published in the April 13, 2001, issue of the *Texas Register* (26 TexReg 2801). The text will not be republished.

The new §114.10 is adopted pursuant to the Texas Government Code, §2107.002 which provides that all state agencies are required to report uncollected and delinquent obligations to the Office of the Attorney General for collection efforts after a state agency has determined that normal agency collection procedures have failed. Further, each state agency that collects delinquent obligations owed to the agency must adopt rules to establish procedures for the collection of delinquent obligations, or the attorney general by rule may establish collection procedures for state agencies.

New §114.10 adopts by reference the rules and guidelines adopted by the Office of the Attorney General under Title 1, TAC, Chapter 59 - Collections.

No comments were received concerning the adoption of new rule §114.10.

The new rule is adopted under the authority of the Texas Government Code, Title 10, Subtitle D, §2152.003, and Texas Government Code 2107.002 that provides the General Services Commission with the authority to promulgate rules necessary to implement the section.

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

Filed with the Office of the Secretary of State on May 23, 2001.

TRD-200102907
Cynthia Hill
Acting General Counsel
General Services Commission
Effective date: June 12, 2001
Proposal publication date: April 13, 2001
For further information, please call: (512) 463-3960

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 20. COTTON PEST CONTROL

SUBCHAPTER C. STALK DESTRUCTION PROGRAM

4 TAC §20.22

The Texas Department of Agriculture (the department) adopts an amendment to §20.22 concerning cotton stalk destruction requirements, without changes to the proposed text as published in the April 20, 2001 issue of the *Texas Register* (26 TexReg 2919).

The amendment to §20.22(a) is adopted to change the established stalk destruction deadline for pest management Zone 2 Areas 1 and 2 from September 15 to September 1 and for Zone 2 Area 3 from September 25 to September 1. This deadline change will allow the department and producers to coordinate stalk destruction activities in the zones with boll weevil eradication goals and objectives, and to allow more effective elimination of cotton hosts.

No written or oral comments were received on the proposal.

The amendment is adopted in accordance with the Texas Agriculture Code, §74.006, which provides the department with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74, Subchapter A; and §74.004 which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other parts, and products of host plants for cotton pests.

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

Filed with the Office of the Secretary of State on May 24, 2001.

TRD-200102910
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: June 13, 2001
Proposal publication date: April 20, 2001
For further information, please call: (512) 463-4075

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TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 26. PRACTICE AND PROCEDURE

13 TAC §26.5, §26.27

The Texas Historical Commission adopts amendments to §26.5 and §26.27 (relating to Definitions and Disposition of Archeological Artifacts and Data) of Title 13, Part 2, Chapter 26 of the Texas Administrative Code, with changes to the proposed text as published in the March 9, 2001, issue of the *Texas Register* (26 TexReg 1921).

These changes are needed to clarify the intent of the commission regarding the collection, curation, deaccessioning, disposal, and destructive analysis of artifacts recovered under either permit or contracts issued by the commission. The Texas Natural Resources Code provides for the protection of these artifacts and assigns the Texas Historical Commission as the legal custodian of these artifacts. The revised sections establish a process for ensuring that the artifacts are properly curated, recorded, and, if appropriate, disposed of in conformance with appropriate standards established by the Commission.

Comments were received regarding adoption of these amendments from the President of the Council of Texas Archeologists (CTA) and several other members of CTA. The over-all theme of these fairly uniform comments concerned language within the proposed amendments to, and some existing language within §26.27. These comments primarily involve a request to remove all references within §26.27 to the accreditation of curatorial facilities by the Accreditation and Review Council of the Council of Texas Archeologists. Many CTA members are concerned that references to that non-profit organization's accreditation process within the rules of the THC could be incorrectly perceived as part of an official state regulatory process that might create unintended liability problems for CTA. The THC understands these concerns and has agreed to remove such references to the amendments that are proposed for adoption. The THC will also continue to work with CTA to amend other portions of these rules that deal with the issue of the CTA accreditation process.

The amendments are adopted under Section 442.005(q), Title 13 Part 2 of the Texas Government Code, and Section 191.052 of the Texas Natural Resources Code, which provides the Texas Historical Commission with the authority to promulgate rules and conditions to reasonably effect the purposes of this chapter. No other statues, articles, or codes are affected by these amendments.

These adopted rule amendments implement Section 442.005(b) of the Texas Government Code and Section 191.058(a-c) of the Texas Natural Resources Code.

§26.5. Definitions.

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

(1) Accession--the formal acceptance of a collection and its recording into the holdings of a curatorial facility.

(2) Antiquities--the tangible aspects of the past, which relate to human life and culture. Some examples include objects, written histories, architectural significance, cultural traditions and patterns, art forms, and technologies.

(3) Antiquities Advisory Board--a ten-member board that assists the Texas Historical Commission in reviewing matters related to the Antiquities Code of Texas.

(4) Appropriate historical or archeological authorities--for purposes of implementing the Antiquities Code of Texas, the Texas Historical Commission, P.O. Box 12276, Capital Station, Austin, Texas 78711-2276, is the statutorily created body responsible for protecting and preserving State Archeological Landmarks, Texas Natural Resources Code of 1977, Title 9, Chapter 191. In cases where federal statutes apply, appropriate authorities include the Secretary of the Interior, the State Historic Preservation Officer, and their designated representatives.

(5) Archeological site--any place containing evidence of human activity, including but not limited to the following:

(A) Habitation sites. Habitation sites are areas or structures where people live or have lived on a permanent or temporary basis. Standing structures may or may not be present. Habitation sites may also contain evidence of activities that are listed in the following as site types in the non-habitation category.

(i) Campsites.

(I) Native American open campsites were occupied on a temporary, seasonal, or intermittent basis. Evidence of structures may or may not be present. Native American campsites of both periods may have accumulations of shell or burned rock as well as hearths, hearth fields, bedrock mortars, burials, and/or scatters or accumulations of ceramics, stone debitage, flaked tools, and grinding stones. Campsites vary in size from a few square meters to several hectares. Additionally, Native American sites near missions, forts, and trading posts were present during the historic period. These sites, termed encampments, are of varying degrees or permanence with the site generally being continuously occupied but not necessarily by the same group, tribe, or culture.

(II) Native American rock shelters, in general, are a special kind of campsite. These sites are located in caves or under rock overhangs and have been occupied either temporarily, seasonally, or intermittently. Many articles of perishable materials such as clothing, basketry, sandals, and matting may be preserved if the shelter is located in an arid environment. Shelter sites include not only the shelter area itself, but also the area of debris accumulation located in the immediate vicinity that is the result of activity by those occupying the rock shelter. Associated hearths, burials, bedrock mortars, dumps, etc., may be present. Rock shelters vary in size from an area large enough to accommodate only one person to areas of several hundred meters in the largest dimension.

(III) Non-Native American campsites are the cultural remains of activities by people who are not Native American. Examples are sites that represent the activities of railroad workers, military units, settlers, slaves and other groups as yet unidentified. These sites include the area and remains of temporary encampments such as Chinese railroad camps, wagon train campsites, shepherd shelters, line camps, buffalo hunter camps, cavalry campgrounds, trail drive camps, camps at river fords, candelilla wax camps, and others.

(ii) Residence sites.

(I) Residence sites are those where routine daily activities were carried out and which were intended for year-round use. A greater degree of permanence is implied in a residence site than a campsite; therefore, structural evidence in the form of post molds, foundations, and so forth is more likely to be present. Examples include remains of cabins, dugouts, farmhouses, ranch headquarters, plantation residences, slave quarters, and urban homes, as well as teepee rings, pueblos, and Caddoan houses constructed by Native Americans.

(II) Residence sites resulting from Native American activities may include additional features and structures including hearths, retaining walls, enclosures, compounds, patios, burials, cemeteries, mounds, platforms, and borrow areas, as well as scatters and accumulations of stone debitage, ceramic debitage, burned rock, flaked tools, grinding tools, grinding stones, and bedrock mortars.

(III) Non-Native American sites may include, in addition to the main structure, outbuildings, water systems, trash dumps, garden areas, driveways, and other remains that were an integral part of the site when it was inhabited. Examples of structures or structural remains which might be present in addition to the residence include, but are not limited to, barns, silos, cisterns, corrals, wells, smokehouses, stables, gazebos, carriage houses, fences, walls, corn cribs, gins or mills, cellars, kitchens, and bunkhouses. Family cemeteries are often associated with early historic sites.

(B) Non-habitation sites. Non-habitation sites result from use during specialized activities and may include standing structures. Descriptions of each kind of site are given.

(i) Rock art and graffiti sites consist of symbols or representations that have been painted, ground, carved, sculpted, scratched, or pecked on or into the surface of rocks, wood, or metal. Names, dates, symbols, and representations or likenesses of people, animals, plants, or objects are common elements in such sites.

(ii) Mines, quarry areas, and lithic procurement sites are those from which raw materials such as flint, clay, coal, minerals, or other materials were collected or mined for future use. Sites where flint was obtained can be identified by the abundance of flint flakes, broken tools, and flint cobbles. Mines often have associated structures such as head frames, support timbers, and transportation facilities.

(iii) Game procurement and processing sites are areas where game was killed or butchered for food or hides. Remnants of structures such as game runs, hunting blinds, and fish weirs as well as stone, bone, and metal tools may be present in association with animal remains. Often the animal remains form a bone bed with cultural material dispersed sparsely among the bones.

(iv) Engineering structures such as aqueducts, irrigation canals and ditches, earthen mounds, ramps, platforms, terraces, dams, bordered and leveled fields, constructed trails, medicine wheels, bridges, tunnels, shafts, roads, rock fences, dams, lighthouses, and railroad, streetcar, and thoroughfare systems are the most common, but not the only kinds of engineering structures.

(v) Cemeteries and burials, marked and unmarked, are special locales set aside for burial purposes. Cemeteries contain the remains of more than one person placed in a regular or patterned order.

Burials, in contrast, may contain the remains of one or more individuals located in a common grave in a locale not formerly or subsequently used as a cemetery. The site area encompasses the human remains present and also gravestones, markers, containers, coverings, garments, vessels, tools, and other goods, which may be present. Cemeteries and burials that are publicly owned and are of prehistoric origin (i.e., dating prior to A.D. 1500), or classified as historic, are protected under the Antiquities Code. Cemeteries are considered historic if interments within the cemetery occurred at least fifty (50) years ago. Individual burials within a cemetery are not considered historic unless the interments occurred at least fifty (50) years ago.

(vi) Fortifications, battlefields, and skirmish sites include fortifications of the historic period and the central areas of encounters between opposing forces, whether major battleground or areas of small skirmishes. Trenches, mounds, walls, bastions, and other fortifications may be present. Trash dumps will also be considered a part of the site. Included here are battlefields of the Civil War, the Texas War for Independence, the Mexican War, and skirmish sites between non-native American and Native American forces. Standing structures may or may not be present.

(vii) Public service and ceremonial sites include, but are not limited to, kivas, temple mounds, shrines, missions, churches, libraries, museums, educational institutions, courthouses, fire stations, and hospitals. Standing structures may or may not be present.

(viii) Commercial business structures and industrial structures and sites where products or services are produced, stored, distributed, or sold include, but are not limited to, markets, stores, shops, banks, hostels, stables, inns, stage stops, breweries, bakeries, factories, kilns, mills, storage facilities, and railroad, bus and tramway depots. Trash or dump deposits, outbuildings, wells, cisterns, and other features associated with the principal structures are considered to be a part of these sites.

(ix) Monuments and markers include structures erected to commemorate or designate the importance of an event, person, or place, and may or may not be located at the sites they commemorate. Included in this category are certain markers erected by the Texas Historical Commission and county historical commissions, and markers and statuary located on public grounds such as courthouse squares and the Capitol grounds. Examples of such sites constructed by Native Americans will be included in this category upon identification.

(x) Shipwrecks by definition, Texas Natural Resource Code, §191.091, also include the wrecks of naval vessels, Spanish treasure ships, coastal trading schooners, sailing ships, steamships, and river steamships, among others.

(6) Board--the board of the Texas Historical Commission.

(7) Commission--the Texas Historical Commission and its staff.

(8) Committee, or Antiquities Committee, or Texas Antiquities Committee--as redefined by the 74th Texas Legislature within §191.003 of the Antiquities Code, the committee means the Texas Historical Commission and/or staff members of the Texas Historical Commission.

(9) Contract Archeologist--a professional archeologist who performs or directs archeological investigations under contract.

(10) Council of Texas Archeologists--a non-profit voluntary organization that promotes the goals of professional archeology in the State of Texas.

(11) Council of Texas Archeologists Guidelines--professional and ethical standards which provide a code of self regulation for archeological professionals in Texas with regard to field methods, reporting, and curation.

(12) Conservation--scientific laboratory process for cleaning, stabilizing, restoring, and preserving artifacts.

(13) Cultural resource--any building, site, district, structure, object, pre-twentieth century shipwreck, data, and locations of historical, archeological, educational, or scientific interest, including, but not limited to, prehistoric and historic Native American or aboriginal campsites, dwellings, and habitation sites, archeological sites of every character, treasure embedded in the earth, sunken or abandoned ships and wrecks of the sea or any part of the contents thereof, maps, records, documents, books, artifacts, and implements of culture in any way related to the inhabitants' prehistory, history, natural history, government, or culture. Examples of cultural resources include Native American mounds and campgrounds, aboriginal lithic resource areas, early industrial and engineering sites, rock art, early cottage, and craft industry sites, bison kill sites, cemeteries, battlegrounds, all manner of historical structures, local historical records, etc.

(14) Curatorial Facility--is a museum, school of higher education, cultural resource management firm, or governmental agency that engages in the conservation, storage, and/or displays archeological or other cultural artifacts.

(15) Data Recovery--an excavation mode of archeology and a form of mitigation. The evidence from a skillfully accomplished archeological excavation provides a detailed picture of the human activities at the site; emphasis is placed on evidence rather than artifacts. In data recovery, the archeological deposits are removed by digging and so destroyed. The destruction can be justified only if:

(A) it is done with such care that all antiquities and all cultural and environmental data in the area excavated are discovered, and if possible, preserved, however faint the surviving trace may be;

(B) appropriate information has been accurately recorded, whether its importance is immediately recognized or not, to remain available after the site has disappeared; and

(C) the record and results of the investigation are rapidly made available through publication.

(16) Deaccession--the permanent removal of an object or collection from the holdings of a curatorial facility.

(17) Default--failure to fulfill all conditions of a permit or contract, issued or granted to permittee(s), sponsors, principal investigators, and co-principal investigators.

(18) Defaulted permit--a permit that has expired without all permit terms and conditions having been met.

(19) Designated historic district--areas of archeological or historical significance indicated by listing on, or determined eligible for inclusion in, the National Register of Historic Places, designated as State Archeological Landmarks, or considered eligible for designation as State Archeological Landmarks, or have been identified by State agencies, or political subdivisions of the State as historically sensitive sites, districts, or areas. This includes designations by local landmarks commissions, boards, or other public authority, and/or through local preservation ordinances.

(20) Destructive analysis--destroying all or a portion of an object or sample to gain specialized information. For purposes of these rules, it does not include analysis of objects or samples prior to their being accessioned by a curatorial facility.

(21) Discovery--the act of locating, recording, and reporting a cultural resource.

(22) Disposal--the discard of an object or sample after being recovered and prior to accession.

(23) Environmental Data--presently available information as well as data derived as an adjunct to an archeological investigation, which includes, but is not limited to, area drainage, physiography, surface and subsurface geology, soils, flora, fauna, climate, the alteration of prehistoric and historic landforms, and so forth. The implications of present and/or hypothetical micro-environments should be presented when sufficient data allow for such inferences. The above elements of the environment through time must be considered during attempts to reconstruct past technological subsistence and settlement patterns.

(24) Emergency Permit--a permit that authorizes investigations to be performed prior to the formal application for those investigations. This permit will only be issued under emergency conditions when archeological deposits are discovered during development or other construction projects, or under conditions of natural or man-made disasters that necessitate immediate action to deal with the findings.

(25) Held-in-trust collection--the associated set of objects, samples, records, or documents generated during investigations conducted on public lands or under public waters in the state of Texas under antiquities permits issued by the commission. A collection may consist only of records or documents.

(26) Historic time period--for the purposes of State Archeological Landmark designation, this time period is defined as extending from A. D. 1500 to 50 years before the present.

(27) Investigation--archeological or architectural activity including, but not limited to, reconnaissance or intensive survey, testing, or data recovery; preservation of rock art; underwater archeological survey, test excavation, or data recovery excavations; monitoring; measured drawings, or photographic documentation.

(28) Investigative Firm--a company or scientific institution that have full-time experienced research personnel capable of handling archeological investigations and employs a principal investigator. The company or institution must provide adequate field equipment and laboratory facilities for analysis, interpretation, and storage, and must have the technical capability to produce a finished report on any investigation. The company or institution holds equal responsibilities with the principal investigator to complete all requirements under an Antiquities Permit.

(29) Land owning or controlling agency--any state agency or political subdivision of the state that owns or controls the land(s) in question.

(30) Local Society--any historical preservation group, archeological society, or other community group whose aim is related to or involved in architectural or archeological site preservation.

(31) Mitigation--the amelioration of potential total or partial loss of significant cultural resources, accomplished through preplanned data recovery actions to preserve or recover an appropriate amount of data by application of current professional techniques and procedures, as defined in the permit's scope of work. Following any mitigation or data recovery investigation, a clearance letter may be issued by the commission, which authorizes destruction of all or part of a cultural resource without an Antiquities Permit.

(32) Monitoring--the on-site presence of a professional archeologist or architect to observe construction activities that could or will alter cultural resources and to report findings and effects.

(33) National Register--the National Register of Historic Places is a register of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, and culture maintained by the Secretary of the Interior. Information concerning the National Register is available through the State Historic Preservation Officer, Texas Historical Commission, P. O. Box 12276, Capitol Station, Austin, Texas 78711-2276.

(34) Permit Application Offense--failure to properly apply for a permit, and/or receive authorization for an emergency permit by the commission, prior to the actual performance of an archeological or architectural investigation.

(35) Permit Censuring--a restriction in the ability of a principal investigator and investigative firm to be issued a permit under the auspices of the Antiquities Code of Texas.

(36) Permittee--an individual, institution, investigative firm, or company issued an Antiquities Permit for any archeological investigation or historic preservation activity.

(37) Political subdivision--a local government entity created and operating under the laws of this state, including a city, county, school district, or special district created under the Texas Constitution, Article III, §52(b)(1) or (2), or Article XVI, §59.

(38) Prehistoric time period--for the purpose of State Archeological Landmark designation, a time period that encompasses a great length of time beginning when man first entered the New World and ending with the arrival of the Spanish Europeans, which has been approximated for purposes of these guidelines at A. D. 1500.

(39) Professional personnel--appropriately trained specialists required to perform adequate archeological and architectural investigations. These personnel include the following:

(A) Principal investigator. A professional archeologist with demonstrated competence in field archeology and laboratory analysis, as well as experience in administration, logistics, personnel deployment, report publication, and fiscal management. In addition to these criteria the principal investigator shall:

(i) hold a graduate degree in anthropology/archeology, or closely related field such as, geography, geology, or history, if their degree program also included formal training in archeological field methods, research, and site interpretation from an accredited institution of higher education; and/or be accredited by the Register of Professional Archeologists (RPA) with emphasis in field research, historical archeology, or underwater archeology as appropriate; and/or have successfully completed investigations under an Antiquities Permit; and/or hold an active permit not in default, prior to the date that these rules become effective;

(ii) not hold one or more defaulted permits;

(iii) have at least twelve months of full-time experience in a supervisory role involving complete responsibility for a major portion of a project of comparable complexity to that which is to be undertaken under permit;

(iv) have demonstrated the ability to disseminate the results of an archeological investigation in published form conforming to current professional standards;

(v) remain on-site a minimum of 25% of the time required for the field investigation, and whose names must appear on the project report;

(vi) provide a field archeologist to supervise the field investigation in his or her absence; and

(vii) testify concerning report findings in the interest of controversy or challenge.

(B) Professional archeologist. One who has a degree in anthropology/ archeology or closely related field if that degree also included formal training in archeological field methods, research, and site interpretation, conducts archeological investigations as a vocation, and whose primary source of income is from archeological work. Qualifications for specialized types of professional archeologists are listed below.

(i) Prehistoric Archeologist. One who is a professional archeologist and, in addition, meets the following conditions:

(I) has been trained in the field of prehistoric archeology;

(II) has a minimum experience of two comprehensive archeological field seasons of three to six months in length on archeological site(s) that contain prehistoric (pre-16th century) archeological deposits; and

(III) has published the results of those prehistoric archeological investigations in scholarly journals or publications.

(ii) Historic archeologist. One who is a professional archeologist and, in addition, meets the following conditions:

(I) has been trained in the field of historical archeology;

(II) has a minimum experience of two comprehensive archeological field seasons of three to six months in length on archeological site(s) that contain historic (post-16th century) archeological deposits; and

(III) has published the results of those historical archeological investigations in scholarly journals or publications.

(iii) Underwater archeologist. One who is a professional archeologist and, in addition, is a competent diver with a minimum of two full seasons in underwater archeological testing or excavation projects. Training and experience sufficient for safe and proficient use of the specialized underwater remote sensing survey, excavation and mapping techniques, and equipment are required.

(iv) Underwater archeological surveyor. One who has training and experience sufficient for safe and proficient supervision of appropriate remote sensing survey equipment operation, as well as for interpretation of survey data for anomalies and geomorphic features that may have some probability of association with submerged aboriginal sites and sunken vessels. This individual may represent the archeological interests on board the survey vessel in the absence of an underwater archeologist, as defined in subparagraph (B)(iii) of this definition.

(C) Project architect. A professional architect who is a qualified architect and has had full-time experience in a supervisory role on at least one historic preservation project. The project architect must be involved, at a minimum, in 25% of the time required for an historic structures permit project and, when not involved with the project, must assign a qualified historic architect to supervise the preservation project.

(D) Historic architect. One who has a professional degree in architecture or a state license to practice architecture, plus one of the following:

(i) at least one year of graduate study in architectural preservation, American architectural history, preservation planning, or closely related field: or

(ii) at least one year of full-time professional experience on historic preservation projects to include experience on projects similar to the project to be permitted; detailed investigations of historic structures; preparation of historic structures research reports; and preparation of plans and specifications for preservation projects.

(E) Historian. The minimum professional qualifications are a graduate degree in history or closely related field; or a bachelor's degree in history or a closely related field plus one of the following:

(i) at least 2 years of full-time experience in research, writing, teaching, interpretation, or other demonstrable professional activity with an academic institution, historical organization or agency, museum, or other professional institution; or

(ii) substantial contribution through research and publication to the body of scholarly knowledge in the field of history.

(F) Geomorphologist or Geoarcheologist. A person that holds a graduate degree in geology, geomorphology, archeology, or other closely related field, and has had sufficient training to adequately evaluate the sedimentology, stratigraphy, and pedology of deposits in the field and be competent to describe and analyze the deposits using standard terminology and methods. This person should also have general archeological experience in area in which the investigations are to occur.

(40) Project sponsor--an individual, institution, investigative firm, or company paying costs of archeological investigation or historic preservation activity.

(41) Public agency or agencies--any state agency or political subdivision of the State.

(42) Public lands--non-federal, public lands that are owned or controlled by the State of Texas or any of its political subdivisions, including the tidelands, submerged land, and the bed of the sea within the jurisdiction of the State of Texas.

(43) Reconnaissance--a literature search and record review plus an on-the-ground surface examination of selected portions of an area adequate to assess the general nature of the resource probably present. Shovel test excavations may be required to help identify some sites. This level of investigation is appropriate to preliminary planning decisions and will be of assistance in determining viable project alternatives. A reconnaissance does not preclude a survey and cannot be used for the purposes of achieving construction clearance.

(44) Recorded archeological site--sites that are recorded, listed, or registered with an institution, agency, or university, such as the Texas Archeological Research Laboratory of the University of Texas at Austin.

(45) Recovered Artifacts--an object or sample has been removed from the site where it was found.

(46) Register of Professional Archeologists--a voluntary national professional organization of archeologists which registers qualified archeologists.

(47) Research design--a theoretical approach taken prior to implementation of a field study and submitted with an archeological permit application from and which is essential to the success of scientific objectives, resource management decision-making, and project management.

(48) Rock art--all manner of carvings, scratchings, and paintings on rock which relate to human life and culture, including, but not limited to, Native American pictographs and petroglyphs,

historical graffiti and inscriptions, and religious and genealogical records.

(49) Ruins--an historic or prehistoric site, composed of both archeological and structural remains, in which the structure is in a state of collapse or deterioration to the point that the original roof and/or flooring and/or walls are either missing, partially missing, collapsed, partially collapsed, or seriously damaged through natural forces or structural collapse. Ruins are considered archeological sites and the original structure of a ruin must be at least 100 years old. Historic structures recently damaged or destroyed are not classified as ruins.

(50) Scope of work--the methodological techniques used to perform the archeological or architectural investigations under permit.

(51) Significance--a trait attributable to sites, buildings, structures and objects of historical, architectural, and archeological (cultural) value which are eligible for designation to State Archeological Landmark status and protection under the Antiquities Code of Texas. Similarly, a trait attributable to properties included in or determined eligible for inclusion in the National Register of Historic Places.

(52) Site--a shortened term meaning any place containing evidence of human activity, a cultural resource, or an archeological site.

(53) Sponsor--an agency, individual, institution, investigative firm, organization, corporation, subcontractor, and/or company paying costs of archeological investigation or historic preservation activity or that sponsors, funds, or otherwise functions as a party under a permit.

(54) State agency--a department, commission, board, office, or other agency that is a part of state government and that is created by the constitution or a statute of this state. The term includes an institution of higher education as defined by the Texas Education Code, §61.003.

(55) State Archeological Landmark--any cultural resource or site located in, on, or under the surface of any lands belonging to the State of Texas or any county, city, or other political subdivision of the state, or a site officially designated as a landmark at an open public hearing before the commission.

(56) State Historic Preservation Officer--the official within each state authorized by the state, at the request of the Secretary of the Interior, to act as liaison for purposes of implementing the National Historic Preservation Act. In Texas, the Executive Director of the commission is designated as the State Historic Preservation Officer.

(57) Survey--an intensive on-the-ground pedestrian survey to provide for the determination of the number and extent of the resources present and their scientific importance. Shovel testing may be required to locate sites when the ground surface is obscured or to determine the horizontal limit of buried archeological deposits. Following any survey investigation, a clearance letter may be issued by the committee, which authorizes destruction of all or part of a cultural resource without an Antiquities Permit.

(58) Testing--application of current archeological techniques to the investigation and evaluation of one or more sites. Testing must be accomplished in such a way as to recover the adequate amount of archeological, historical, and scientific data through detailed examination of a representative sample of the site or sites. Testing must result in the recovery of data, specimens, and samples relating to the total cultural content of the site or sites. Results of testing will be utilized in preservation of the remaining portions of the resource. Following any testing investigation, a clearance letter which authorizes destruction of all or part of a cultural resource without an Antiquities Permit may be issued by the commission.

§26.27. Disposition of Archeological Artifacts and Data.

(a) Processing. Investigators who receive permits shall be responsible for cleaning, conserving, cataloguing, and preserving all collections, specimens, samples, and records, and for the reporting of results of the investigation.

(b) Ownership. All specimens, artifacts, materials, and samples plus original field notes, maps, drawings, photographs, and standard state site survey forms, resulting from the investigations remain the property of the State of Texas. Certain exceptions left to the discretion of the commission are contained in the Texas Natural Resources Code, §191.052 (b). The commission will determine the final disposition of all artifacts, specimens, materials, and data recovered by investigations on State Archeological Landmarks or potential landmarks, which remain the property of the State. Antiquities from State Archeological Landmarks are of inestimable historical and scientific value and should be preserved and utilized in such a way as to benefit all the citizens of Texas. It is the rule of the commission that such antiquities shall never be used for commercial exploitation.

(c) Housing, conserving, and exhibiting antiquities from State Archeological Landmarks.

(1) After investigation of a State Archeological Landmark has culminated in the reporting of results, the antiquities will be permanently preserved in research collections at the curatorial facility approved by the commission. Prior to the expiration of a permit, proof that archeological collections and related field notes are housed in a curatorial facility is required. Failure to demonstrate proof before the permit expiration date may result in the principal investigator and co-principal investigator falling into default status.

(2) By December 31, 2002, institutions that curate artifacts recovered under Antiquities Permit(s) must be accredited through the Council of Texas Archeologists Accreditation and Review Council accreditation program. Institutions housing antiquities from State Archeological Landmarks will also be responsible for adequate security of the collections, continued conservation, periodic inventory, and for making the collections available to qualified institutions, individuals, or corporations for research purposes.

(3) Exhibits of materials recovered from State Archeological Landmarks will be made in such a way as to provide the maximum amount of historical, scientific, archeological, and educational information to all the citizens of Texas. First preference will be given to traveling exhibits following guidelines provided by the commission and originating at an adequate facility nearest to the point of recovery. Permanent exhibits of antiquities may be prepared by institutions maintaining such collections following guidelines provided by the commission. A variety of special, short-term exhibits may also be authorized by the commission.

(d) Access to antiquities for research purposes--antiquities retained under direct supervision of the commission will be available under the following conditions:

(1) Request for access to collections must be made in writing to the curatorial facility holding the collections indicating to which collection and what part of the collection access is desired; nature of research and special requirements during access; who will have access, when, and for how long; type of report which will result; and expected date of report.

(2) Access will be granted during regular working hours to qualified institutions or individuals for research culminating in non-

permit reporting. A copy of the report will be provided to the commission.

(3) Data such as descriptions or photos when available will be provided to institutions or individuals on a limited basis for research culminating in nonprofit reporting. A copy of the report will be provided to the commission.

(4) Access will be granted to corporations or individuals preparing articles or books to be published on a profit-making basis only if there will be no interference with conservation activities or regular research projects; photos are made and data collected in the facility housing the collection; arrangements for access are made in writing at least one month in advance; cost of photos and data and a reasonable charge of or supervision by responsible personnel are paid by the corporation or individual desiring access; planned article or publication does not encourage or condone treasure hunting activity on public lands, State Archeological Landmarks, or National Register sites, or other activities which damage, alter, or destroy cultural resources; proper credit for photos and data are indicated in the report; a copy of the report will be provided to the commission.

(5) The commission may maintain a file of standard photographs and captions available for purchase by the public.

(6) A written agreement containing the appropriate stipulations will be prepared and executed prior to the access.

(7) Institutions, organizations, and agencies designated by the commission as depositories for antiquities collections shall promulgate reasonable rules and regulations governing access to those collections in their custody.

(e) Pursuant to Texas Natural Resources Code §§191.091-092, all antiquities found on land or under waters belonging to the State of Texas or any political subdivision of the State belong to the State of Texas. The commission is charged with the administration of the Antiquities Code and exercises the authority of the State in matters related to these held-in-trust collections.

(f) Decisions regarding the disposal, deaccession, or destructive analysis of held-in-trust collections are the legal responsibility of the commission. Acceptable circumstances for disposal, deaccessioning, or destructive analysis are provided by these rules. Exceptions may be considered by the commission. Under no circumstances will held-in-trust collections be disposed of, or deaccessioned through sale.

(g) Disposal. The commission's rules for disposal applies to objects and samples prior to accessioning that have been recovered from a site on public lands or under public waters under an Antiquities Permit issued by the commission.

(1) Disposal of recovered objects or samples from a site on public lands or from public waters under an antiquities permit issued by the commission must be approved by the commission. Approval for anticipated disposal is by means of an approved research design at the time the Antiquities Permit is issued. The manner in which the object or sample is to be disposed must be included in the research design. Additional disposal not included in the approved research design must be approved by the commission prior to any disposal action.

(2) The appropriate reasons for disposal include, but are not limited to, the following:

(A) Objects that are highly redundant and without additional merit;

(B) Objects that lack historical, cultural, or scientific value;

(C) Objects that have decayed or decomposed beyond reasonable use and repair or that by their condition constitute a hazard to other objects in the collection.

(D) Objects that may be subject to disposal as required by federal laws.

(3) Items disposed of after recovery must be documented in the notes, and final report, with copies provided to the curatorial facility.

(4) The commission relinquishes title for the State to any object or sample approved for disposal. The object or sample must be disposed of in a suitable manner.

(h) Deaccession. The commission's rules for deaccession recognize the special responsibility associated with the receipt and maintenance of objects of cultural, historical, and scientific significance in the public trust. Although curatorial facilities become stewards of held-in-trust collections, title is retained by the commission for the State. Thus, the decision to deaccession held-in-trust objects or collections is the responsibility of the commission. The commission recognizes the need for periodic reevaluations and thoughtful selection necessary for the growth and proper care of collections. The practice of deaccessioning under well-defined guidelines provides this opportunity.

(1) Deaccessioning may be through voluntary or involuntary means. The transfer, exchange, or deterioration beyond repair or stabilization or other voluntary removal from a collection in a curatorial facility is subject to the limitations of this rule.

(2) Involuntary removal from collections occurs when objects, samples, or records are lost through theft, disappearance, or natural disaster. If the whereabouts of the object, sample, or record is unknown, it may be removed from the responsibility of the curatorial facility, but the commission will not relinquish title in case the object, sample, or record subsequently is returned.

(i) Accredited curatorial facilities. Authority to deal with deaccessioning of limited categories of objects and samples from held-in-trust collections is delegated to a curatorial facility approved by the commission to hold state held-in-trust collections through a contractual agreement between the curatorial facility and the commission. Annual reports will be submitted to the commission on these deaccessioning actions.

(1) If the commission determines that a curatorial facility has acted in violation of the contractual agreement and this rule, the contractual agreement will be terminated. From that date forward, the commission will review and decide on all deaccession actions of that curatorial facility concerning held-in-trust objects and samples. A new contractual agreement may be executed at such time as the commission determines that the curatorial facility has come into compliance with this rule.

(2) Curatorial facilities not yet approved by the commission to hold state held-in-trust collections shall submit written deaccession requests of objects and samples from held-in-trust collections to the commission.

(3) Requests to deaccession a held-in-trust collection in its entirety must be submitted to the commission.

(4) The reasons for deaccessioning all or part of held-in-trust collections include, but are not limited to, the following:

(A) Objects lacking provenience that are not significant or useful for research, exhibit, or educational purposes in and of themselves;

(B) Objects or collections that do not relate to the stated mission of the curatorial facility. Objects or collections that are relevant to the stated mission of the curatorial facility may not be deaccessioned on the grounds that they are not relevant to the research interests of current staff or faculty;

(C) Objects that have decayed or decomposed beyond reasonable use or repair or that by their condition constitute a hazard in the collections;

(D) Objects that have been noted as missing from a collection beyond the time of the next collections-wide inventory are determined irretrievable and subject to be deaccessioned as lost;

(E) Objects suspected as stolen from the collections must be reported to the commission in writing immediately for notification to similar curatorial facilities, appropriate organizations, and law enforcement agencies. Objects suspected as stolen and not recovered after a period of three years or until the time of the next collections-wide inventory are determined irretrievable and subject to being deaccessioned as stolen;

(F) Objects that have been stolen and for which an insurance claim has been paid to the curatorial facility.

(G) Objects that may be subject to deaccessioning as required by federal laws.

(H) Deaccession for reasons not listed above must be approved on a case-by-case basis by the commission.

(j) Title to Objects or Collections Deaccessioned. If deaccessioning is for the purpose of transfer or exchange, commission retains title for the State to the object or collection. A new held-in-trust agreement must be executed between the receiving curatorial facility and the THC.

(1) If deaccessioning is due to theft or loss, the commission will retain title for the State to the object or collection in case it is ever recovered, but the curatorial facility will no longer be responsible for the object or collection.

(2) If deaccessioning is due to deterioration or damage beyond repair or stabilization, the commission relinquishes title for the State to the object or collection and the object or collection must be discarded in a suitable manner.

(k) Destructive Analysis. The commission's rules for destructive analysis applies only to samples and objects from held-in-trust collections accessioned into the holdings of a curatorial facility. Destructive analysis of samples or objects prior to placement in a curatorial facility is covered by the research design approved for the Antiquities Permit. Authority to deal with destructive analysis requests of categories of objects and samples from held-in-trust collections is delegated to a curatorial facility approved by the commission to hold state held-in-trust collections through a contractual agreement between the curatorial facility and the commission. Annual reports will be submitted to the commission on these destructive analysis actions.

(1) A written research proposal must be submitted to the curatorial facility stating research goals, specific samples or objects from a held-in-trust collection to be destroyed, and research credentials in order for the curatorial facility to establish whether the destructive analysis is warranted.

(2) If the commission determines that a curatorial facility has acted in violation of the contractual agreement and this rule, the contractual agreement will be terminated. From that date forward, the commission will review and decide on all destructive analysis actions of that curatorial facility concerning held-in-trust objects and samples. A new contractual agreement may be executed at such time as the commission determines that the curatorial facility has come into compliance with these rules.

(3) Curatorial facilities not yet approved by the commission to hold state held-in-trust collections shall submit destructive analysis requests of objects and samples from held-in-trust collections to the commission.

(4) Conditions for approval of destructive analysis may include qualifications of the researcher, uniqueness of the project, scientific value of the knowledge sought to be gained, and the importance, size, and condition of the object or sample.

(5) Objects and samples from held-in-trust collections approved for destructive analysis purposes are loaned to the institution where the researcher is affiliated. Objects and samples will not be loaned to individuals for destructive analysis.

(6) If the curatorial facility denies a request for destructive analysis of a sample or object from a held-in-trust collection, appeal of the decision is through the commission.

(7) Information gained from the analysis must be provided to the curatorial facility as a condition of all loans for destructive analysis purposes. After completion of destructive analysis, the researcher must return the information (usually in the form of a research report) in order for the loan to be closed. Two copies of any publications resulting from the analysis must be sent to the curatorial facility. If the object or sample is not completely destroyed by the destructive analysis, the remainder must be returned to the curatorial facility.

(8) It is the responsibility of the curatorial facility to monitor materials on loan for destructive analysis, to assure their correct use, and to note the returned data in the records.

(9) The commission does not relinquish title for the State to an object or sample that has undergone destructive analysis and the object or sample is not deaccessioned.

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

Filed with the Office of the Secretary of State on May 25, 2001.

TRD-200102985
F. Lawerence Oaks
Executive Director
Texas Historical Commission
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Proposal publication date: March 9, 2001
For further information, please call: (512) 463-5711

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

The Railroad Commission of Texas (Commission) adopts amendments to §3.5, relating to applications to drill, deepen, reenter or plug back; §3.11, relating to inclination and directional surveys; §3.37, relating to statewide spacing rule; §3.38, relating to well densities; the repeal of existing §3.70, relating to Commission forms required to be filed; amendments to

§3.78, relating to fees, performance bonds and alternate forms of financial security required to be filed; and amendments to §3.86, relating to horizontal drainhole wells, without changes to the versions published in the March 23, 2001, issue of the *Texas Register* (26 TexReg 2257). The Railroad Commission of Texas (Commission) adopts new §3.80, relating to Commission forms, applications and filing requirements, with one change to the version published in the March 23, 2001, issue of the *Texas Register* (26 TexReg 2257). This change adds the word "applications" to the title of the new rule.

The Commission repeals former §3.70 and adopts new §3.80 to conform the Texas Administrative Code section number to the Statewide Rule number. The new rule will also change the title in the Texas Administrative Code to conform with the title adopted by the Commission for this rule. Substantive changes in §3.80 include the specification of requirements for electronic filings under both the Electronic Compliance and Approval Process (ECAP) and the Electronic Data Interchange (EDI) program.

The Commission received no comments on the proposal.

The Commission simultaneously readopts these rules, with the amendments, in accordance with Tex. Gov't Code, §2001. The agency's reasons for adopting these rules continue to exist. The notice of proposed review of §3.11 was filed with the *Texas Register* concurrently with this proposal and published in the March 23, 2001, issue of the *Texas Register* (26 TexReg 2412).

16 TAC §§3.5, 3.11, 3.37, 3.38, 3.78, 3.80, 3.86

The Commission adopts the new section and amendments under Texas Natural Resources Code, §81.052, which authorizes the Commission to adopt all necessary rules for governing persons and their operations under the jurisdiction of the Commission under §81.051; Texas Natural Resources Code, §85.161-.167, which authorizes the Commission to require, administer, and cancel certificates of compliance; Texas Natural Resources Code, §91.114, which authorizes the Commission to accept, reject, or revoke reports filed with the Commission; and Texas Natural Resources Code, §91.142 which authorizes the Commission to require business entities to file organization reports.

Texas Natural Resources Code §§81.052, 85.041, 85.042, 85.161-.167, 85.201, 85.202, 91.114, and 91.142 are affected by the adopted new section and amendments.

Issued in Austin, Texas, on May 22, 2001.

§3.80. Commission Forms, Applications and Filing Requirements.

(a) Forms. Forms required to be filed at the commission will be those prescribed by the commission. The Commission may revise any forms, at its discretion, without having a rulemaking proceeding if the revisions do not result in any substantive changes to the forms. A complete set of all commission forms required to be filed at the commission will be kept by the commission secretary. Notice of any new or amended forms shall be issued by the commission.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Commission--The Railroad Commission of Texas.

(2) Position of ownership or control--A person holds a position of ownership or control in an organization if the person is:

(A) an officer or director of the organization;

(B) a general partner of the organization;

(C) the owner of an organization which is a sole proprietorship;

(D) the owner of more than a 25 percent ownership interest in the organization; or

(E) the designated trustee of the organization.

(3) Violation--Non-compliance with a statute, commission rule, order, license, permit, or certificate relating to safety or the prevention or control of pollution.

(4) Electronic filing--An electronic transmission to the commission in the prescribed form and format authorized by the commission.

(5) Organization--Any person, firm, partnership, joint stock association, corporation, or other organization, domestic or foreign, operating wholly or partially within this state, acting as principal or agent for another, for the purpose of performing operations within the jurisdiction of the commission.

(c) Organization eligibility. The commission may not accept an organization report or an application for a permit, or approve a certificate of compliance if:

(1) the organization that submitted the report, application, or certificate violated a statute or commission rule, order, license, certificate, or permit that relates to safety or the prevention or control of pollution; or

(2) any person who holds a position of ownership or control in the organization has, within the five years preceding the date on which the report, application, or certificate is filed, held a position of ownership or control in another organization, and during that period of ownership or control the other organization violated a statute or commission rule, order, license, permit, or certificate that relates to safety or the prevention or control of pollution.

(d) Violations. An organization has committed a violation if there is either a commission order against an organization finding that the organization has committed a violation and all appeals have been exhausted or an agreed order entered into by the commission and an organization relating to an alleged violation, and:

(1) the conditions that constituted the violation or alleged violation have not been corrected;

(2) all administrative, civil and criminal penalties, if any, relating to the violation or agreed settlement relating to an alleged violation have not been paid; or

(3) all reimbursements of costs and expenses, if any, assessed by the commission relating to the violation or to the alleged violation have not been collected.

(e) Requirements for electronic filing under the Electronic Compliance and Approval Process (ECAP). An organization may submit to the commission an electronic filing pursuant to the Electronic Compliance and Approval Process if:

(1) the organization and the commission have executed a Master Electronic Filing Agreement;

(2) the commission has authorized the electronic filing in a prescribed form and format as identified in Supplement 1 to the Master Electronic Filing Agreement;

(3) the organization has filed a Security Administrator Designation with the commission; and

(4) the organization pays all required filing fees.

(f) Requirements for electronic filing under the Electronic Data Interchange (EDI) program. An organization may submit an electronic filing with the commission pursuant to the Electronic Data Interchange program if:

(1) the organization has executed a Master Electronic Filing Certification;

(2) the commission has authorized the electronic filing in a prescribed form and format under the Electronic Data Interchange program; and

(3) the organization and any authorized agent comply with all provisions published by the commission for electronic filings.

(g) Other electronic transmissions. The commission may at its discretion accept written notice electronically transmitted.

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

Filed with the Office of the Secretary of State on May 22, 2001.

TRD-200102850
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Effective date: June 11, 2001
Proposal publication date: March 23, 2001
For further information, please call: (512) 475-1295

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16 TAC §3.70

The Commission adopts the repeal under Texas Natural Resources Code, §81.052, which authorizes the Commission to adopt all necessary rules for governing persons and their operations under the jurisdiction of the Commission under §81.051; Texas Natural Resources Code, §85.161-.167, which authorizes the Commission to require, administer, and cancel certificates of compliance; Texas Natural Resources Code, §91.114, which authorizes the Commission to accept, reject, or revoke reports filed with the Commission; and Texas Natural Resources Code, §91.142 which authorizes the Commission to require business entities to file organization reports.

Texas Natural Resources Code §§81.052, 85.041, 85.042, 85.161-.167, 85.201, 85.202, 91.114, and 91.142 are affected by the adopted repeal.

Issued in Austin, Texas, on May 22, 2001.

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

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CHAPTER 12. COAL MINING REGULATIONS

The Railroad Commission of Texas adopts amendments to 16 TAC §12.80, relating to Procedures: Initial Processing, Record Keeping, and Notification Requirements; §12.385, relating to Backfilling and Grading: General Grading Requirements; §12.552, relating to Backfilling and Grading: General Grading Requirements; and §12.651, relating to Coal Processing Plants: Performance Standards, without change to the versions published in the March 23, 2001, issue of *Texas Register* (26 TexReg 2268). The commission adopts the amendments to maintain consistency with federal regulations and to streamline the effectiveness of commission rules.

Amended §12.80(a)(1) reduces the number of days, from 60 to 30 days from the date of receipt of petition, within which the commission must notify a petitioner of petition completeness. This amendment parallels federal regulation 30 CFR §764.15(a)(1), relating to initial processing, record-keeping, and notification requirements.

Amended §12.80(a) removes paragraph (3), which states that the commission may reject frivolous petitions for designation or petitions for termination of designations, that no party bears the burden of proof, and that each petition shall be considered and acted upon by the commission. This amendment, removal of former paragraph (3), streamlines the effectiveness of commission rules and parallels the federal regulation 30 CFR §764.15(a)(1), relating to initial processing, record-keeping, and notification requirements.

Amended §12.80(a)(4) adds that a petition can be determined to be frivolous if available information shows that either no mineable coal resources exist in the petitioned area or the petitioned area is not or could not be subject to related surface coal mining operations and surface impacts incident to an underground coal mine or an adjoining surface mine. This amendment parallels federal regulations dealing with designation of federal lands as unsuitable for coal mining, 30 CFR §769.140(a)(3)(ii), relating to initial processing, record-keeping, and notification requirements.

Section 12.80(a)(4) - (7) are redesignated as §12.80(a)(3) - (6).

Section 12.80(b)(2) that states the commission may provide for a hearing or period of written comments on completeness of the petition is removed. This removal streamlines the effectiveness of commission rules and parallels the federal regulation 30 CFR §764.15(a)(1), relating to initial processing, record-keeping, and notification requirements.

Section 12.80(b)(3) is redesignated as (b)(2).

Amended §12.385(a) deletes the provisions that pertain to performance standards for backfilling and grading of previously mined land. This is required by the Office of Surface Mining Reclamation and Enforcement, United States Department of Interior (OSM).

New §12.385(e) includes provisions for backfilling and grading of previously mined areas that are substantially identical to the corresponding federal regulation 30 CFR §816.106, relating to backfilling and grading: previously mined areas. This is required by OSM.

Amended §12.552(a) deletes the provisions that pertain to performance standards for backfilling and grading on previously mined land. This is required by OSM.

New §12.552(e) includes provisions for backfilling and grading of previously mined areas that are substantially identical to the

corresponding federal regulation 30 CFR §817.106, relating to backfilling and grading: previously mined areas. This is required by OSM.

Amended §12.651(13) adds reference citations to §§12.224 - 12.338, relating to proper topsoil handling. This is required by OSM.

The commission received no comments on the proposed amendments.

SUBCHAPTER F. LANDS UNSUITABLE FOR MINING

DIVISION 4. PROCESS FOR DESIGNATING AREAS AS UNSUITABLE FOR SURFACE COAL MINING OPERATIONS

16 TAC §12.80

The amendments are adopted under Texas Natural Resources Code §134.013, which provides the commission the authority to promulgate rules pertaining to surface coal mining operations.

Texas Natural Resources Code, §134.013, is affected by the amendments.

Issued in Austin, Texas, on May 22, 2001.

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

Filed with the Office of the Secretary of State on May 23, 2001.

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

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SUBCHAPTER K. PERMANENT PROGRAM PERFORMANCE STANDARDS

DIVISION 2. PERMANENT PROGRAM PERFORMANCE STANDARDS - SURFACE MINING ACTIVITIES

16 TAC §12.385

The amendments are adopted under Texas Natural Resources Code §134.013, which provides the commission the authority to promulgate rules pertaining to surface coal mining operations.

Texas Natural Resources Code, §134.013, is affected by the amendments.

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DIVISION 3. PERMANENT PROGRAM PERFORMANCE STANDARDS--UNDERGROUND MINING ACTIVITIES

16 TAC §12.552

The amendments are adopted under Texas Natural Resources Code §134.013, which provides the commission the authority to promulgate rules pertaining to surface coal mining operations.

Texas Natural Resources Code, §134.013, is affected by the amendments.

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DIVISION 7. SPECIAL PERMANENT PROGRAM PERFORMANCE STANDARDS--COAL PROCESSING PLANTS AND SUPPORT FACILITIES NOT LOCATED AT OR NEAR THE MINESITE OR NOT WITHIN THE PERMIT AREA FOR A MINE

16 TAC §12.651

The amendments are adopted under Texas Natural Resources Code §134.013, which provides the commission the authority to promulgate rules pertaining to surface coal mining operations.

Texas Natural Resources Code, §134.013, is affected by the amendments.

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

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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 60. TEXAS COMMISSION OF LICENSING AND REGULATION

SUBCHAPTER B. ORGANIZATION

16 TAC §60.64

The Texas Department of Licensing and Regulation adopts amendments to §60.64 concerning duration of advisory committee/boards/councils governed by the Texas Commission of Licensing and Regulation, without changes, as published in the April 13, 2001, issue of the *Texas Register* (26 TexReg 2802) and will not be republished.

The amendments to §60.64 specify that the Auctioneer Education Advisory Board and the Property Tax Consultants Advisory Council is in effect until September 1, 2004. The Texas Government Code §2110.008(a) states that a state agency that is advised by an advisory committee shall establish by rule a date on which the committee will automatically be abolished. The advisory committee may continue in existence after that date only if the governing body of the agency affirmatively votes to continue the committee in existence. At their May 22, 2000 meeting, the Texas Commission of Licensing and Regulation voted unanimously to continue the Auctioneer Education Advisory Board and the Property Tax Consultants Advisory Council until September 1, 2004. The amendments reflect these changes.

No comments were received regarding adoption of these amendments.

This section will provide an opportunity for the public and industry representatives to advise the Commissioner on matters relating to auctioneers and property tax consultants.

The amendment is adopted under the Texas Occupations Code, Chapter 51, §51.203. The Department interprets §51.203 as authorizing the Commissioner to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provision affected by the adopted amendment is Texas Occupations Code, Chapter 51, §51.203. No other statutes, articles, or codes are affected by the adoption.

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

Filed with the Office of the Secretary of State on May 24, 2001.

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William H. Kuntz, Jr.
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Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-7348

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CHAPTER 70. INDUSTRIALIZED HOUSING AND BUILDINGS

16 TAC §§70.20, 70.22, 70.50, 70.73

The Texas Department of Licensing and Regulation adopts amendments to §§70.20, 70.22, 70.50, and 70.73 concerning industrialized housing and buildings. Sections 70.20 and 70.50 are adopted with changes to the proposed text as published in the April 13, 2001 issue of the *Texas Register* (26 TexReg 2802). Sections 70.22 and 70.73 are adopted without changes as published in the April 13, 2001 issue of the *Texas Register* (26 TexReg 2802) and will not be republished.

The changes to §§70.20 and 70.50 from what was previously proposed are grammatical changes. The sections are being adopted to amend registration requirements for industrialized builders, to amend plan reviewer requirements for design review agencies, to eliminate the reporting requirement for industrialized builders, to clarify reporting requirements for manufacturers, to add a requirement for yearly audits of the records of industrialized builders, and to clarify the requirements for building site inspections and site inspection reports.

No comments were received regarding adoption of these amendments.

The amendments will help improve the efficiency of the industrialized housing and buildings program.

The amendments are adopted under the Texas Occupations Code, Chapter 51, §51.203 and Texas Revised Civil Statutes Annotated, Article 5221f-1, §6. The Department interprets §51.203 as authorizing the Commissioner of the Texas Department of Licensing and Regulation to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department. The Department interprets §6 as authorizing the Commissioner to adopt rules as appropriate to implement actions, decisions, interpretations and instructions of the Texas Industrialized Building Code Council with respect to the Industrialized Housing and Buildings program.

The statutory provisions affected by the adopted amendments are Texas Occupations Code, Chapter 51, §51.203 and Texas Revised Civil Statutes Annotated, Article 5221f-1, §6. No other statutes, articles, or codes are affected by the adoption.

§70.20. Registration of Manufacturers and Industrialized Builders.

Manufacturers and industrialized builders shall not engage in any business activity relating to the construction or location of industrialized housing or buildings without being registered with the department.

(1) An application for registration shall be submitted on a form supplied by the department, and shall contain such information as may be required by the department. The application must be verified under oath by the owner of a sole proprietorship, the managing partner of a partnership, or the officer of a corporation. The application must be accompanied by the fee set forth in §70.70 of this title (relating to Commission Fees).

(2) The industrialized builder shall verify under oath at the time of registration that the foundation and installation of all units installed under this registration shall be constructed in accordance with the mandatory state codes, the engineered plans, and department rules, and shall be inspected in accordance with the site inspection procedures established by the Texas Industrialized Building Code Council.

(3) A person who does not purchase industrialized housing or buildings from a manufacturer for sale or lease to the public may file for an installation permit in lieu of registering as an industrialized builder. A person who buys or leases industrialized housing or buildings from an industrialized builder and assumes responsibility for the installation of the unit or units, but who is not purchasing these units for sale or lease to the public, may apply for an installation permit in lieu of registering as an industrialized builder. The application shall be submitted on a form supplied by the Department and shall contain such information as may be required by the Department. A separate application must be submitted for each building containing industrialized housing and buildings modules or modular components. The application must be accompanied by the fee set forth in §70.80 of this title (relating to Commission Fees).

(4) The registration shall be valid for 12 months and must be renewed annually. Every corporate entity must be separately registered. Each separate manufacturing facility must be registered; a manufacturing facility is separate if it is not on property that is contiguous to a registered manufacturing facility. An industrialized builder must register each separate sales office but is not required to register each job location.

(5) A registered manufacturer or industrialized builder shall notify the department in writing within 10 days if:

(A) the corporate or firm name is changed;

(B) the main address of the registrant is changed;

(C) there is a change in 25% or more of the ownership interest of the company within a 12-month period;

(D) the location of any manufacturing facility is changed;

(E) a new manufacturing facility is established; or

(F) there are changes in principal officers of the firm.

(6) A manufacturer certified pursuant to §70.61 of this title (relating to Responsibilities of the Department - Plant Certification), whose registration expires shall have his certification revoked if the registration is not renewed within 30 day of the expiration date. A manufacturer whose certification has been revoked must undergo another certification inspection to reinstate the certification.

(7) An application for original registration or renewal may be rejected if any information contained on, or submitted with, the application is incorrect. The certificate of registration may be revoked or suspended or a penalty or fine may be imposed for any violation of the Act, violation of the rules and regulations in this chapter or administrative orders of the department, or violations of the instructions and determinations of the council in accordance with §70.90 of this title (relating to Sanctions - Administrative Sanctions/Penalties), and §70.91 of this title (relating to Revocation or Suspension because of a Criminal Conviction).

§70.50. Manufacturer's and Builder's Monthly Reports.

(a) The manufacturer shall submit a monthly report to the department, of all industrialized housing, buildings, modules, and modular components that were constructed and to which decals and insignia were applied during the month. The manufacturer shall keep a copy of the monthly report on file for a minimum of five years. Any corrections to reports previously filed shall clearly indicate the corrections to be made and the month and date of the report that is being corrected. The report shall contain:

(1) the serial or identification number of the units;

(2) the decal or insignia number assigned to each identified unit;

(3) the name and registration number of the industrialized builder (as assigned by the department), or the installation permit number (as assigned by the department) of the person, to whom the units were sold, consigned, and shipped. The requirements contained in §70.20(2) (relating to Registration of Manufacturers and Industrialized Builders) shall apply when an installation permit is reported in lieu of the registration number of an industrialized builder;

(4) the address to which the units were shipped;

(5) an identification of the type of structure for which the units are to be used, e.g., single family residence, duplex, restaurant, equipment shelter, bank building, hazardous storage building, etc.;

(6) any other information the department may require; and

(7) an indication of zero units if there was not activity for the reporting month.

(b) Each industrialized builder shall keep records of all industrialized housing, buildings, modules, and modular components that were sold, leased, or installed. These records shall be kept for a minimum of five years from the date of sale, lease, or installation and shall be made available to the department for review upon request. An annual audit of units sold, leased, or installed by the builder shall be conducted by the Department. The audit will identify the modules or modular components by the name and Texas registration number of the manufacturer of each unit and the assigned Texas decal or insignia numbers and the corresponding identification, or serial, numbers as assigned by the manufacturer. The builder shall report or provide the following information to the Department for each unit identified in the audit within the timeframe set by the audit:

(1) evidence of compliance with §70.75 of this title (relating to Responsibilities of Registrants - Permit/Owner Information);

(2) the address where each unit was installed. If the builder is not responsible for the installation, then the address to where each unit was delivered;

(3) the occupancy use of each building containing modules or modular components, i.e., classroom, restaurant, bank, equipment shelter, etc; and

(4) identification of the type of foundation system, either permanent or temporary, on which each unit was installed, in accordance with the following.

(A) If the builder is responsible for the installation and site work, then the builder:

(i) shall, for units installed outside the jurisdiction of a municipality, keep a copy of the foundation plans and, for units installed on a permanent foundation, keep a copy of the site inspection report in accordance with §70.73 of this title (relating to Responsibilities of the Registrants - Building Site Inspections). A copy of these documents shall be made available to the department upon request; or

(ii) shall, if installed within the jurisdiction of a municipality, provide the name of the city responsible for the site inspection.

(B) If the builder is not responsible for the installation and site work, then the builder shall provide identification of the installation permit number, assigned by the Department, or builder registration number, assigned by the Department, of the person responsible.

(c) The manufacturer's monthly reports must be filed with the department no later than the 10th day of the following month.

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

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

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CHAPTER 75. AIR CONDITIONING AND REFRIGERATION CONTRACTOR LICENSE LAW

16 TAC §75.20

The Texas Department of Licensing and Regulation adopts an amendment to §75.20 concerning air conditioning and refrigeration contractors, without changes, as published in the March 30, 2001, issue of the *Texas Register* (26 TexReg 2472) and will not be republished.

The amendment corrects an omission in the previous rule adoption. The Department proposed and adopted amendments to §75.20, however, subsection (c) was inadvertently omitted and the Secretary of State's rules on correction do not allow an agency to submit corrections after the effective date of a rule. The Department is correcting this oversight by adding subsection (c) back into the rules.

No comments were received regarding adoption of this amendment.

This section will function by clarifying that obtaining a license by fraud or false representation is grounds for administrative sanctions and/or penalties which enforces the licensing requirements.

The amendment is adopted under the Texas Occupations Code, Chapter 51, §51.353 and Texas Revised Civil Statutes Annotated, Article 8861, §5. The Department interprets §51.353 as authorizing the Commissioner of the Texas Department of Licensing and Regulation to adopt rules relating to administrative sanctions that may be enforced against a person regulated by the department. The Department interprets §5 as authorizing the Commissioner to deny, suspend or revoke a license for a violation under Article 8861 with respect to the Air Conditioning and Refrigeration Contractors License Law program.

The statutory provisions affected by the adopted amendment are Texas Occupations Code, Chapter 51, §51.353 and Texas Revised Civil Statutes, Article 8861, §5. No other statutes, articles, or codes are affected by the adoption.

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

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TITLE 25. HEALTH SERVICES

PART 1. TEXAS DEPARTMENT OF HEALTH

CHAPTER 73. LABORATORIES

25 TAC §§73.22, 73.24, 73.25

The Texas Department of Health (department) adopts amendments to §§73.22, 73.24, and new §73.25 concerning fees for laboratory services, the certification of drinking water, milk, and shellfish laboratories, and voluntary environmental laboratory accreditation, with changes to the proposed text as published in the December 1, 2000, issue of the *Texas Register* (25 TexReg 11863) as a result of comments received during the 30 day comment period.

An amendment to §73.22 increases fees for laboratories and is needed to recover the costs to administer the laboratory certification program. An amendment to §73.24 removes drinking water certification from this section. Drinking water certification is addressed in new §73.25. New §73.25 implements added Chapter 421 (Senate Bill 1238, Chapter 447, 76th Legislature 1999, Subtitle E, Title 5, Health and Safety Code, "Accreditation of Environmental Laboratories"). This legislation requires the department to administer the program and the Board of Health (board) to adopt rules and set fees to defray the cost of administering the program. Adoption of the rules will allow the department to meet the requirements to become a National Environmental Laboratory Accreditation Program approved accrediting authority.

Changes made to the proposed text result from comments received during the comment period. The details of the changes are described in the summary of comments that follow. Other minor editorial changes were made for clarification purposes.

The following comments were received concerning the proposed rules. Following each comment is the department's response and any resulting change(s).

Comment: Concerning §73.22, one commenter expressed concerns that "the proposed fees appear to apply equally to accreditation and certification".

Response: The department agrees that the same fee structure is used for both accreditation and certification. No changes were made as a result of this comment.

Comment: Concerning the proposed title of §73.25, one commenter suggested changing the title of the proposed rule to more

accurately reflect the two-tiered program for laboratory certification and accreditation that is described in the rule.

Response: The department agrees with the commenter and has changed the title of the proposed §73.25 to " Environmental Laboratory Certification and Accreditation".

Comment: Concerning proposed §73.25 in general, one commenter expressed concern "that throughout the proposed rule, the language is difficult to understand because of the dual certification/accreditation programs."

Response: The department agrees with the commenter and has reorganized the rule by putting the requirements for certification and accreditation into separate sections.

Comment: Concerning proposed §73.25 in general, one commenter suggested there is no need to have a dual program "because EPA's Office of Ground Water and Drinking Water has recognized that a NELAC accreditation will be acceptable for SDWA certification". They predict that very few, if any, laboratories would need to be "certified" and recommended that the department remove the certification aspects from this proposed rule.

Response: The department agrees in part with the commenter, that the EPA will accept NELAC accreditation for SDWA certification, however, the two-tiered approach described in this section ensures that the small laboratories, that are so vital to the Texas Natural Resource Conservation Commission's Drinking Water Program, will not be forced out of business due to the cost of regulatory compliance. These small laboratories will be required to meet the minimum requirements in the Environmental Protection Agency's, Manual for the Certification of Laboratories Analyzing Drinking Water as described in §73.25(e). No changes were made as a result of this comment.

Comment: Concerning proposed §73.25, one commenter observed that while certain NELAC standards are specifically addressed in the proposed rule, others appear to be addressed (only) through general references to the NELAC documents and suggests that only general references to the NELAC standards be used in the rules with detailed information provided in guidance documents or that the proposed rules add specific NELAC requirements which they identified.

Response: The department agrees with the commenter, however the department feels that specific references provide the details that a laboratory needs to comply with this section. No changes were made as a result of this comment.

Comment: Concerning proposed §73.25, one commenter suggested that the department "make it more clear that accreditation of laboratories may include laboratories performing tests in compliance with the Resource Conservation and Recovery Act (RCRA) and other statutes that involve environmental measurement.

Response: The department disagrees because it will only offer accreditation for testing in compliance with the Safe Drinking Water Act and the Clean Water Act at this time. No changes were made as a result of this comment.

Comment: Concerning proposed §73.25(b)(1) and (2), one commenter suggested that the phrase "that is certified" be deleted from the definitions of "Accreditation" and "Certification".

Response: The department agrees with the commenter and has revised the definitions.

Comment: Concerning proposed §73.25(b)(5)(A), several commenters expressed concern that the definition of "environmental laboratory" was too restrictive and proposed alternate definitions.

Response: The department agrees with the commenters and has expanded the definition.

Comment: Concerning proposed §73.25(e)(3), one commenter recommended that this section be removed because it conflicts with NELAC standards.

Response: The department agrees with the commenter and has removed the paragraph.

Comment: Concerning proposed §73.25(f)(4)(B), one commenter stated that the language in this section appears to indicate that laboratories accredited by third party organizations would automatically be granted NELAC accreditation which is in direct conflict with NELAC standards. The commenter states further that if the intent of the language is to allow such accreditation to occur, the language should be removed.

Response: The department disagrees with the commenter, this subsection refers to the requirement for an on-site assessment, not accreditation. No changes were made as a result of this comment.

Comment: Concerning proposed §73.25(f), one commenter stated that "it is unclear which portions of section §73.25(f) apply to all laboratories and which apply to in-state laboratories only and which apply to accreditation versus certification".

Response: The department agrees with the commenter and has clarified the rule by placing the requirements for certification and accreditation into separate subsections in new §73.25(e) and (f).

Comment: Concerning proposed §73.25(f)(1)(D), one commenter suggested that the proposed language "location of laboratory" be replaced with "physical address".

Response: The department agrees with the commenter and has added suggested change to new §73.25(e)(2)(A)(vi).

Comment: Concerning proposed §73.25(f)(1)(A)-(K), one commenter stated that the listing of items required on the application does not include information required by the NELAC standard.

Response: The department agrees with the commenter and has referenced §§4.1.7.1 and 4.1.7.2 of the NELAC standards in the new §73.25(f)(3)(A) which refers to the completion of an application for accreditation.

Comment: Concerning proposed §73.25(f)(2), one commenter identified an incorrect reference.

Response: The department agrees and has made the correction to new §73.25(e)(2)(B).

Comment: Concerning proposed §73.25(f)(3), §73.25(h), and §73.25(k)(1), two commenters recommended that the term "interdependent analyte group" be removed from the rule because the concept no longer exists in the NELAC standard.

Response: The department agrees with the commenters and has made the suggested change to new §73.25(e)(4), and §73.25(e)(7).

Comment: Concerning proposed §73.25(f)(3)(C), several commenters stated that the categories of testing in these sections were incorrect and or restrictive.

Response: The department agrees and has rewritten new subsection (f).

Comment: Concerning proposed §73.25(f)(4), one commenter expressed concerns that out-of-state laboratories would gain a competitive advantage compared to in-state laboratories if they were exempt from paying accreditation fees.

Response: The department disagrees. The proposed fee structure for accreditation and certification of laboratories includes both an administrative fee and a category fee. Each applicant must pay the administrative fee and the appropriate category fee (microbiology, radiochemistry, etc) for the fields of testing for which they seek accreditation. The purpose of the category fees is to recover the cost of performing an on-site assessment. Since out-of-state laboratories are accredited through reciprocity and the department does not perform the on-site assessment the department has exempted them from paying the category fees. No changes were made as a result of this comment.

Comment: Concerning proposed §73.25(f)(6), one commenter stated that the proposed rules refer to "applicant" and "applicant laboratory", which have not been defined, interchangeably with "laboratory". The commenter suggested using "laboratory" throughout.

Response: The department agrees with the commenters suggestion to replace the terms "applicant" and "applicant laboratory" with "laboratory" and has made the suggested change throughout new §73.25(e) and (f).

Comment: Concerning proposed §73.25(f)(6), one commenter noted that the department had incorrectly stated that the statement of compliance must be signed and dated by the laboratory owner, director and quality assurance officer and that this statement was a contradiction to the NELAC standard.

Response: The department agrees and has deleted the statement. The correct signature requirements for the statement of compliance are included in the broad reference to NELAC accreditation requirements found in new §73.25(f)(3).

Comment: Concerning proposed §73.25(g)(1), one commenter stated that the terms "accreditation" and "certification " appear to be used interchangeably and that the rules are unclear regarding whether the department intends to accept out-of-state accreditation by a NELAP-approved accrediting authority, a state or federal SDWA certification authority, a third-party accrediting organization, or all of these for purposes of Texas SDWA certification. The commenter suggests revising the proposed rules to accept NELAP approved accrediting authorities and state SDWA certification authorities.

Response: The department agrees with the commenter and has made the changes suggested with regard to acceptance of NELAP approved accrediting authorities and state SDWA certification authorities. The department has eliminated the confusion related to "accreditation" and "certification" by placing the requirements for accreditation and certification in separate sections of the rule in §73.25(e) and (f).

Comment: Concerning proposed §73.25(g)(3), one commenter stated that the proposed rules were unclear regarding whether a state's certificate or certification program must meet the departments requirements and suggested replacing "certificate" with "certification program".

Response: The department agrees and has made the suggested change to new §73.25(e)(3)(B) and (C).

Comment: Concerning proposed §73.25(17) renumbered to §73.25(19), one commenter stated that the terms "stringent criteria" in the definition of "Proficiency testing study provider" are not adequately defined and suggested an alternate definition.

Response: The department agrees in part with the commenter that the terms "stringent criteria" are vague. However this definition was taken directly from the NELAC standard. No changes were made as a result of this comment.

Comment: Concerning proposed §73.25(g)(3) and (4), one commenter stated that these sections of the proposed rule imply that the department will review other state programs for adequacy and that it is difficult to determine whether this applies to certified and/or accredited laboratories. Furthermore, such a review would be considered a supplemental requirement under NELAC, allowable only with approval of NELAC.

Response: The department agrees with the commenter and has reorganized the rule by putting the requirements for certification and accreditation into separate subsections and removed the statement referring to review of other state programs from the subsection on accreditation.

Comment: Concerning proposed §73.25(g)(5), one commenter suggested using "revoked" instead of "downgraded" which has not been defined.

Response: The department agrees and has substituted the word "revoked" for "downgraded" in new §73.25(e)(10)(D) and (f)(10)(B).

Comment: Concerning proposed §73.25(h)(1), one commenter noted that the statement that laboratories must analyze PT samples for each analyte/analyte group where available should be clarified to indicate, "that PT samples are only required to be analyzed for those analytes established by NELAC".

Response: The department agrees with the commenter and has clarified the PT requirements for certification and accreditation in new §73.25(f)(5)(A).

Comment: Concerning proposed §73.25(h)(3), one commenter suggested that the reference to "prior approval" be deleted.

Response: The department agrees with the commenter and has made the requested change to new §73.25(e)(4)(C).

Comment: Concerning proposed §73.25(h)(6), one commenter states that the proposed rules are unclear regarding whether an out-of-state laboratory may direct a proficiency test provider to submit results to the department electronically and suggests adding language to allow this.

Response: The department agrees with the commenter and has deleted the statement about out-of-state laboratories so that all laboratories have the option of directing a proficiency test provider to submit results to the department electronically, in new §73.25(e)(4)(E).

Comment: Concerning proposed §73.25(h)(9) and (10), one commenter suggested that these sections are duplicative and recommends that §73.25(h)(10) be deleted.

Response: The department agrees with the commenter that these sections appear to be duplicative, however §73.25(h)(9) states the proficiency testing requirements for accreditation while §73.25(h)(10) states the proficiency testing requirements for certification. This issue has been resolved by placing the requirements for certification and accreditation in separate subsections of the rule in new §73.25(e) and (f).

Comment: Concerning proposed §73.25(i)(5), one commenter suggests that this section appears to allow NELAP accreditation by third-party accreditation organizations which conflicts with the NELAC standard.

Response: The department agrees and has added language that limits the scope of a third-party's responsibility to perform on-site assessments to new §73.25(f)(6)(A)(iii).

Comment: Concerning proposed §73.25(j)(3), one commenter noted that the proposed rules are unclear regarding the scope and form of the department's response to a corrective action report.

Response: The department agrees with the commenter and has added clarifying language to new §73.25(e)(6)(C).

Comment: Concerning proposed §73.25(j)(2), one commenter suggested adding "to the department" at the end of the sentence.

Response: The department agrees and has made the suggested change to new §73.25(e)(6)(B).

Comment: Concerning proposed §73.25(j)(6) and (8), one commenter stated that these proposed rules appear to conflict with each other and are unclear regarding the process for releasing information and suggested making §73.25(j)(8) an exception to §73.25(j)(6) and deleting the phrase "and are to be released".

Response: The department agrees and has made the suggested change to new §73.25(e)(6)(F) and proposed §73.25(j)(8) was deleted.

Comment: Concerning proposed §73.25(k)(3), one commenter states that this section implies that the department would approve the methods laboratories would use which is not a NELAC requirement and suggests that it be removed.

Response: The department agrees and the statement has been removed.

Comment: Concerning proposed §73.25(o), two commenters noted that this section of the proposed rule appears to address regulatory compliance rather than laboratory accreditation and recommends that it be removed.

Response: The department agrees and has made the recommended change.

Comment: Concerning proposed §73.25(p)(5), one commenter is concerned that the proposed rules are unclear regarding who must apply on behalf of a laboratory for a hearing.

Response: The department agrees and has added appropriate language to new §73.25(e)(10)(D).

Comment: Concerning proposed §73.25(q), one commenter states that the notification requirements in this section omit some of the key criteria for notification identified in the NELAC standard and suggests that they should be added.

Response: The department agrees and has made the suggested change to new §73.25(e)(11).

The commenters where the American Council of Independent Laboratories, TXU Electric and Gas, The Texas Eastman Division of the Eastman Chemical company and the Texas Natural Resource Conservation Commission. All commenters were in favor of the rules, however, they raised questions, offered comments for clarification purposes, and suggested clarifying language concerning specific provisions in the rules.

The amendments and new section are adopted under Health and Safety Code, §421.003, which provides the board the authority to set an accreditation fee in an amount sufficient to defray the cost of administering Chapter 421; and §421.005, which provides the board the authority to adopt rules to implement Chapter 421 and minimum performance and quality assurance standards for accreditation of an environmental testing laboratory, §12.031 - 12.032 which allows the board to establish fees for public health services, and §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

§73.22. Fees

(a) Purpose. This section establishes fees pursuant to the Health and Safety Code, §§12.031, 12.032, and 12.034 for laboratory services provided by the Bureau of Laboratories (bureau) of the Texas Department of Health (department). The fees will enable the department to offset costs incurred when delivering certain laboratory services.

(b) General. Services are offered at the discretion of the department subject to laws and rules in effect at the time of the request for services.

(1) The fees assessed are intended to recover the reasonable service costs and shall not exceed the costs of providing the service as determined by the department.

(2) Each fee for which a maximum cap is set within this section shall be calculated annually by department staff in accordance with paragraph (1) of this subsection.

(3) A schedule of all fees will be available upon request from the Texas Department of Health, Bureau of Laboratories, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7318.

(4) The department will determine whether a fee must be paid with submission of the specimen or whether the department will bill later for the fee unless stated otherwise in this section.

(5) The submission of specimens to the department shall be in compliance with the bureau's Manual of Reference Services and other written instructions established by the bureau.

(A) The manual outlines clinical and scientific standards, procedures and requirements of the department.

(B) Failure to submit a specimen as required may result in the department's refusal to perform the requested services.

(C) The manual and other written instructions may be obtained upon request from the Texas Department of Health, Bureau of Laboratories, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7318.

(6) Failure to pay a fee in a timely manner may result in the department's refusal to accept specimens or samples until the fee is paid.

(7) A fee paid is nonrefundable.

(c) Fees.

(1) The annual fees for certification of milk, shellfish, and environmental laboratories and proficiency testing for milk laboratories are as follows:

(A) antibiotic milk laboratories--$250;

(B) milk industry laboratories--$400;

(C) full service milk laboratories--$500;

(D) milk proficiency testing (non-Texas certified laboratories)--$250;

(E) shellfish laboratory--$500;

(F) environmental laboratory administrative fee -- $460;

(G) environmental laboratory microbiology category fee -- $115;

(H) environmental laboratory radiochemistry category fee -- $430;

(I) environmental laboratory chemistry category fee for a single category -- $430;

(J) environmental laboratory chemistry category fee for two categories -- $860;

(K) environmental laboratory chemistry category fee for three categories -- $1290 and/or;

(L) environmental laboratory chemistry category fee for four or more categories -- $1720;

(2) The fee for testing blood for the presence of lead shall not exceed $10 per test.

(3) The fee for a newborn screening test kit shall not exceed $20 per test kit.

(4) The fees for testing of bottled water, drinking water systems, drinking water fountains in day care centers or schools, or individual home drinking water systems shall not exceed the following amounts:

(A) tests for minerals and physical properties:

(i) chloride--$22.50;

(ii) fluoride--$22.50;

(iii) nitrate--$30;

(iv) nitrite--$30;

(v) sulfate--$22.50;

(vi) total dissolved solids--$37.50;

(vii) phenols--$66;

(viii) turbidity--$24;

(ix) color--$30;

(x) odor--$37.50;

(xi) bromate--$83;

(xii) bromide--$35;

(xiii) total organic carbon, water--$53;

(xiv) chlorate--$75;

(xv) chlorite--$75;

(xvi) nitrate and nitrite--$27;

(xvii) routine water (minerals panel)--$180; and

(xviii) UV 254--$75;

(B) tests for trace metals:

(i) all metals panel: Al, Sb, As, Ba, Be, Cd, Cr, Cu, Fe, Pb, Mn, Hg, Ni, Se, Ag, Th, Zn--$357;

(ii) total recoverable metals digestion (performed only if turbidity equals or exceeds 1 NTU)--$36;

(iii) Pb-Cu--$27;

(iv) Pb--$22;

(v) cadmium--$22;

(vi) arsenic--$22;

(vii) antimony--$22;

(viii) ICP metals panel: Ba, Cr, Cu, Fe, Mn, Ag, Zn, Al, Ni, Be--$165;

(ix) mercury--$31;

(x) selenium--$22;

(xi) single ICP metal--$22; and

(xii) thallium--$22;

(C) tests for organics:

(i) volatile organic compounds, including trihalomethanes--$180;

(ii) ethylene dibromide (EDB) and dibromochloropropane (DBCP)--$192;

(iii) carbamate insecticides--$246;

(iv) chlorophenoxy herbicides--$270;

(v) polychlorinated biphenyl and chlorinated insecticides--$280;

(vi) polyaromatic hydrocarbons (PHA), phthalates--$354;

(vii) diquat--$297;

(viii) endothall--$439;

(ix) glyphosate--$208;

(x) haloacetic acids (EPA method 552)--$370;

(xi) haloacetonitriles (EPA method 551)--$231;

(xii) insecticides, drinking water (EPA method 505)--$225;

(xiii) organophosphate insecticides, drinking water (EPA method 507)--$340;

(xiv) polychlorinated biphenyls (PCB), drinking water (EPA method 508A)--$360; and

(xv) trihalomethanes, drinking water (EPA method 502.2)--$82;

(D) radiochemical testing:

(i) gross alpha and beta--$111;

(ii) total alpha emitting radium--$87;

(iii) radium 226--$100;

(iv) radium 228--$84;

(v) uranium isotopes--$93; and

(vi) radon--$81;

(E) bacteriological examination for coliforms--$20; and

(F) miscellaneous drinking water chemistry procedures--$96 per hour.

(5) The fees for testing environmental samples from nuclear power plants and other users or holders of radiation sources shall not exceed the following amounts:

(A) miscellaneous (per hour) Nuclear Chemical Branch--$96;

(B) gross alpha or beta, water--$99;

(C) gross alpha and beta, water--$111;

(D) gamma emitting isotopes, water--$91;

(E) radium-226, water--$100;

(F) alpha spectrum preparation, water--$162;

(G) radium-228, water--$84;

(H) uranium isotopes, water--$93;

(I) thorium isotopes, water--$87;

(J) plutonium, water--$88;

(K) tritium, water--$61;

(L) total alpha emitting radium, water--$87;

(M) radon, water--$81;

(N) strontium-89 or 90, water--$124;

(O) carbon-14, water--$133;

(P) gross alpha or beta, soil--$79;

(Q) gross alpha and beta, soil--$100;

(R) gamma emitting isotopes, soil--$138;

(S) alpha spectrum preparation, soil--$151;

(T) radium-226, soil--$133;

(U) radium-228, soil--$108;

(V) uranium isotopes, soil--$84;

(W) thorium isotopes, soil--$87;

(X) plutonium, soil--$88;

(Y) tritium, soil--$98;

(Z) strontium-89 or 90, soil--$160;

(AA) gross alpha or beta, vegetation/tissue--$79;

(BB) gross alpha and beta, vegetation/tissue--$109;

(CC) gamma emitting isotopes, vegetation/tissue--$135;

(DD) alpha Spectrum preparation, vegetation/tissue--$151;

(EE) radium-226, vegetation/tissue--$133;

(FF) radium-228, vegetation/tissue--$96;

(GG) uranium isotopes, vegetation/tissue--$84;

(HH) thorium isotopes, vegetation/tissue--$87;

(II) plutonium, vegetation/tissue--$88;

(JJ) tritium, vegetation/tissue--$97;

(KK) strontium-89 or 90, vegetation/tissue--$160;

(LL) gross alpha or beta, wipe/filter/cartridge--$48;

(MM) gross alpha and beta, wipe/filter/cartridge--$63;

(NN) alpha spectrum preparation, wipe/filter/cartridge--$151;

(OO) radium-226, wipe/filter/cartridge--$133;

(PP) radium-228, wipe/filter/cartridge--$96;

(QQ) uranium isotopes, wipe/filter/cartridge--$84;

(RR) thorium isotopes, wipe/filter/cartridge--$87;

(SS) plutonium, wipe/filter/cartridge--$88;

(TT) tritium, wipe/filter/cartridge--$61;

(UU) strontium-89 or 90, wipe/filter/cartridge--$160;

(VV) carbon-14, wipe/filter/cartridge--$142;

(WW) gamma emitting isotopes, wipe/filter/cartridge--$78;

(XX) asbestos identification--$55;

(YY) asbestos fiber counting--$46;

(ZZ) dust identification--$60;

(AAA) organic chemicals, by group, such as insecticides, herbicides, volatile organic compounds, semi-volatile organic compounds in water or soil/sediment, including routine sample preparation procedures--$542 per group per sample;

(BBB) metals, per analyte in water or soil/sediment, including routine sample preparation procedures--$77 per analyte per sample; and

(CCC) inorganic chemicals, per analyte in water or soil/sediment--$105 per analyte per sample.

(d) Newborn screening procedures.

(1) Newborn screening is required by the Health and Safety Code, Chapter 33.

(2) The department through the bureau will provide newborn screening test kits upon written request from a provider of newborn screening. A test kit is the department-designed collection device, demographic information form and envelope used to submit a newborn's blood specimens for screening by the bureau. A separate test kit is required for each screening panel. Each newborn must have two screening panels performed. Additional screening panels may be necessary under certain circumstances. Testing providers include hospitals, birthing centers, physicians, midwives, and clinics.

(3) The department shall accept only its test kit for submission of specimens.

(4) The department will provide test kits for Medicaid-eligible or charity care newborns at no cost to the provider.

(5) The department will provide test kits for all other newborns at a fee as described in subsection (c)(3) of this section.

(6) A Medicaid-eligible newborn is a patient whose mother is a Medicaid recipient or who is otherwise eligible for Medicaid coverage for the newborn-related services. A charity care newborn is a patient who is not insured and is not covered or eligible to be covered for newborn screening services by Medicaid or any other government program.

(7) When a provider requests test kits, the provider must identify the number estimated to be needed for Medicaid-eligible newborns, charity care newborns, and other newborns. The provider's estimates shall be based on the provider's newborn screening services provided in the most recent fiscal or calendar year if the provider has previously provided these services. A provider shall provide further information upon request of the department to verify the appropriateness of the number of test kits provided at no cost.

(8) The department will bill the requesting provider for test kits when the test kits are sent to the provider. Payment is due within 120 days from the provider's receipt of the test kits.

(9) A provider may use the no-cost test kit only for a Medicaid-eligible or charity care newborn.

(10) A provider shall ensure that the identifying and demographic information provided with the test kit is complete and accurate when submitted to the department.

(11) A provider may use the department's previous newborn screening forms until May 31, 1998. Beginning on June 1, 1998, all providers must use the department's new test kits for newborn specimens.

§73.24. Certification of Milk and Shellfish Laboratories

(a) Purpose. This section establishes the procedures for milk and shellfish laboratories to become certified laboratories under federal or state law.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings unless the text clearly indicates otherwise.

(1) Assessment--A fact-finding process performed either by an approved third party or by the Texas Department of Health (department) in which information and observations are collected and evaluated for the purpose of judging the laboratory's conformance with established certification standards. Assessment includes an onsite inspection.

(2) Certification--An official and legal approval granted by the department to a laboratory, permitting analysis of milk or shellfish samples in accordance with applicable federal and state laws and rules based on the process outlined in this section. Certification means that a certified laboratory has been judged capable of performing the analyses for which it is certified correctly. Certification does not imply or mean that the department certifies the results produced by the certified laboratory.

(c) Certification application.

(1) A laboratory must submit an application for certification directly to the department on a form specified by the department.

(2) Payment of the appropriate fee for certification under §73.22 of this title (relating to Fees) must accompany the application.

(3) Payment may be by check or money order made payable to the Texas Department of Health.

(4) A laboratory may apply for certification in a single category or any combination of categories from among the following: milk analysis-antibiotics, milk analysis-raw, milk analysis-full service, or shellfish analysis-full service.

(5) The department shall perform an assessment for each milk and shellfish laboratory applying for certification.

(6) Each certified laboratory must reapply for certification every two years and pay the appropriate certification fee. After initial certification, the laboratory will be assessed the certification fee on an annual basis.

(d) Standards.

(1) The minimum standards for certification are as specified by the United States Environmental Protection Agency (EPA) applying to drinking water and the United States Food and Drug Administration (FDA) applying to milk and shellfish. These specifications are available for review during normal business hours at the department's Bureau of Laboratories, 1100 West 49th Street, Austin, Texas.

(2) Each applicant laboratory will be evaluated, at a minimum on the following factors: credentials and experience of staff, quality assurance plan, manuals of procedures, performance on evaluation unknowns, equipment, calibrations and standards, methodology, facilities, sample acceptance policies, sample tracking, record keeping, reporting, and results interpretation.

(e) Inspections. The department may conduct inspections of laboratories to ascertain adherence to minimum standards and the effectiveness of the certification system. For laboratories for which the department serves as both the assessing and certification authority, inspections will be conducted on at least a biennial basis.

(f) Withdrawal of certification.

(1) A laboratory must meet all minimum standards, pass all performance evaluation sets, and pass onsite inspection no less than every two years to be certified.

(2) A laboratory that fails to meet requirements by scoring outside the acceptable limits on a set of performance evaluation unknowns, has serious deficiencies at the time of an onsite inspection, fails to notify the department within 30 days of major changes which might impair analytical capability (personnel, equipment, or location), or fails to notify the state or public of certain problems as required by notification regulations may be placed on provisionally certified status.

(3) Failure on two consecutive performance evaluation sets or failure to correct major deficiencies following onsite inspection may result in the withdrawal of certification. The correction action must take place within the time frames set by the appropriate federal regulatory authority, which are 90 days or less.

(4) Certification may be suspended or revoked immediately if the standards of the EPA or FDA require suspension or revocation, or if continued operation of the laboratory will jeopardize public health. Due process will be afforded to the laboratory whose certification is revoked or suspended.

(5) Certification shall be revoked for a laboratory which submits as its own work the results for analysis of any performance evaluation sample which was analyzed by a different laboratory. The laboratory may not reapply for certification for a period of not less than three years.

§73.25. Environmental Laboratory Certification and Accreditation

(a) Purpose. This section establishes a two-tiered program for the certification and accreditation of environmental laboratories. The first tier of this program is established to certify laboratories performing microbiological and chemical analysis of drinking water for compliance with EPA regulations issued pursuant to the Safe Drinking Water Act (SDWA). The second tier of this program is established to accredit laboratories performing analysis for compliance with the SDWA and the Clean Water Act (CWA) federal programs that voluntarily comply with the consensus standards adopted at the National Environmental Laboratory Accreditation Conference (NELAC).

(b) Definitions. The following words and terms when used in this section shall have the following meanings unless the context clearly indicates otherwise.

(1) Accreditation--The recognition of a laboratory as having met the requirements of subsection (f) of this section.

(2) Accrediting Authority--The territorial, state or federal agency having responsibility and accountability for environmental laboratory accreditation and which grants accreditation.

(3) Certification--The recognition of a laboratory as having met the requirements of subsection (e) of this section.

(4) CWA--The Clean Water Act also known as the Federal Water Pollution Control Act.

(5) Deficiency--A noncompliance with one or more of the requirements of this section.

(6) Environmental laboratory--a scientific laboratory that performs analyses to determine the chemical, molecular, or pathogenic components of drinking water, wastewater, hazardous wastes, soil, or air.

(7) EPA--The United States Environmental Protection Agency.

(8) Federal Water Pollution Control Act (Clean Water Act)--The enabling legislation under 33 United States Code §§1251 et seq., Public Law 92-50086, Stat. 816, that empowers EPA to set discharge limitations, write discharge permits, monitor, and bring enforcement action for non-compliance.

(9) Fields of Testing--NELAC's approach to accrediting laboratories by program, method and analyte or component.

(10) Interim accreditation--The temporary accreditation status for a laboratory that has met all accreditation criteria except for a pending on-site assessment, which has been delayed for reasons beyond the control of the laboratory.

(11) Interim certification--The temporary certification status for a laboratory that has met all certification criteria except for a pending on-site assessment, which has been delayed for reasons beyond the control of the laboratory.

(12) NELAC--The National Environmental Laboratory Accreditation Conference.

(13) NELAC Standards--Standards that include procedures for consistently evaluating and documenting the ability of laboratories performing environmental measurements to meet nationally defined standards established by the National Environmental Laboratory Accreditation Conference.

(14) NELAP--The National Environmental Laboratory Accreditation Program.

(15) NELAP Approved Accrediting Authority--An accrediting authority that has received recognition from NELAP.

(16) NELAP Primary Accrediting Authority--The agency or department designated at the Territory, State or Federal level as the recognized authority with the responsibility and accountability for granting NELAC accreditation for a specified field of testing.

(17) NELAP Secondary Accrediting Authority--The territorial, state of federal agency that grants NELAC accreditation to laboratories, based upon their accreditation by a NELAP-recognized Primary Accrediting Authority.

(18) Proficiency testing program--The aggregate of providing rigorously controlled and standardized environmental samples to a laboratory for analysis, reporting of results, statistical evaluation of the results and the collective demographics and results summary of all participating laboratories.

(19) Proficiency testing study provider--Any person, private party, or government entity that meets stringent criteria to produce and distribute NELAC proficiency testing samples, evaluate study results against published performance criteria and report the results.

(20) Revoke--To remove a laboratory's certification or accreditation or the approval for a certified or accredited laboratory to perform one or more specified methods.

(21) Safe Drinking Water Act (SDWA)--The enabling legislation, 42 United States Code §§300f *et seq.* (1974), (Public Law 93-523), that requires the EPA to protect the quality of drinking water in the United States by setting maximum allowable contaminant levels, monitoring, and enforcing violations.

(22) SDWA--The Safe Drinking Water Act.

(23) Suspension--The temporary removal of a laboratory's accreditation or certification for a defined period of time, which shall not exceed 6 months, to allow the laboratory time to correct deficiencies or areas of non-compliance with this rule.

(24) TNRCC--The Texas Natural Resource Conservation Commission.

(c) Administration by department. The department shall administer the environmental laboratory certification and accreditation program established by the Health and Safety Code, Chapter 421 and this section.

(d) Implementation.

(1) Laboratories currently certified by the department have two years from promulgation of this rule to comply with all requirements of this rule.

(2) The department shall not implement subsection (f) of this section until it is recognized as an accrediting authority by NELAP.

(e) Certification.

(1) Standard for certification. A laboratory certified by the department pursuant to this rule shall comply with the standards outlined in the EPA's Manual for the Certification of Laboratories Analyzing Drinking Water, EPA 815-B-97-001, March 1997, and is adopted by reference into this rule. This document is available for review during normal business hours at the department's Bureau of Laboratories, 1100 West 49th Street, Austin Texas.

(2) Certification requirements. To become certified, to renew certification, or to become recertified under this rule, a laboratory must:

(A) submit a completed application to the department, on forms provided by the department that shall include:

(i) the legal name of the laboratory;

(ii) the mailing address;

(iii) the billing address;

(iv) the name of the laboratory owner;

(v) the mailing address of the owner;

(vi) the physical address of the laboratory;

(vii) the name and phone number of technical director(s), however named, and the lead technical director (if applicable);

(viii) the name and daytime phone number of the laboratory quality assurance officer;

(ix) the name and daytime phone number of a laboratory contact person;

(x) the laboratory hours of operation;

(xi) fields of testing for which the laboratory is requesting certification;

(xii) methods employed including components;

(xiii) description of laboratory type (for example):

(I) commercial;

(II) federal;

(III) hospital or health care facility;

(IV) state;

(V) academic institutes;

(VI) public water system;

(VII) public waste water system;

(VIII) industrial (an industry with a discharge permit);

(IX) mobile; or

(X) other (describe).

(xiv) fee enclosed (if applicable);

(xv) description of geographical location;

(xvi) fax number;

(xvii) lab identification number; and

(xviii) quality manual;

(B) be enrolled in a proficiency-testing program and meet all requirements of paragraph (4) of this subsection;

(C) pay all fees under §73.22 of this title prior to the issuance of a certificate:

(i) out-of-state laboratories that meet requirements through reciprocity are exempt from category fees;

(ii) laboratories that use third party assessors to meet the on-site assessment requirements are exempt from category fees.

(D) pass an on-site assessment by meeting all requirements of paragraphs (5) - (7) of this subsection.

(3) Certification of laboratories outside the State of Texas.

(A) The department shall certify an out-of-state laboratory to perform environmental sample analysis provided:

(i) the laboratory is certified by the EPA or a State Certification Authority for those fields of testing in which the laboratory is requesting certification pursuant to this rule;

(ii) the laboratory submits to the department a completed application, copies of the laboratory's two most recent proficiency test results, and its written quality assurance manual;

(iii) the laboratory submits to the department a copy of its most recent (less than two years old) on-site assessment report from the EPA or State Certification Authority together with a current copy of the laboratory's certification listing the categories, analytes or components, and approved methods; and

(iv) the department determines that the out-of-state certification program is equivalent to the requirements of this rule.

(B) If upon review of the required documents, the department determines that the out-of-state certification program is equivalent to the requirements of this rule, the department will not require an on-site assessment by its assessors and certification shall be granted after the assessed fees are paid.

(C) If upon review of the required documents, the department determines that the out-of-state certification program is not equivalent or cannot determine if the out-of-state certification is equivalent to the requirements of this rule, the department will notify, in writing, the applicable certification authority and the laboratory. However, the laboratory is to be notified only in situations where no administrative or judicial prosecution is contemplated.

(D) If the laboratory's status is changed from certified to provisionally certified or not certified by the laboratory's primary certification authority, the laboratory shall notify the department within 30 days of receipt of notification of the intent to downgrade by the primary certification authority.

(4) Proficiency testing requirements for certification. For a laboratory to become certified or to maintain certification for a component by a specific method, the laboratory shall, at its own expense meet the proficiency testing requirements of this subsection.

(A) The laboratory shall enroll and participate in a proficiency testing program for each component for which it seeks certification. For each of these components for which proficiency testing is not available, the laboratory shall establish, maintain, and document the accuracy and reliability of its procedures through a system of internal quality management.

(B) The laboratory shall participate in more than one proficiency testing program if necessary to be evaluated to obtain or maintain approval to analyze a component.

(C) The laboratory shall use a proficiency test provider that is accredited by the National Institute of Standards and Technology.

(D) The laboratory shall follow the proficiency testing provider's instructions for preparing the proficiency testing sample and shall analyze the proficiency testing sample as if it were a client sample.

(E) The laboratory shall direct the proficiency testing provider to send, either in hard copy or electronically, a copy of each evaluation of the laboratory's proficiency testing study results to the department. The laboratory shall allow the proficiency testing provider to release all information necessary for the department to assess the laboratory's compliance with this rule.

(F) Proficiency testing providers shall evaluate results from all proficiency testing studies using NELAC-mandated acceptance criteria described in Chapter 2, Appendix A, of the NELAC standards.

(G) In each calendar year, the laboratory shall complete at least two separate proficiency testing studies for each component. The department may determine the months of participation in the proficiency testing program.

(H) The laboratory shall be successful in at least one of the most recent two proficiency testing studies for each field of testing, subgroup, or component for which it is certified.

(I) The laboratory shall be successful in at least one proficiency testing study annually for each SDWA method for which it is certified.

(J) The certified laboratory shall not:

(i) discuss the results of a proficiency testing study with any other laboratory until after the deadline for receipt of results by the proficiency testing provider;

(ii) if the laboratory has multiple testing sites or separate location, discuss the results of a proficiency testing study across sites or locations until after the deadline for receipt of results by the proficiency testing provider;

(iii) send proficiency testing samples or portions of samples to another laboratory to be tested; or

(iv) knowingly receive proficiency testing samples from another laboratory for analysis and fail to notify the department of the receipt of the other laboratory's sample within five business days of discovery.

(K) The following are strictly prohibited:

(i) performing multiple analyses (replicates, duplicates) which are not normally performed in the course of analysis of routine samples;

(ii) averaging the results of multiple analyses for reporting when not specifically required by the method; or

(iii) permitting anyone other than bona fide laboratory employees who perform the analyses on a day-to-day basis for the laboratory to participate in the generation of data or reporting of results.

(L) The laboratory shall maintain a copy of all proficiency testing records, including analytical worksheets and proficiency testing provider report of results.

(5) On-site assessments for certification.

(A) The department is authorized to conduct on-site assessments of the laboratory at any time during normal business hours.

(B) An on-site assessment shall be conducted prior to the issuance of a certificate. Thereafter, an on-site assessment shall be conducted every two years. If the laboratory completes all of the requirements for continued certification except that of an on-site assessment because the department is unable to schedule the assessment, the department may issue interim certification for a period not to exceed six months.

(C) The laboratory shall ensure that its documented Quality System, analytical methods, quality control data, proficiency test data, laboratory standard operating procedures, and other records needed to verify compliance with this rule are available for review during the on-site laboratory assessment. The laboratory shall allow the department's authorized personnel to examine records; observe the laboratory's procedures, facilities, and equipment; and interview staff as necessary to determine such compliance.

(D) The department shall issue an assessment report to the laboratory documenting any deficiencies found by the assessor within 30 calendar days of the on-site assessment.

(E) The department shall adopt procedures specifying the application criteria for acceptance and approval of approved third-party laboratory accreditation organizations.

(6) Corrective action reports in response to on-site assessment for certification.

(A) A corrective action report must be submitted by the laboratory to the department in response to any assessment report received by the laboratory after an on-site assessment. The corrective action report shall include the action that the laboratory shall implement to correct each deficiency and the time period required to accomplish the corrective action.

(B) After being notified of deficiencies, the laboratory shall have 30 calendar days from the date of receipt of the assessment report to provide a corrective action report to the department.

(C) The department shall evaluate the corrective action report and respond to the laboratory within 30 calendar days of receipt of the report.

(D) If the corrective action report (or a portion) is deemed unacceptable to remediate a deficiency, the laboratory shall have an additional 30 calendar days to submit a revised corrective action report.

(E) If the corrective action report is not acceptable to the department after the second submittal, certification shall be revoked for all or any portion of its scope of certification for all or any of a field of testing, method, or component within a field of testing.

(F) All information included and documented in an assessment report and the corrective action report are considered to be public information with the exception of proprietary data such as: confidential business information and classified national security information which will be excluded from all public records.

(G) If the laboratory fails to implement the corrective actions as stated in their corrective action report, certification for fields of testing, specific methods, or components within those fields of testing shall be revoked.

(7) Method approval for certification.

(A) A laboratory must request approval to analyze for a component as part of its application for certification or renewal of certification. The laboratory must specify the method by which the analysis shall be performed. Approval to analyze for a component by the specific method shall be granted only after an on-site assessment. The laboratory shall:

(i) provide documentation that it has the necessary equipment and trained technical employees to perform the test;

(ii) provide documentation that the laboratory has passed two proficiency testing studies for the component(s) in question;

(iii) provide its standard operating procedure for the method used for the component(s) in question;

(iv) provide documentation of its initial demonstration of analytical capability; and

(v) provide documentation establishing the laboratory's method detection limit for the component.

(B) At any time a laboratory may request approval to analyze for additional components or to analyze by additional methods by submitting a written request together with the documentation required in subparagraph (A) of this paragraph. The department may require an on-site assessment prior to the granting of approval.

(C) SDWA methods of analysis shall be as specified in 40 Code of Federal Regulations Chapter 141 of the National Primary Drinking Water Regulation, or by any alternative analytical technique as specified by the department and approved by the Administrator of the EPA under 40 Code of Federal Regulations §141.27.

(D) The department adopts by reference the federal regulations referred to in subparagraph (C) of this paragraph. These documents are available for review during normal business hours at the department's Bureau of Laboratories, 1100 West 49th Street, Austin Texas.

(8) Period of certification.

(A) The period of certification shall be 24 months from the date of issuance of the certificate.

(B) To renew certification, a laboratory shall reapply to the department and meet all the requirements for certification prior to the termination of their certification.

(9) Display of certificate. A current certificate shall be displayed at all times in a prominent place in each certified laboratory where it may be viewed by the public.

(10) Denial and revocations of certification.

(A) The department is authorized to deny, suspend, limit, or revoke the certification of any laboratory that does not comply with the requirements in the EPA's Manual for the Certification of Laboratories Analyzing Drinking Water, EPA 815-B-97-001, March 1997, and this rule.

(B) In determining the denial, revocation, suspension, or limitation, the department shall consider such factors as the gravity of the offense, the danger the offense poses to the public, the intent of the violation, the extent of the violation, and the proposed correction of the problem.

(C) The department is authorized to immediately suspend the certification of a laboratory when the department determines that any condition in the laboratory presents a clear and present danger to public health and safety.

(D) Any laboratory, which has its certification revoked, denied, suspended, or limited shall be allowed to apply for a fair hearing conducted by the department. The technical director or quality assurance officer shall submit a written request to the department within 30 days of receipt of notice. The hearing will be conducted using the department's fair hearing procedures in 25 Texas Administrative Code, Chapter 1, Subchapter C (relating to Fair Hearing Procedures).

(11) Changes of name or ownership. A certified laboratory must notify the department in writing within 30 days of major changes in personnel, equipment or laboratory location. A major change in personnel is defined as the loss or replacement of the laboratory supervisor or a situation in which a trained and experienced analyst is no longer available to analyze a particular parameter for which certification has been granted.

(f) Accreditation.

(1) Standard for accreditation. A laboratory accredited by the department pursuant to this rule shall comply with the consensus standards adopted at the National Environmental Laboratory Accreditation Conference (NELAC). The NELAC Constitution, Bylaws, and Standards, EPA 600/R-99/068, revised as of June 29, 2000, are adopted by reference into this rule. These specifications are available for review during normal business hours at the department's Bureau of Laboratories, 1100 West 49th Street, Austin Texas.

(2) Fields of Testing. The department will offer accreditation for analysis performed for compliance purposes with the Safe Drinking Water Act and the Clean Water Act.

(3) Accreditation requirements. To become accredited, to renew accreditation, or to become reaccredited under this rule, a laboratory must meet all the requirements of the NELAC standard and:

(A) submit a completed application to the department, on forms provided by the department that shall include the information required by §§4.1.7.1 and 4.1.7.2 of the NELAC standards;

(B) be enrolled in a proficiency testing program and meet all requirements of subsection (5) of this section;

(C) pay all fees under §73.22 of this title (relating to Fees) prior to the issuance of accreditation. Out of state laboratories that meet the requirements through reciprocity are exempt from category fees;

(D) pass an on-site assessment to determine competence in the areas listed in §3.6.1 of the NELAC Standard and meet all requirements of paragraph (6) of this subsection.

(4) Reciprocity. An out-of-state laboratory shall be eligible for reciprocal accreditation to perform environmental sample analysis provided the laboratory is accredited by an agency recognized as a NELAP approved accrediting authority for those fields of testing in which the laboratory is requesting accreditation pursuant to this rule.

(A) To apply for reciprocal accreditation the laboratory shall submit to the department:

(i) a completed application;

(ii) copies of the laboratory's three most recent proficiency test results;

(iii) its written quality assurance manual; and

(iv) a copy of its most recent (less than two years old) on-site assessment report from the accrediting authority or from the accrediting authority's delegated assessor body, together with a current copy of the laboratory's accreditation that lists the categories, analytes, or components , and methods accredited.

(B) The department shall review the documentation submitted by the laboratory and grant reciprocal accreditation in compliance with §6.2.1 of the NELAC standard.

(5) Proficiency testing requirements for accreditation.

(A) To be accredited initially and to maintain accreditation a laboratory must comply with the proficiency testing requirements of §§2.4, 2.5 and 2.7 of the NELAC standard.

(B) The laboratory shall direct the proficiency testing provider to send, either in hard copy or electronically, a copy of each evaluation of the laboratory's proficiency testing study results to the department. The laboratory shall allow the proficiency testing provider to release all information necessary for the department to assess the laboratory's compliance with this rule.

(C) Proficiency testing providers shall evaluate results from all proficiency testing studies using NELAC-mandated acceptance criteria described in Chapter 2, Appendix, C the NELAC standards.

(D) The laboratory shall maintain a copy of all proficiency testing records, including analytical worksheets and proficiency testing provider report of results.

(6) On-site assessments for accreditation.

(A) On-site assessments will be conducted by the department in accordance with the requirements outlined in Chapter 3 the NELAC standard.

(i) The department is authorized to conduct on-site assessments of the laboratory at any time during normal business hours.

(ii) An on-site assessment shall be conducted prior to granting accreditation. Thereafter, an on-site assessment must be completed at least every two years. If the laboratory completes all of the requirements for continued accreditation except that of an on-site assessment because the department is unable to schedule the assessment, the department may issue interim accreditation for a period not to exceed six months. Assessments for cause may be conducted at any time.

(iii) The department shall adopt procedures specifying the application criteria for acceptance and approval of third-party laboratory accreditation organizations to perform the onsite assessment.

(iv) The department shall issue an assessment report to the laboratory documenting any deficiencies found by the assessor within 30 calendar days of the on-site assessment.

(B) Preparation and evaluation of corrective action reports in response to on-site assessment shall be in compliance with §4.1.3 of the NELAC standard.

(i) The laboratory must submit a plan of corrective action to the department within 30 days of receipt of any assessment report. The corrective action plan shall include the action that the laboratory shall implement to correct each deficiency and the time period required to accomplish the corrective action.

(ii) The department shall respond to the action noted in the corrective action report within 30 calendar days of receipt.

(iii) If the corrective action report (or a portion) is deemed unacceptable to remediate a deficiency, the laboratory shall have an additional 30 calendar days to submit a revised corrective action report.

(iv) If the corrective action report is not acceptable to the department after the second submittal, the laboratory shall have accreditation revoked pursuant to §4.4.3 of the NELAC standard for all or any portion of its scope of accreditation for any or all of a field of testing, method, or component within a field of testing.

(v) All information included and documented in an assessment report and the corrective action report are considered to be public information and are to be released.

(vi) If the laboratory fails to implement the corrective actions as stated in their corrective action report, accreditation for fields of testing, specific methods, or analytes within those fields of testing shall be revoked.

(vii) Proprietary data, confidential business information and classified national security information will be excluded from all public records.

(7) Awarding of accreditation. The department shall award accreditation in compliance with §4.6 of the NELAC standard. When the laboratory has met the requirements specified for receiving accreditation, the laboratory shall receive a certificate awarded on behalf of the department as the accrediting authority. The certificate shall be signed by a member of the department and shall be considered an official document. It will be transmitted as a sealed and dated (effective date and expiration date) document containing the NELAP insignia. The certificate shall comply with §4.6 of the NELAC standard and include:

(A) name of laboratory;

(B) address of laboratory;

(C) fields of testing (program, method, analyte or component); and

(D) addenda or attachments (these shall be considered to be official documents.

(8) Period of accreditation.

(A) The period of accreditation shall be 12 months from the date of issuance.

(B) To renew accreditation, a laboratory shall reapply to the department and meet all requirements for accreditation prior to the termination of their accreditation.

(9) Display of accreditation. A current accreditation document shall be displayed at all time in a prominent place in each accredited laboratory where it may be viewed by the public.

(10) Denial and revocations of accreditation.

(A) Pursuant to §4.4 of the NELAC standard, the department is authorized to deny, suspend, limit, or revoke the accreditation of any laboratory that does not comply with the requirements in the NELAC Standards and this rule.

(B) Any laboratory, which has its accreditation, revoked, denied, suspended, or limited shall be allowed to apply for a fair hearing conducted by the department. The technical director or quality assurance officer shall submit a written request to the department within 30 days of receipt of the notice. The hearing will be conducted using the department's fair hearing procedures in 25 Texas Administrative Code, Chapter 1, Subchapter C (relating to Fair Hearing Procedures).

(11) Notification and reporting requirements. The accredited laboratory shall notify the department of any changes in key accreditation criteria within 30 calendar days of the change. This written notification includes but is not limited to changes in the laboratory ownership, location, key personnel and major instrumentation. All such updates are public record and any or all of the information contained therein may be placed in the national database.

(12) Technical Committee.

(A) The department shall establish one or more technical committees for the assistance in interpretation of requirements and for advising the department on the technical matters relating to the operation if its environmental laboratory accreditation program.

(B) Appointments to the committee shall be made from lists of nominees solicited by the department, and shall provide adequate representation of interested parties and environmental laboratories subject to this rule.

(C) The department shall determine the terms of office of appointees. All committee members shall serve without compensation and shall pay their own expenses incurred as a result of attending meetings or engaging in any other activity pursuant to this section.

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

Filed with the Office of the Secretary of State on May 25, 2001.

TRD-200102987

Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: June 14, 2001
Proposal publication date: December 1, 2000
For further information, please call: (512) 458-7236

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

CHAPTER 101. GENERAL AIR QUALITY RULES

SUBCHAPTER H. EMISSIONS BANKING AND TRADING

DIVISION 3. MASS EMISSIONS CAP AND TRADE PROGRAM

30 TAC §101.351

The Texas Natural Resource Conservation Commission (commission) adopts an amendment to §101.351, Applicability. This amendment is adopted in Chapter 101; Subchapter H, Emissions Banking and Trading; Division 3, Mass Emissions Cap and Trade Program. The amended section will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP). Section 101.351 is adopted *without changes* to the proposed text as published in the April 6, 2001 issue of the *Texas Register* (26 TexReg 2626) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

On December 6, 2000, the commission adopted rules which established a program of emissions capping and trading as part of the Houston/Galveston (HGA) SIP for the control of ozone. These rules were published in the January 12, 2001 issue of the *Texas Register* (26 TexReg 283). In the rules preamble, under the SECTION BY SECTION DISCUSSION, the commission stated its intention to propose an amendment to §101.351 shortly after the adoption of the cap and trade program rules. The commission believed that the amendment would be necessary to specify that the requirement to operate under the cap and trade program applied to all nitrogen oxides (NO_x) emitting facilities in the HGA area with emission standards under Chapter 117, Control of Air Pollution from Nitrogen Compounds, and which are located at a site where their collective design capacity to emit NO_x is ten tons or more per year. Section 101.351 was adopted on December 6, 2000 with language which could be interpreted to limit the application of the cap and trade program to individual facilities which have a NO_x design capacity of ten tons or more per year.

This adoption would apply the requirements of Chapter 101, Subchapter H, Division 3, to NO_x-emitting facilities located at a single site in the HGA area with emission standards under Chapter 117, and which have a collective design capacity to emit ten tons of NO_x or more per year. The commission believes that the intended applicability of the cap and trade was made clear in the preamble that accompanied the December 6, 2000 rules, in the SIP adopted on the same date, and in numerous contacts with representatives of the intended affected sources in the HGA area.

SECTION BY SECTION DISCUSSION

If adopted, the amendment to §101.351 would state that the requirements of Chapter 101, Subchapter H, Division 3 apply to all NO_x emitting stationary facilities with emission specifications under §117.106, Emission Specifications for Attainment Demonstration; §117.206, Emission Specifications for Attainment Demonstration; and §117.475, Emission Specifications; and which are located at a site where they collectively have a design capacity to emit ten tons or more of NO_x per year. The amendment, if adopted, would require the owner or operator of facilities at a site to obtain and use allowances for actual total NO_x emissions from all affected facilities at the site once the collective design capacity of all the affected facilities has reached ten tons.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed this rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225. If adopted, this action would affect owners and operators of new and existing NO_x-emitting facilities subject to §§117.106, 117.206, and 117.475 requirements in the HGA nonattainment area which individually emit less than ten tons of NO_x per year, but which are located at a site with a total of at least ten tons of NO_x emissions per year from subject facilities. The commission determined the rulemaking action, if adopted, meets the definition of a "major environmental rule" as defined in Texas Government Code, §2001.0225. "Major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Existing facilities would be limited to NO_x emission levels under an emissions cap based on historical operating data and specific emission rates determined by Chapter 117. New facilities would be required to identify a source(s) of allowances equal to allowable emissions prior to commencing operation. All facilities subject to this division would be required to hold a quantity of allowances in their compliance account by January 31 following the end of a control period, which is equal to or greater than the total emissions from the preceding control period. The cost of allowances in similar programs about the nation ranges from approximately $500 to $5,000 per allowance (ton), depending on availability and demand. Actual costs in the HGA nonattainment area will be dependent upon market demand and availability. The commission is adopting this amendment as part of a strategy to reduce and permanently cap NO_x emissions to a level which would allow the HGA nonattainment area to attain the ozone NAAQS. In addition, Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: 1.) exceed a standard set by federal law, unless the rule is specifically required by state law; 2.) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3.) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4.) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking action is not subject to the regulatory analysis

provisions of §2001.0225(b), because the amendment does not meet any of the four applicability requirements. Specifically, the emission cap and trade requirements within this rulemaking action were developed in order to meet the ozone NAAQS set by the EPA under the Federal Clean Air Act (FCAA), §109 as codified in 42 United States Code (USC), §7409, and therefore meet a federal requirement. Provisions of 42 USC, §7410, require states to adopt a SIP which provides for "implementation, maintenance, and enforcement" of the primary NAAQS in each air quality control region of the state. While §7410 does not require specific programs, methods, or reductions in order to meet the standard, SIPs must include "enforceable emission limitations and other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter," (meaning 42 USC, Chapter 85, Air Pollution Prevention and Control). It is true that 42 USC does require some specific measures for SIP purposes, such as the inspection and maintenance program, but those programs are the exception, not the rule, in the SIP structure of 42 USC. The provisions of 42 USC recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public, to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though 42 USC allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of §7410. Thus, while specific measures are not generally required, the emission reductions are required. States are not free to ignore the requirements of §7410 and must develop programs to assure that the nonattainment areas of the state will be brought into attainment on schedule.

The requirement to provide a fiscal analysis of proposed regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Legislative Session, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis (RIA) of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted proposed rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law. As previously discussed, 42 USC does not require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each nonattainment area to ensure that area will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues, the commission routinely proposes and adopts SIP rules. The legislature is presumed to understand this federal scheme. If each rule proposed for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every SIP rule would require the full RIA contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Because the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full RIA for rules that are extraordinary in nature. While the SIP rules will have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the 42 USC. For these reasons, rules proposed for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a), because they are required by federal law. The commission performed photochemical grid modeling which predicts that NO_x emission reductions, such as those achieved by this amendment, will result in reductions in ozone formation in the HGA ozone nonattainment area. This rulemaking action does not exceed an express requirement of state law. This rulemaking action is intended to obtain NO_x emission reductions which will result in reductions in ozone formation in the HGA ozone nonattainment area and help bring HGA into compliance with the air quality standards established under federal law as NAAQS for ozone. The rulemaking action does not exceed a standard set by federal law, exceed an express requirement of state law, nor exceed a requirement of a delegation agreement. The rulemaking action was not developed solely under the general powers of the agency, but was specifically developed to meet the NAAQS established under federal law and authorized under Texas Clean Air Act (TCAA), §§382.011, 382.012, and 382.017 as well as under 42 USC, §7410(a)(2)(A).

The commission invited public comment on the draft regulatory impact analysis, but received no comment.

TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact assessment for the rulemaking action. The following is a summary of that assessment. The amendment is adopted as part of a strategy to reduce and permanently cap NO_x emissions to a level which would allow the HGA nonattainment area to attain the ozone NAAQS. Promulgation and enforcement of the rule will not burden private real property. The amendment does not affect private real property in a manner which restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Additionally, the credits and allowances that are the subject of this rule are not property rights. Consequently, this amendment does not meet the definition of a takings under Texas Government Code, §2007.002(5). Although the amendment does not directly prevent a nuisance or prevent an immediate threat to life or property, it helps prevent a real and substantial threat to public health and safety, and partially fulfills a federal mandate under the 42 USC, §7410. Specifically, the emission limitations within this amendment were developed in order to meet the ozone NAAQS set by the EPA under the 42 USC, §7409. States are primarily responsible for ensuring attainment and maintenance of the NAAQS once the EPA has established them. Under §7410 and related provisions, states must submit, for EPA approval, SIPs that provide for the attainment and maintenance of NAAQS through control programs directed to sources of the pollutants involved. Therefore, the purpose of this rulemaking action is to implement a NO_x strategy which is necessary for the HGA area to meet the air quality standards established under federal law as NAAQS. Consequently, the exemption which applies to this amendment is that of an action reasonably taken to fulfill an obligation mandated by federal

law, and therefore, this amendment will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action 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 rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 30 TAC §281.45(a)(3) and 31 TAC §505.11(b)(2), 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 reviewed this action for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council, and determined that the amendment is consistent with the applicable CMP goal expressed in 31 TAC §501.12(1) of protecting and preserving the quality and values of coastal natural resource areas, and the policy in 31 TAC §501.14(q), which requires that the commission protect air quality in coastal areas. If adopted, the amended section would require all NO_x sources in the HGA area with emission standards under Chapter 117 which are located at a site and have a collective design capacity to emit ten tons of NO_x or more per year to operate under the requirements of Chapter 101, Subchapter H, Division 3. This requirement is part of the ozone attainment strategy for the HGA area. No new contaminants will be authorized by this amendment, and a reduction of NO_x emissions should occur.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

The amended section will become part of the state's ozone attainment strategy; therefore, these amendments will be submitted as part of the SIP. As a result, the amended section and any allowances allocated under the section would become applicable requirements under the federal operating permit program.

HEARING AND COMMENTERS

The commission held a public hearing in Houston on April 26, 2001, and no comments were received. In addition, written comments were not received during the public comment period which closed on April 26, 2001.

RESPONSE TO COMMENT

There were no commenters to this proposed rule amendment, therefore, the commission made no changes to the rule language for adoption.

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code, TCAA, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also adopted under TCAA, §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to develop a plan for control of the state's air; and 42 USC, §7410(a)(2)(A), which requires SIPs to include enforceable emission limitations and other control measures or techniques, including economic incentives such as fees, marketable permits, and auction of emission rights.

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

Filed with the Office of the Secretary of State on May 24, 2001.

TRD-200102966
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Texas Natural Resource Conservation Commission
Effective date: June 13, 2001
Proposal publication date: April 6, 2001
For further information, please call: (512) 239-0348

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CHAPTER 106. PERMITS BY RULE
SUBCHAPTER W. TURBINES AND ENGINES

30 TAC §106.512

The Texas Natural Resource Conservation Commission (commission) adopts an amendment to §106.512, Stationary Engines and Turbines. The commission adopts this amendment to Chapter 106, Permits by Rule, Subchapter W, Turbines and Engines, to preclude registration under §106.512 of new or modified engines or turbines used to generate electricity upon issuance of a standard permit for electric generating units. However, the amendment exempts from this preclusion: 1) engines or turbines used to provide power for the operation of facilities registered under the Air Quality Standard Permit for Concrete Batch Plants; 2) engines or turbines satisfying the conditions for facilities permitted by rule under Chapter 106, Subchapter E, Aggregate and Pavement; and 3) engines or turbines used exclusively to provide power to electric pumps used for irrigating crops. Section 106.512 is adopted *with changes* to the proposed text as published in the January 5, 2001 issue of the *Texas Register* (26 TexReg 82).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

The Public Utility Commission (PUC) of Texas anticipates that small electric generating units (EGUs) may become an attractive option for electric customers as an alternative to central station generating units as a primary source of electricity due to electricity market restructuring and electricity reliability concerns. Small EGUs are usually situated nearer to the load that will use all or most of the electricity generated than are large central station generating units. Many EGUs are eligible for preconstruction authorization under §106.512. However, a number of "clean" EGU technologies exist which can meet and exceed the emission limits in §106.512. Thus, the commission believes it would be inappropriate to allow such technologies to operate under the emission standards in 106.512. Therefore, this rulemaking is being coordinated with development of a standard permit for EGUs that contains emission limits more stringent than the emission limits in §106.512. The standard permit is designed to provide a streamlined permitting method to encourage the use of "clean" EGU technologies and is being issued in accordance with Chapter 116, Subchapter F, Standard Permits. This rulemaking is necessary to preclude registration of nonemergency EGUs under §106.512, subject to a few exceptions, upon issuance of the standard permit. Emergency engines and turbines may continue

to be permitted by rule under §106.511, Portable and Emergency Engines and Turbines.

Upon the effective date of the adopted rule amendment and issuance of the standard permit for EGUs, nonemergency engines or turbines used to drive generators may obtain preconstruction authorization under the standard permit or under Chapter 116, Subchapter B, New Source Review Permits.

SECTION BY SECTION DISCUSSION

The adopted amendment to §106.512 precludes registrations under this section (previously Standard Exemption 6) for nonemergency engines or turbines used to generate electricity once a standard permit for EGUs is issued. The preclusion contains an exception for: 1) engines or turbines used to provide power for the operation of facilities registered under the Air Quality Standard Permit for Concrete Batch Plants; 2) engines or turbines satisfying the conditions for facilities permitted by rule under Chapter 106, Subchapter E; and 3) engines or turbines used exclusively to provide power to electric pumps used for irrigating crops. The commission added the third exception in response to a comment. The adopted revision is necessary to encourage the use of "clean" EGU technology. The commission changed the reference to "engine or turbine-driven generators" to "engines or turbines" for consistency within the section.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225. The commission determined that the amendment to §106.512 does not meet the definition of a "major environmental rule" as defined in Texas Government Code, §2001.0225. "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Although the specific intent of the amendment to §106.512 is to protect the environment or reduce risks to human health from environmental exposure, the adopted rule will not have an adverse material impact. The adverse impact is not material because owners or operators of EGUs will continue to have multiple methods for obtaining preconstruction authorization of the units. Therefore, this amendment does not constitute a "major environmental rule." In addition, Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking is not subject to the regulatory analysis provisions of §2001.0225(b), because the adopted rule does not meet any of the four applicability requirements. Specifically, the amendment eliminates the opportunity for registrations under this section of nonemergency engines or turbines used to generate electricity upon the issuance of a standard permit for EGUs, except for: 1) engines or turbines used to provide power for the operation of facilities registered under the Air Quality Standard Permit for Concrete Batch Plants; 2) engines or turbines satisfying the conditions for facilities permitted by rule under Chapter 106, Subchapter E; or 3) engines or turbines used exclusively to provide power to electric pumps used for irrigating crops. The commission does not believe that the emission limitations contained in §106.512 are sufficiently stringent to encourage the use of existing "clean," small EGUs. This rulemaking is being coordinated with the development of a standard permit for EGUs in accordance with Chapter 116, Subchapter F. The standard permit will contain emission limitations more stringent than the emission limitations in §106.512.

The rulemaking was not developed solely under the general powers of the agency, but was specifically developed under Texas Clean Air Act (TCAA), §§382.011, 382.017, 382.051, and 382.05196.

Comments on the draft regulatory impact analysis determination were solicited, but no comments were received.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the rulemaking and performed a final assessment of whether the adopted rule constitutes a taking under Texas Government Code, Chapter 2007. The following is a summary of that assessment. The specific purpose of the adopted rule is to encourage the use of "clean" EGUs. This is accomplished by eliminating the opportunity for registrations under §106.512 for nonemergency engines or turbines used to generate electricity upon the issuance of a standard permit for EGUs, except for: 1) engines or turbines used to provide power for the operation of facilities registered in the Air Quality Standard Permit for Concrete Batch Plants; 2) engines or turbines satisfying the conditions for facilities permitted by rule under Chapter 106, Subchapter E; and 3) engines or turbines used exclusively to provide power to electric pumps used for irrigating crops. This rulemaking is being coordinated with the development of a standard permit for EGUs in accordance with Chapter 116, Subchapter F. The standard permit will contain emission limitations more stringent than the emission limitations in §106.512. Promulgation and enforcement of the adopted rule will be neither a statutory nor a constitutional taking of private real property. Specifically, the subject regulations do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally), nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. This amendment is intended to provide notice that upon issuance of the standard permit for EGUs, registrations under this permit by rule for EGUs will no longer be accepted by the commission except in cases so identified. The amendment does not impact existing authorizations under this permit by rule. Consequently, the amendment does not meet the definition of a taking under Texas Government Code, §2007.002(5). Therefore, the adoption of this rule is an action reasonably taken to fulfill requirements of state law to control the quality of the state's air and will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed this rulemaking for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council, and determined that the rulemaking is consistent with the applicable CMP goals and policies.

HEARING AND COMMENTERS

The commission conducted a public hearing on the proposed amendment to §106.512 on January 23, 2001, at the TNRCC, 12100 Park 35 Circle, Building F, Room 2210, in Austin, Texas. Oral testimony was submitted by the Texas Department of Criminal Justice (TDCJ) and Good Company Associates (Good Co.). In addition, the commission received four written comments during the public comment period which closed February 5, 2001. The written comments were received from Good Co.; ASCO Power Technologies, L.P. (ASCO); the Texas Oil and Gas Association (TxOGA); and an individual.

Good Co., TxOGA, and an individual generally opposed the rulemaking. ASCO and TDCJ proposed changes to the rulemaking.

RESPONSE TO COMMENTS

TDCJ requested that TDCJ facilities be allowed to continue to register engines and turbines under §106.512 upon issuance of a standard permit for small EGUs. TDCJ cited public safety, institutional security, and the reliability of local electric utilities as the reasons for this request.

The commission did not change the rule in response to this comment. Engines and turbines used for emergency or standby services are not affected by this rulemaking and may continue to be permitted by rule under §106.511, Portable and Emergency Engines and Turbines. TDCJ may use §106.511 to authorize emergency engines and turbines that must be operated in the unlikely event that grid energy fails. Thus, public safety and institutional security should not be compromised by this rulemaking.

Good Co. commented that the proposed amendment may result in more, rather than fewer, emissions from engines and turbines used to drive generators. Good Co. stated that the proposed amendment will require most engines and turbines that drive generators to register under a standard permit for small electric generators upon issuance of the standard permit. Good Co. asserted that the proposed nitrogen oxides (NO_x) emission limits in the proposed standard permit are so stringent that rather than register units under the standard permit, individuals may rely on back-up emergency generators which are exempt from the proposed standard permit. Good Co. observed that most back-up emergency generators combust diesel fuel which results in more emissions than might otherwise be emitted by a cleaner engine or turbine permitted under the proposed standard permit if not for its proposed emission limitations. An individual commented that elimination of relatively clean forms of distributed generation (suggested the proposed standard permit will do because of the proposed NO_x emission limitations) will lead to the use of the dirtiest form of distributed generation, diesel emergency stand-by generation. The individual further stated that emergency generators are often operated on days most susceptible to ozone formation.

The commission did not change the rule in response to this comment. This rulemaking is being coordinated with development of a standard permit for EGUs. The standard permit should contain NO_x emission limits less stringent than those originally proposed. The revised emission limits should allow for more engines and turbines to be permitted under the standard permit. Of course, owners and operators may obtain a new source review permit under Chapter 116, Subchapter B, should a facility not qualify for the standard permit. Finally, owners and operators that choose to authorize facilities under §106.511, instead of the standard permit or Chapter 116, Subchapter B, must comply with all of the requirements in §106.511, including its limits on hours of operation.

Good Co. stated that the proposed amendment may exclude some very clean 15 megawatt (MW) turbines that otherwise satisfy the emission requirements of §106.512 from obtaining preconstruction authorization under §106.512.

The commission did not change the rule in response to this comment. However, the commission expects the previously mentioned standard permit to provide for authorization of 15 MW turbines that qualify. Thus, 15 MW turbines may be registered under the standard permit or permitted under Chapter 116, Subchapter B. Still, the purpose of this rulemaking is to preclude §106.512 preconstruction authorization of engines and turbines used to generate electricity, regardless of generation capacity or emission characteristics.

Good Co. stated that issuance of the proposed Air Quality Standard Permit for Small EGUs would be premature at this time. Good Co. recommended that, prior to development of the proposed standard permit, the commission enter into a study of distributed generation technology, its potential applications, and available emissions reduction technologies for distributed generation units. Good Co. explained that distributed generation contributes an unknown and insignificant amount of emissions to the Texas environment and that it is unclear whether distributed generation will contribute significant emissions to the environment in the foreseeable future.

The commission did not change the rule in response to this comment. The comment appears to apply more to the standard permit and, therefore, is beyond the scope of this rulemaking. The commission intends to conduct a study to determine the environmental impact of distributed generation on the State of Texas. Based upon the outcome of such a study, the commission may revise any standard permit for EGUs that it may have issued. However, this amendment to §106.512 is necessary at this time to encourage the use of "clean" EGUs in a market in which distributed generation is advocated as an option for saving money and maintaining reliable service (see PUC of Texas News Release, "Electric Customers Gain from On- Site Power: Texas Takes Lead in Developing Distributed Generation," January 29, 2001, Austin, Texas, *www.puc.state.tx.us*). Many EGU technologies exist which can meet emission limitations more stringent than the emission limitations in §106.512.

ASCO commented that emergency engines and turbines can be used to provide supplemental electric power to prevent blackouts during a power shortage and temporarily deployed for this purpose until generating capacity and transmission and distribution infrastructure are upgraded to meet power demand. Toward this end, ASCO commented that existing permitting rules could be updated to allow operation of emergency engines or turbines for no more than six hours following declaration of a power shortage emergency with total annual operation of such an engine or turbine not to exceed 500 hours. ASCO defined a power shortage emergency as that which occurs when system-wide or region- wide available power reserves are reduced to 2.0% or less. ASCO stated that technology exists which can be used to reduce emissions from emergency engines or turbines by 40% and that application of this technology in conjunction with ASCO's suggested limited operation schedule will limit the impact on air quality.

The commission did not change the rule in response to this comment. ASCO's comment is relevant to emissions and equipment authorized by §106.511, Portable and Emergency Engines and Turbines. Section 106.511 permits by rule and limits the hours

of operation of emergency engines and turbines. ASCO suggested possible changes to the hours of operation of emergency engines and turbines. The commission did not propose amendments to §106.511; therefore, under Texas administrative law, the section cannot be amended with this adoption.

An individual commented that the proposed emission limitations in the proposed Air Quality Standard Permit for Small EGUs will have the effect of establishing and maintaining a monopoly for existing generation companies. She stated that many of these companies have paid for costly emission- reduction technology in a regulated electricity market. She added that fuel cell technology (which is probably capable of complying with the proposed standard permit NO_x emission limitations) cannot approach the needed power output to make an impact on the market. The individual continued that fuel cell technology is 500 - 1000% more expensive than existing forms of reciprocating engine generation (which some commenters assert cannot meet the proposed standard permit NO_x emission limitations).

The commission did not change the rule in response to this comment. The comment appears to apply more to the standard permit and, therefore, is beyond the scope of this rulemaking. However, this rulemaking does not preclude preconstruction authorization of any class of generating unit. EGUs may be registered under the standard permit or permitted under Chapter 116, Subchapter B. Also, the commission expects to issue a standard permit with NO_x emission limits that will allow for a variety of generating units, including fuel cells, to be authorized under it.

An individual commented that some existing distributed generation units in the State of Texas do not meet the proposed emission limits in the proposed Air Quality Standard Permit for Small EGUs. The individual wrote that micro-generators which serve the agricultural market in West Texas are one example. The individual explained that electrical utilities do not want to provide power to meet the seasonal agricultural peak load that micro-generators serve. The individual also stated that the cost to run electrical lines to water wells that require submersible pumps for cotton and peanut irrigation is cost-prohibitive for farmers. The individual claimed that farmers who incur these costs may not be able to operate in a profitable manner and may default on their loans. The individual asked whether the impact on the West Texas economy due to farmers' inability to repay their loans and its impact on the banks (and their shareholders) that serve these farmers had been studied.

The commission changed the rule in response to this comment to allow engines or turbines used exclusively to provide power to electric pumps used for irrigating crops to continue to be permitted by rule under §106.512. Also, the commission would like to clarify that units authorized under §106.512 before the effective date of this rulemaking are not affected by this rule change since the rule change only affects new or modified units.

An individual commented that the proposed amendment will force individuals to choose between paying housing costs and groceries and paying their electric bill. The individual pointed to the recent California energy crisis for support of this position and stated that the average citizen will not tolerate such a situation.

The commission did not change the rule in response to this comment. Before this rulemaking, EGUs could be authorized under §106.512 or under Chapter 116, Subchapter B. After this rulemaking, EGUs may be authorized under the standard permit or under Chapter 116, Subchapter B. The number of authorization mechanisms for these units remains the same. The most substantive difference between §106.512 and the standard permit is the emission limits for NO_x. The emission limits in the standard permit are more stringent than the emission limits in §106.512 because the emission limits in §106.512 do not represent best available control technology for small EGUs. However, the emission limits in the standard permit should allow for a number of EGU technologies to be authorized under the standard permit.

In addition, the commission notes that 27 power plants have been constructed in Texas since 1995; 27 are currently under construction, and 31 are in the planning stages (see PUC of Texas News Release, "Texas Power Plant Additions Continue: Customer Choice Pilot Program Enrollment Under Way," March 14, 2001, Austin, Texas, *www.puc.state.tx.us*). The PUC predicts that the State of Texas will have a 23% excess power margin for the 2001 summer peak demand period and indicates that the annual Electric Reliability Council of Texas Wholesale Market Report shows 5,385 MW of generating capacity were added in 2000 and another 9,188 MW will be added this year. The PUC indicates that the total additional capacity can power more than 3.25 million Texas homes on the hottest summer day. For these reasons, the commission does not anticipate that this rulemaking will lead to a situation in Texas similar to that in California.

TxOGA stated its objection to adoption of the proposed amendment and recommended the proposed rule be withdrawn until such time that the commission is prepared to concurrently propose issuance of a standard permit for small EGUs. TxOGA explained that such action would allow stakeholders an opportunity to make a reasoned evaluation of the impact of the proposal based on the proposed conditions of the standard permit. TxOGA reasoned that commission action on this proposal is unnecessary until such time that it proposes a standard permit since the current proposal will have no force and effect until a standard permit is issued.

On November 17, 2000, the commission published notice in the *Texas Register* and 11 newspapers across the State of Texas of the opportunity for public comment and a public meeting to receive comments concerning a draft standard permit for small EGUs. Notice was also posted on the agency's web site. The standard permit is proposed in accordance with 30 TAC Chapter 116, Subchapter F. The commission expects to take final action on the proposed standard permit concurrently with the adoption of this amendment to §106.512.

TxOGA recommended the proposed rule change be made applicable only to those engines that power small EGUs used to export electricity to the electrical grid. TxOGA commented that the language of the proposed rule amendment makes it applicable to engines for all small EGUs, including those that are not and will never be used for distributed generation. TxOGA elaborated that the proposed rule change unnecessarily penalizes operators of other small EGUs by subjecting them to the added cost and delays associated with obtaining a standard permit or Subchapter B new source review permit, but not incurred with construction under §106.512.

The commission did not change the rule in response to this comment. The commission is most concerned about the emissions from EGUs as opposed to the final use of the electricity generated. Thus, the commission does not distinguish between units that export electricity to the grid and those that do not. However, the commission would like to clarify that units currently authorized under §106.512 are not affected by this rulemaking. Only

new units or modified units that no longer satisfy the requirements of §106.512 are affected by this rulemaking.

STATUTORY AUTHORITY

The amendment is adopted under Texas Health and Safety Code, TCAA, §382.011, which authorizes the commission to control the quality of the state's air; §382.017, which provides the commission the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.051, which authorizes the commission to issue permits; and §382.05196, which authorizes the commission to adopt permits by rule for certain types of facilities.

§106.512. Stationary Engines and Turbines.

Gas or liquid fuel-fired stationary internal combustion reciprocating engines or gas turbines that operate in compliance with the following conditions of this section are permitted by rule.

(1) The facility shall be registered by submitting the commission's Form PI-7, Table 29 for each proposed reciprocating engine, and Table 31 for each proposed gas turbine to the commission's Office of Permitting, Remediation, and Registration in Austin within ten days after construction begins. Engines and turbines rated less than 240 horsepower (hp) need not be registered, but must meet paragraphs (5) and (6) of this section, relating to fuel and protection of air quality. Engine hp rating shall be based on the engine manufacturer's maximum continuous load rating at the lesser of the engine or driven equipment's maximum published continuous speed. A rich-burn engine is a gas-fired spark- ignited engine that is operated with an exhaust oxygen content less than 4.0% by volume. A lean-burn engine is a gas-fired spark-ignited engine that is operated with an exhaust oxygen content of 4.0% by volume, or greater.

(2) For any engine rated 500 hp or greater, subparagraphs (A) - (C) of this paragraph shall apply.

(A) The emissions of nitrogen oxides (NO_x) shall not exceed the following limits:

(i) 2.0 grams per horsepower-hour (g/hp-hr) under all operating conditions for any gas-fired rich-burn engine;

(ii) 2.0 g/hp-hr at manufacturer's rated full load and speed, and other operating conditions, except 5.0 g/hp-hr under reduced speed, 80-100% of full torque conditions, for any spark-ignited, gas-fired lean- burn engine, or any compression-ignited dual fuel-fired engine manufactured new after June 18, 1992;

(iii) 5.0 g/hp-hr under all operating conditions for any spark-ignited, gas-fired, lean-burn two-cycle or four-cycle engine or any compression-ignited dual fuel-fired engine rated 825 hp or greater and manufactured after September 23, 1982, but prior to June 18, 1992;

(iv) 5.0 g/hp-hr at manufacturer's rated full load and speed and other operating conditions, except 8.0 g/hp-hr under reduced speed, 80-100% of full torque conditions for any spark-ignited, gas-fired, lean- burn four-cycle engine, or any compression-ignited dual fuel-fired engine that:

(I) was manufactured prior to June 18, 1992, and is rated less than 825 hp; or

(II) was manufactured prior to September 23, 1982;

(v) 8.0 g/hp-hr under all operating conditions for any spark-ignited, gas-fired, two-cycle lean-burn engine that:

(I) was manufactured prior to June 18, 1992, and is rated less than 825 hp; or

(II) was manufactured prior to September 23, 1982;

(vi) 11.0 g/hp-hr for any compression-ignited liquid-fired engine.

(B) For such engines which are spark-ignited gas-fired or compression-ignited dual fuel-fired, the engine shall be equipped as necessary with an automatic air-fuel ratio (AFR) controller which maintains AFR in the range required to meet the emission limits of subparagraph (A) of this paragraph. An AFR controller shall be deemed necessary for any engine controlled with a non-selective catalytic reduction (NSCR) converter and for applications where the fuel heating value varies more than ± 50 British thermal unit/standard cubic feet from the design lower heating value of the fuel. If an NSCR converter is used to reduce NO_x, the automatic controller shall operate on exhaust oxygen control.

(C) Records shall be created and maintained by the owner or operator for a period of at least two years, made available, upon request, to the commission and any local air pollution control agency having jurisdiction, and shall include the following:

(i) documentation for each AFR controller, manufacturer's, or supplier's recommended maintenance that has been performed, including replacement of the oxygen sensor as necessary for oxygen sensor- based controllers. The oxygen sensor shall be replaced at least quarterly in the absence of a specific written recommendation;

(ii) documentation on proper operation of the engine by recorded measurements of NO_x and carbon monoxide (CO) emissions as soon as practicable, but no later than seven days following each occurrence of engine maintenance which may reasonably be expected to increase emissions, changes of fuel quality in engines without oxygen sensor-based AFR controllers which may reasonably be expected to increase emissions, oxygen sensor replacement, or catalyst cleaning or catalyst replacement. Stain tube indicators specifically designed to measure NO_x and CO concentrations shall be acceptable for this documentation, provided a hot air probe or equivalent device is used to prevent error due to high stack temperature, and three sets of concentration measurements are made and averaged. Portable NO_x and CO analyzers shall also be acceptable for this documentation;

(iii) documentation within 60 days following initial engine start-up and biennially thereafter, for emissions of NO_x and CO, measured in accordance with United States Environmental Protection Agency (EPA) Reference Method 7E or 20 for NO_x and Method 10 for CO. Exhaust flow rate may be determined from measured fuel flow rate and EPA Method 19. California Air Resources Board Method A-100 (adopted June 29, 1983) is an acceptable alternate to EPA test methods. Modifications to these methods will be subject to the prior approval of the Source and Mobile Monitoring Division of the commission. Emissions shall be measured and recorded in the as-found operating condition; however, compliance determinations shall not be established during start- up, shutdown, or under breakdown conditions. An owner or operator may submit to the appropriate regional office a report of a valid emissions test performed in Texas, on the same engine, conducted no more than 12 months prior to the most recent start of construction date, in lieu of performing an emissions test within 60 days following engine start-up at the new site. Any such engine shall be sampled no less frequently than biennially (or every 15,000 hours of elapsed run time, as recorded by an elapsed run time meter) and upon request of the executive director. Following the initial compliance test, in lieu of performing stack sampling on a biennial calendar basis, an owner or operator may elect to install and operate an elapsed operating time meter

and shall test the engine within 15,000 hours of engine operation after the previous emission test. The owner or operator who elects to test on an operating hour schedule shall submit in writing, to the appropriate regional office, biennially after initial sampling, documentation of the actual recorded hours of engine operation since the previous emission test, and an estimate of the date of the next required sampling.

(3) For any gas turbine rated 500 hp or more, subparagraphs (A) and (B) of this paragraph shall apply.

(A) The emissions of NO_x shall not exceed 3.0 g/hp-hr for gas-firing.

(B) The turbine shall meet all applicable NO_x and sulfur dioxide (SO_2) (or fuel sulfur) emissions limitations, monitoring requirements, and reporting requirements of EPA New Source Performance Standards Subpart GG--Standards of Performance for Stationary Gas Turbines. Turbine hp rating shall be based on turbine base load, fuel lower heating value, and International Standards Organization Standard Day Conditions of 59 degrees Fahrenheit, 1.0 atmosphere and 60% relative humidity.

(4) Any engine or turbine rated less than 500 hp or used for temporary replacement purposes shall be exempt from the emission limitations of paragraphs (2) and (3) of this section. Temporary replacement engines or turbines shall be limited to a maximum of 90 days of operation after which they shall be removed or rendered physically inoperable.

(5) Gas fuel shall be limited to: sweet natural gas or liquid petroleum gas, fuel gas containing no more than ten grains total sulfur per 100 dry standard cubic feet, or field gas. If field gas contains more than 1.5 grains hydrogen sulfide or 30 grains total sulfur compounds per 100 standard cubic feet (sour gas), the engine owner or operator shall maintain records, including at least quarterly measurements of fuel hydrogen sulfide and total sulfur content, which demonstrate that the annual SO_2 emissions from the facility do not exceed 25 tons per year (tpy). Liquid fuel shall be petroleum distillate oil that is not a blend containing waste oils or solvents and contains less than 0.3% by weight sulfur.

(6) There will be no violations of any National Ambient Air Quality Standard (NAAQS) in the area of the proposed facility. Compliance with this condition shall be demonstrated by one of the following three methods:

(A) ambient sampling or dispersion modeling accomplished pursuant to guidance obtained from the executive director. Unless otherwise documented by actual test data, the following nitrogen dioxide (NO_2)/NO_x ratios shall be used for modeling NO_2 NAAQS; Figure: 30 TAC §106.512(6)(A) (No change.)

(B) all existing and proposed engine and turbine exhausts are released to the atmosphere at a height at least twice the height of any surrounding obstructions to wind flow. Buildings, open-sided roofs, tanks, separators, heaters, covers, and any other type of structure are considered as obstructions to wind flow if the distance from the nearest point on the obstruction to the nearest exhaust stack is less than five times the lesser of the height, Hb, and the width, Wb, where: Figure: 30 TAC §106.512(6)(B) (No change.)

(C) the total emissions of NO_x (nitrogen oxide plus NO_2) from all existing and proposed facilities on the property do not exceed the most restrictive of the following:

(i) 250 tpy;

(ii) the value (0.3125 D) tpy, where D equals the shortest distance in feet from any existing or proposed stack to the nearest property line.

(7) Upon issuance of a standard permit for electric generating units, registrations under this section for engines or turbines used to generate electricity will no longer be accepted, except for:

(A) engines or turbines used to provide power for the operation of facilities registered under the Air Quality Standard Permit for Concrete Batch Plants;

(B) engines or turbines satisfying the conditions for facilities permitted by rule under Subchapter E of this title (relating to Aggregate and Pavement); or

(C) engines or turbines used exclusively to provide power to electric pumps used for irrigating crops.

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

Filed with the Office of the Secretary of State on May 24, 2001.

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CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES
SUBCHAPTER I. NON-ROAD ENGINES
DIVISION 1. AIRPORT GROUND SUPPORT EQUIPMENT

30 TAC §§114.400, 114.402, 114.406, 114.409

The Texas Natural Resource Conservation Commission (commission) adopts the repeal of §114.400, Definitions; §114.402, Control Requirements; §114.406, Reporting and Recordkeeping Requirements; and §114.409, Affected Counties and Compliance Schedules; and corresponding revisions to the state implementation plan (SIP). The repeals are adopted *without changes* as published in the April 6, 2001 issue of the *Texas Register* (26 TexReg 2630).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE REPEALED RULES

The rules were originally adopted on April 19, 2000 as part of the SIP control strategy for the Dallas/Fort Worth (DFW) ozone nonattainment area to achieve attainment with the national ambient air quality standard (NAAQS) for ozone. When the rules were implemented, they would have resulted in nitrogen oxides (NO_x) emissions reductions through the conversion of airport ground support equipment (GSE) to lower emission equipment. Similar GSE rules were proposed on August 9, 2000 for the Houston/Galveston ozone nonattainment area, but were never adopted because the emission reduction commitments were achieved through federally enforceable agreements among the commission, the major airlines, and the City of Houston.

The commission developed agreements with the City of Dallas (Dallas); the City of Fort Worth (Fort Worth); the DFW International Airport Board (the Board); American Airlines and American Eagle Airlines, Inc. (American); Delta Air Lines, Inc. (Delta); and Southwest Airlines, Co. (Southwest) making federally enforceable certain reductions of local ozone precursor emissions of NO_x from sources at Alliance Airport, DFW International Airport, Love Field, and Meacham Airport. These agreements will replace the existing rules and result in a similar level of emission reductions. Therefore, the NO_x reductions previously claimed in the DFW Attainment Demonstration SIP will, as a result of this rulemaking, be achieved through an alternate, but equivalent federally enforceable mechanism.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The staff reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a "major environmental rule" as defined in that statute. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The repealed rules were intended to protect the environment and reduce risks to human health from environmental exposure to ozone and would have affected, in a material way, a sector of the economy, competition, and the environment.

This rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the repealed rules are being replaced by federally enforceable agreements which will result in NO_x emission reductions similar to the NO_x reductions that would have been achieved by the rules. These agreements will protect the environment and reduce risks to human health from environmental exposure to ozone. Therefore, there will be no adverse effect as a result of these repeals.

TAKINGS IMPACT ASSESSMENT

Staff prepared a takings impact assessment for the repealed rules under Texas Government Code, 2007.043. The following is a summary of that assessment. The specific purpose of this rulemaking is to repeal §§114.200, 114.202, 114.206, and 114.209 which will be replaced by federally enforceable agreements which will obtain the similar NO_x reductions necessary for the DFW ozone nonattainment area to meet the NAAQS established under federal law. The repeal of these rules will not burden private real property, which is the subject of the rules, because these rules will be replaced by the agreements and therefore not used by the commission.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

When DFW airport GSE rules were originally adopted, the commission determined that the rulemaking related 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 rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. 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 reviewed the previous adoption action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action was consistent with the applicable CMP goals and policies. The CMP goal applicable to the rulemaking action was the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1)). No new sources of air contaminants were authorized and NO_x air emissions were anticipated to be reduced as a result of these rules. The CMP policy applicable to the rulemaking action was the policy that commission rules comply with regulations in 40 Code of Federal Regulations (CFR), to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). The rulemaking action complied with 40 CFR 50, National Primary and Secondary Ambient Air Quality Standards, and 40 CFR 51, Requirements for Preparation, Adoption, and Submittal Of Implementation Plans. Therefore, in compliance with 31 TAC §505.22(e), the rulemaking action was consistent with CMP goals and policies.

The repeal of these rules will not invalidate the determination that the previous rulemaking action was consistent with CMP goals and policies, because the repealed rules are being replaced by federally enforceable agreements which will result in NO_x emission reductions similar to the NO_x reductions that would have been achieved by the rules. Therefore, this rulemaking action is also consistent with CMP goals and policies.

HEARINGS AND COMMENTERS

The commission held a public hearing in Arlington on January 4, 2001 to receive public comment on the agreements with Fort Worth, American, and the Board. The first comment period closed on January 4, 2001.

The commission held a second public hearing in Arlington on April 27, 2001 to receive public comment on the agreements with Dallas, Southwest, and Delta, and on the proposed repeal of the rules. The second comment period closed on April 27, 2001. No comments were received during the second comment period.

Fort Worth and the North Central Texas Council of Governments (NCTCOG) provided oral comments at the January 4, 2001 hearing. The United States Environmental Protection Agency (EPA) submitted written comments by the January 4, 2001 deadline.

Fort Worth and the NCTCOG generally supported the agreements and the EPA requested clarification of some points of the agreements.

RESPONSE TO COMMENTS

Fort Worth supported the agreement between the commission and the city relating to reductions at Meacham and Alliance airports. NCTCOG also expressed support at the flexible approach that all of the agreements provide in reaching the emission reduction goals.

The commission appreciates the support.

The EPA requested clarification of one of the points of the agreements. The agreements state that airlines may comply with their commitments through the use of NO_x emission control measures which have been achieved within the nonattainment area. The EPA stated that all signatories must be aware that these control measures cannot be duplicative and must be in addition to strategies already credited in the SIP.

The agreements between the commission and American (Section VII - Alternate Means of Compliance) and between the commission and Fort Worth (Section V - Obligation of Parties) already contain language which clarifies that strategies proposed by the signatories cannot be duplicative of strategies relied upon in the SIP. However, the commission agrees that the agreement with the Board does not contain the same clarifying language. The commission felt that the language was unnecessary in this agreement because: 1) the Board has already implemented the majority of the strategies necessary to obtain its required reductions; 2) the language of the agreement requires that such strategies be creditable under the banking program which in turn requires that they not be duplicative; and 3) the commission believed that this aspect of the agreement was already understood by all parties. However, the commission sent a letter to the Board requesting a written statement that the Board understands and concurs with this concept. The Board replied by letter, dated April 27, 2001, to the commission.

The EPA commented that the state should also clarify what happens upon termination of the agreements regarding emission reductions required by the state GSE rules.

Termination of the agreements will not occur before 2007, which is the attainment year for the DFW area. At that point the commission will be drafting the maintenance plan for the DFW area. The commission will consider at that time whether it is necessary to negotiate renewal of these agreements or to find reductions through alternative measures.

The EPA also made reference to the portion of the American agreements which states that if the commission does not reach similar agreements with carriers owning or operating the majority of GSE at Love Field, American can terminate its agreement. The EPA requested to be kept informed of the status of the other Love Field agreements.

The agreements regarding emission reductions at Love Field have been signed and approved by all parties.

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under TWC, and §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and the duties under the provisions of TWC and other laws of this state. These repeals are also adopted under Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of TCAA.

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

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

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CHAPTER 285. ON-SITE SEWAGE FACILITIES

The Texas Natural Resource Conservation Commission (commission) adopts new Subchapter A, General Provisions, §§285.1, 285.3, 285.6, and 285.7; Subchapter B, Local Administration of the OSSF Program, §§285.10 - 285.12; Subchapter C, Commission Administration of the OSSF Program in Areas Where No Authorized Agent Exists, §285.20 and §285.21; Subchapter D, Planning, Construction, and Installation Standards for OSSFs, §§283.30, 285.31, and 285.39; Subchapter E, Special Requirements for OSSFs Located in the Edwards Aquifer Recharge Zone, §285.41 and §285.42; Subchapter F, Licensing and Registration Requirements for Installers, Apprentices, and Designated Representatives, §§285.50 - 285.65; Subchapter G, Duties of Owners and Authorized Agents, §285.70 and §285.71; and Subchapter H, Treatment and Disposal of Greywater §285.81. The commission also adopts amendments to Subchapter A, General Provisions, §§285.2, 285.4, and 285.5; Subchapter D, Planning, Construction, and Installation Standards for OSSFs, §§285.32 - 285.36; Subchapter E, Special Requirements for OSSFs Located in the Edwards Aquifer Recharge Zone, §285.40; Subchapter H, Treatment and Disposal of Greywater, §285.80; and Subchapter I, Appendices, §285.90 and §285.91. The commission also adopts the repeal of Subchapter A, General Provisions, §§285.1, 285.3, and 285.6 - 285.8; Subchapter B, Local Administration of the OSSF Program, §285. 10 and §285.11; Subchapter C, Commission Administration of the OSSF Program in Areas Where No Authorized Agent Exists, §285.20 and §285.21; Subchapter D, Planning, Construction, and Installation Standards for OSSFs, §§285.30, 285.31, and 285.39; Subchapter F, Registration, Certification and/or Training Requirements for Installers, Apprentices, Site Evaluators, or Designated Representatives, §§285.50 - 285.63; and Subchapter G, OSSF Enforcement, §285.70. The commission withdraws §285.13. Sections 285.1 - 285.5, 285.7, 285.10 - 285.12, 285.20, 285.21, 285.30 - 285.36, 285.39, 285.40, 285.42, 285.50, 285.51, 285.55 - 285.59, 285.61, 285.62, 285.64, 285.70, 285.71, 285.81, 285.90, and 285.91 are adopted *with changes* to the proposed text as published in the December 8, 2000 issue of the *Texas Register* (25 TexReg 12041). Sections 285.6, 285.41, 285.52 - 285.54, 285.60, 285.63, 285.65, and 285.80 and the repeals are adopted *without changes* to the proposed text and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The adopted rules revisions are to clarify and update the commission's regulations regarding on- site sewage facilities (OSSF) under Texas Health and Safety Code (THSC), Chapter 366. The purpose of the statute is to regulate health and environmental hazards associated with the installation and maintenance of OSSF systems. The failure of an OSSF is the fundamental cause of OSSF-related public health hazards and provides a medium for the transmission of disease. The failure of an OSSF may be caused by a large number of circumstances, including inadequate soil texture, improper construction, improper planning, improper installation, and inadequate maintenance. Approximately 25% of all homes in Texas are on OSSF systems. In fiscal year 2000 alone, there were 51,443 permitted OSSFs in the State of Texas.

The adopted rules establish minimum standards for the planning and construction of an OSSF, define the systems that are acceptable for use in the State of Texas, and specify requirements for the proper maintenance and operation of these systems. The program can be delegated to local governmental authorities to act as the commission's authorized agents (AAs) to implement these rules, or their equivalent. The significant revisions in these rules include changes to the requirements for maintenance companies, changes to requirements for planning materials and construction, the addition of deadlines for processing applications, the addition of an appeals process, and changes to the certification process.

The adopted rules incorporate comments and instructions from the commission as well as from commenters who responded to the request for comments published in the December 8, 2000 issue of the *Texas Register* (25 TexReg 12041). These rules also implement legislation and an Attorney General's opinion. Comments submitted to the executive director (ED) during the rules review, and a petition for rulemaking filed February 2, 2000 by the Texas Manufactured Housing Association were also considered. These adopted rules also incorporate provisions of House Bill 1654 and Senate Bill 1307 of the 76th Legislature, 1999, which adopted Texas Water Code (TWC), §7.173 and §7.351. Both bills were passed to clarify the role that AAs play in the enforcement of THSC, Chapter 366.

In the commission's order of March 28, 2000, the commission denied the Texas Manufactured Housing Association's petition; however, the commission instructed staff to investigate the need for some form of appeals process to be included in Subchapter B. The appeal process is adopted in new §285.10(b)(9).

The commission used an external review group in the preparation of these adopted revisions. The review group consisted of installers, regulators, designers, engineers, sanitarians, and commission staff from all areas of the state. Two meetings were held with the review group members to discuss issues associated with the rules and to obtain industry perspective on the effectiveness of the rules and changes needed. Comments from the review group members were solicited and considered in preparing the rules as adopted. Within the external review group, input was solicited from the Texas Onsite Wastewater Association, the Texas Society of Professional Engineers, the American Society of Civil Engineers, the Texas Board of Professional Engineers, the Texas Association of Builders, and the Texas Environmental Health Association. The comments given in these meetings were considered in the development of these rules.

An opinion by the Attorney General, Opinion No. JC-0020, in March 1999, found that the commission does not have statutory authority to regulate site evaluators and that the rules requiring certification of site evaluators are invalid. Therefore, the requirement that a site evaluation be performed by an individual possessing a site evaluator license and all language dealing with the site evaluator license is deleted from these rules. However, site evaluations are still required as part of the OSSF permitting process.

The revisions adopted in these rules include new provisions for: 1) manufacturers to properly train individuals with maintenance companies and to ensure that an adequate number of maintenance companies are available to provide service in Texas counties; 2) maintenance companies to notify owners of maintenance visits; 3) the review of OSSF systems listed as acceptable products in the state; 4) the use of site evaluations in the OSSF permitting process; 5) an appeals process for permit applicants, applicants for licenses and registrations, and local governments seeking delegation of the OSSF program; 6) decreasing the experience requirements to qualify for an Installer I or an Installer II license; and 7) changing the term of licenses and the renewal dates of licenses.

SPECIAL REQUEST FOR COMMENTS:

In an effort to explore the appropriate division of costs between the permit fee and the charge- back fee, the commission specifically solicited comments on the appropriate charge-back fee that should be assessed against local governmental entities that are not authorized to implement the program, and the permit fee which should be assessed against the applicants in those areas. The commission received comments on both the charge-back fee and the permit fee. The commission has withdrawn the charge-back fee provision from the proposed rules published in the December 8, 2000 issue of the *Texas Register* (25 TexReg 12041). The commission received numerous comments regarding the charge-back fee, some of the commenters supported the charge-back fee as proposed, while other commenters suggested various modification to the charge-back fee. As a result of the varied comments received, the commission has opted to withdraw the charge-back fee, so that the executive director may continue to study the issue. The permit fee is in adopted §285.21. Discussions of the charge-back and permit fees, as well as a response to the related comments, may be found in the SECTION BY SECTION / RESPONSE TO COMMENTS portion of this preamble.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government 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. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. These rules are adopted to protect the environment but are not expected to adversely affect the economy of the state in a material way.

These adopted rules are anticipated to have a minimal effect on the economy, competition, and jobs, although they enhance the protection of the environment and the public health and safety of citizens of the state. The adopted rules provide minimum standards to ensure that OSSFs meet the requirements of the law and adequately protect the consumer and the environment from potential exposure to raw sewage resulting from improper installation, operation, and maintenance of sewage facilities which could result in the discharge of sewage into the environment. A majority of the changes in this rule package focus on improving readability and clarifying language in an effort to enhance the enforceability of the rules. Specifically, the adopted rules clarify the responsibility of the maintenance companies and the local authorization process; require the permitting of cluster systems under 30 TAC Chapter 205 or Chapter 305 (relating to General Permits for Water Discharges or Consolidated Permits, respectively); and modify the licensing requirements for installers. These adopted rules also clarify and modify the requirements for planning materials and constructing OSSFs.

These adopted revisions are not a major rule and do not meet any of the four applicability requirements that apply to a major environmental rule. Under Texas Government Code, §2001.0225, these rules do not exceed a standard set by federal law or a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. The United States Environmental Protection Agency (EPA) does not have a federal program for OSSFs and does not establish any requirements for states implementing their own OSSF program. The adopted rules do not exceed a standard set by federal law nor exceed the requirement of a delegation agreement because there is no federal authorization for on-site sewage disposal systems.

These revisions do not adopt a rule solely under the general powers of the commission and do not exceed an express requirement of state law. The requirements that will be implemented through these rules are expressly defined under THSC, Chapter 366, which requires the commission to enact rules governing the installation of OSSFs.

The commission solicited comments but received no comments specific to this section.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these rules pursuant to Texas Government Code, §2007.43. The following is a summary of that assessment. The purpose of these rules is to clarify and define minimum standards to ensure that OSSFs meet the requirements of the law and adequately protect the consumer and the environment from potential exposure to raw sewage resulting from improper installation, operation, and maintenance of sewage facilities which could result in the discharge of sewage into the environment. These revisions do not provide the commission with any additional authority or jurisdictional responsibility related to OSSFs.

The specific purpose of the adopted rules is to regulate health hazards associated with the installation, permitting, maintenance, and enforcement of standards for on-site sewage disposal systems under THSC, Chapter 366. The statute addresses problems associated with the improper installation, operation, and maintenance of sewage facilities which could result in the discharge of sewage into the environment. The adopted rules establish minimum standards for the design and construction of OSSFs, establish what systems are acceptable for use in the State of Texas, and specify requirements for the proper operation and maintenance of these systems. The focus of the program is on delegating authority to local governmental authorities to implement these rules or their equivalent.

The adopted rules will substantially advance this specific purpose by implementing the specific requirements of THSC, Chapter 366 which requires the commission to adopt rules to protect the environment and the health and safety of Texas citizens from impacts from improperly placed and constructed OSSFs; reduce nuisance problems associated with malfunctioning OSSFs; protect the property of consumers, their neighbors, and the environment from damage caused by improperly managed sewage; and protect the health and safety of the public by limiting exposure to raw sewage.

These rules are adopted in an effort to reasonably fulfill an obligation mandated by state law to implement the OSSF program and will substantially advance the implementation of the requirements under the THSC, Chapter 366. Promulgation and enforcement of these adopted rules will not affect private real property. Therefore, the commission has determined that these amendments will not result in a takings.

The commission solicited comments and received one comment from an individual specific to this section. It is discussed in the SECTION BY SECTION / RESPONSE TO COMMENTS portion of this preamble.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the adoption is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 TAC Chapter 505, §505.11(b)(2), relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP). The Coastal Coordination Act requires that applicable goals and policies of the CMP be considered during the rulemaking process. The commission prepared a consistency determination for the adopted rules pursuant to 31 TAC Chapter 505, §505.22 and found that the rulemaking is consistent with the applicable CMP goals and policies.

The goals of the CMP are: to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas; to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone; to ensure and enhance planned public access to and enjoyment of the coastal zone in a manner that is compatible with private property rights and other uses of the coastal zone; and to balance these competing interests.

The specific CMP goals applicable to these adopted rules require that rules governing OSSFs shall require those systems to be located, designed, operated, inspected, and maintained so as to prevent release of pollutants that may adversely affect coastal waters. Promulgation and enforcement of these rules will not violate any standards identified in the applicable CMP goals because the standards specified in the rules are intended to reduce discharge of pollutants regardless of location.

These adopted rules will protect coastal areas by mandating the evaluation of the site where an OSSF is to be located. These adopted rules require that a system must be approved for use in the State of Texas and must be used only for the soil types that are specified in these rules. After a system is installed, it must be inspected to ensure that it meets the installation and construction requirements. In addition, there are minimal separation distances required between an OSSF and any surface water or groundwater on or near the property where an OSSF is being installed. All systems, regardless of whether they are in a coastal area, must be maintained in accordance with the standards established in these rules. These adopted rules are developed to reduce the possibility of discharge into coastal waters by ensuring that systems used in coastal areas are installed properly and to protect all water bodies, including coastal waters, by limiting where a system may be located.

The commission sought public comment on the consistency of the proposed rules with applicable CMP goals and policies but received no comments specific to this section.

HEARING AND COMMENTERS

The commission held a public hearing on this proposal in Austin on January 11, 2001 at the Texas Natural Resource Conservation Commission complex. Nine individuals provided oral comments at the hearing. The following provided oral

and/or written comments during the comment period: Amstar Engineering, Inc. (Amstar); Apex Design Group (Apex); Armstrong County Judge Hugh Reed (Armstrong County); Austin County Judge Carolyn Bilski and an Austin County Designated Representative on behalf of Austin County Environmental Protection (Austin County); Bell County Public Health District (BCPHD); Borden County Judge Van L. York (Borden County); Brown Aerobic Service Company (Brown); Burleson County Judge Bob Doonan on behalf of the Burleson County Commissioners Court (Burleson County); Cass County Judge Tilman W. Pyle (Cass County); City of Austin Watershed Protection Department (Austin); City of Fort Worth (Fort Worth); Clearstream Wastewater Systems, Inc. (Clearstream); Community Environmental Services, Inc. (CES); Conference of Urban Counties (Urban Counties); County Judges and Commissioners Association of Texas (CJCAT); Environmental Construction Services (ECS); EZflow, L.P. (EZflow); Flush & Gush Septic (FGS); Franklin County Water District (FCWD); Fritz, Byrne & Head, L.L.P. on behalf of H.E. McGrew, Inc. (McGrew); Galveston County Health District (GCHD); Gillespie County Sanitation/Floodplain (GCSF); Guadalupe Survey Company & Guadalupe Wastewater Company (GSC&GWC); Harris County Public Infrastructure Department/Engineering Division (HCPID); Hays County Environmental Health (HCEH); Highland Lakes Engineering (HLE); Hill, Gilstrap, Adams & Graham, L.L.P. on behalf of the Texas Manufactured Housing Association (TMHA); Hydro-Action (H-A); Infiltrator Systems, Inc. Regional Office (IS-R); Infiltrator Systems, Inc. District Office (IS-D); Lower Colorado River Authority (LCRA); Leaching Chamber Systems of Texas, Inc. (LCST); Live Oak County Health Department (LOCHD); MKM Sales, Inc. (MKM); Murphy Cormier, General Contractors (MCGC); Norris Earth Works (NEW); Northeast Texas Municipal Water District (NETMWD); On-Site Environmental Services, Inc. (On-Site); Quality Concrete Products (QCP); R&R Construction (R&R); S&S Construction Co. (S&S); Snowden On-Site (SOS); Sylva Construction Co. (Sylva); Southern Manufacturing (SM); Texas On-Site Wastewater Association (TOWA); Texas Municipal League (TML); Texas Association of Counties (TAC); Texas Society of Professional Engineers (TSPE); Travis County Attorney's Office (TCAO); Upper Neches River Municipal Water Authority (UNRMWA); Upper Guadalupe River Authority (UGRA); Whitestone Construction, Ltd. (Whitestone); Williamson County and Cities Health District Environmental Services (WCCHDES); and 19 individuals.

The following commenters generally supported the proposal: TAC; and WCCHDES. The following commenters supported the proposal in part: Austin County; Brown; Cass County; ECS; EZflow; McGrew; GSC&GWC HCEH; IS-R; IS-D; LCST; NEW; On-Site; R&R TOWA; TCAO; and seven individuals.

The following commenters opposed the proposal in part: Amstar; Apex; Armstrong County; Austin County; Borden County; Burleson County; Austin; CES; Urban Counties; CJCAT; ECS; EZflow; FGS; FCWD; McGrew; GSC&GWC HCEH; HLE; TMHA; H-A; IS-R; IS-D; LCRA; LCST; LOCHD; MCGC; NEW; On-Site; QCP; R&R S&S SOS; Sylva; SM; TOWA; TML; TAC; TSPE; TCAO; UNRMWA; UGRA; Whitestone; WCCHDES; and 11 individuals.

The following commenters suggested changes to the proposal as stated in the SECTION BY SECTION / RESPONSE TO COMMENTS section of this preamble: Amstar; Austin County; BCPHD; Borden County; Brown; Burleson County; Austin; Fort Worth; Clearstream; CES; CJCAT; ECS; EZflow; FGS; FCWD; McGrew; GCHD; GCSF; GSC&GWC HCPID; HCEH; HLE; TMHA; H-A; IS-R; IS-D; LCRA; LCST; LOCHD; MKM; MCGC; NEW; NETMWD; On-Site; QCP; R&R S&S SOS; Sylva; SM; TOWA; TSPE; TCAO; UNRMWA; UGRA; Whitestone; WCCHDES; and seven individuals.

SECTION BY SECTION / RESPONSE TO COMMENTS

Chapter 285 has been revised to improve readability, to ensure consistency with other commission rules and ensure consistency between sections of the rules, to clarify language or technical requirements that have or may be misunderstood, and to address new requirements.

General

QCP commented that the commission is incorrect in stating that it would be a "difficult administrative task" for businesses that retail septic tanks to require proof of a valid permit to construct before selling a tank. QCP commented that since every approved permit application receives written confirmation of the approval, the written confirmation of approval along with a copy the submitted planning materials would be sufficient to establish that the system was authorized. According to QCP, no additional paperwork would be required, and the retailer could attach a copy of the approval and planning materials to the sales receipt for the tanks. QCP noted that when no permit is required, the purchaser should sign an affidavit, or fill out an identification form, along with legal ID which could be attached to the tank's sales receipt.

The commission disagrees with the comment. Requiring all businesses that retail septic tanks to require proof of a valid permit before selling a tank would be a difficult administrative task. The businesses would have to be identified, contacted, and informed of the requirements. The employees of these businesses would have to be trained on how to identify permits issued by all of the permitting authorities. The businesses would have to forward paperwork to the permitting authorities. The business staff would have to know permitting authorities' regulations to know when a permit may not be required. This would require a considerable amount of effort and would not ensure better environmental protection. Therefore, no change has been made in response to the comment.

Amstar, ECS, HCEH, and Austin suggested the rules should address who is qualified to conduct site evaluations. HCEH and Austin commented that only engineers, sanitarians, or qualified soil scientists should conduct site evaluations. Austin added that geologists should also be allowed to conduct site evaluations. According to HCEH, a site evaluation should only be done by a person with a fundamental understanding of geological or biological processes. HCEH commented that they have had numerous problems with installers who conduct their own subsurface evaluations. Additionally, HCEH stated that "..a site evaluation is separate from an installation and that installer's will evaluate the soil in favor of the type of system they want to install." Austin commented that the commission's previous attempt to certify individuals conducting site evaluations recognized the importance of having a qualified professional perform this work.

The commission appreciates the comments. Due to the Attorney General opinion (No. JC-0020) in 1999, the commission cannot license a person to perform site evaluations. Therefore, these rules do not specify who can perform site evaluations, however, the rules require that a site evaluation be performed and the site evaluation must meet the criteria in §285.30. Site evaluations may be performed by the installer or any other person. No change has been made in response to this comment.

ECS and R&R asked for clarification regarding site evaluator certification.

The commission responds that due to the Attorney General opinion (No. JC-0020) in 1999, the commission cannot license a person to perform site evaluations. Therefore, these rules do not specify who can perform site evaluations. The commission will only license site evaluators if directed by the legislature through a change in the statute. Therefore, no change has been made in response to the comment.

FGS and one individual asked why the commission had not sent refund checks for the costs incurred to obtain the site evaluator license. FGS also asked why a state representative has not sent a letter explaining "how in their infinite wisdom this could happen."

The commission responds the costs were incurred when there was a requirement for the site evaluator. Since the site evaluator requirement was removed, no renewal fees have been assessed or collected for the license, nor have any new site evaluator licenses been issued. No change has been made in response to the comment.

LCST and IS-D commented that eliminating the site evaluator license was a disservice to the consumers of Texas. LCST and IS-D based this statement on professional observations and the noticeable and documented reduction in premature system failures which were caused by poor or improper site evaluations performed by unqualified individuals.

The commission appreciates the comments. Due to the Attorney General opinion (No. JC-0020) in 1999, the commission cannot license a person to perform site evaluations. Therefore, these rules do not specify who can perform site evaluations, however, the rules require that a site evaluation be performed and the site evaluation must meet the criteria in §285.30. No change has been made in response to this comment.

Amstar commented that the commission has been working on the rules for a year, but has kept the changes secret. Amstar commented that the commission wrote the rules in a "subtle manner."

The commission has been working diligently with industry groups throughout both the quadrennial review and during the drafting process of this rule. On March 3 - 4, 1998 and August 17 - 18, 1999, the commission met with groups of external stakeholders and provided them the opportunity to comment on the proposed rules. Their comments were addressed in the preamble to the proposed rules published in the December 8, 2000 issue of the *Texas Register* (25 TexReg 12041). On February 29, 2000 and March 1, 2000, commission staff met with installers, designated representatives (DR), manufacturers, designers, and educators and reviewed the major conceptual changes in the proposed rule. On June 10, 2000, commission staff met with the Texas On-Site Wastewater Association (TOWA) Board of Directors. On August 24, 2000, commission staff met with representatives from the Texas Association of Counties. On August 29, 2000, commission staff met with Aerobic System Manufacturers. At this meeting, the commission was complimented for its efforts to inform stakeholders about these proposed rules. On September 12, 2000, commission staff met with representatives from the Texas Association of Builders (TAB), Texas Association of Realtors, Texas Manufactured Housing Association, Board of Professional Engineers and a manufacturing representative. On September 19, 2000, commission staff met with the Texas On-Site Wastewater Treatment Research Council. On October 12, 2000, commission staff met with representatives of the Texas Public Health Association. On November 8, 2000, commission staff met with representatives of the Texas Association of Counties, the Texas Association of County Judges and Commissioners and the Conference of Urban Counties. At all of these meetings commission staff reviewed the suggested changes in the proposed rules with those in attendance. Additionally, on January 11, 2001, the commission held a public hearing to take comments from any interested stakeholder. Based on the above meeting schedule, the commission has not been secretive during this rule drafting process. No change has been made in response to the comment.

Amstar suggested that the attorney general should get involved in the review of the rules.

The commission followed Texas Government Code, Chapter 2001, known as the Administrative Procedure Act (APA), for these rules. The APA does not require, or even authorize, the commission to refer a rule to the Attorney General.

Austin County, Amstar, and ECS commented that the public comment period was very short, and coincided with the Christmas holidays. Austin County and ECS added that there was not enough time to do an adequate review of the proposed rules considering the number of holidays and vacation days that occurred between the time the comment period began and ended. ECS stated that "It appears you are using this timing to keep the industry from having time to properly evaluate the changes." ECS suggested the review time be expanded to 60 to 90 days, excluding any holidays.

The APA, in §2001.023, requires state agencies to give a minimum of 30 days notice of their intention to adopt a rule. The commission met that requirement for these rules. The comment period ran from December 8, 2000 through 5:00 p.m. on January 12, 2001. This is a total of 35 days. The commission gave a 35-day comment period as opposed to the required 30-day comment period to provide extra time for the Christmas holidays.

TOWA and one individual commented that a reference list of each statute, code, study, etc. referred to in the proposed rules should be provided. TOWA suggested that a copy of the relevant sections of the referenced documents be made available to the public as an appendix to the rules or a guidance document, while the individual suggested that the list include information on how to obtain copies of the materials.

Texas statutes are available on the Internet at *http://tlo2.tlc.state.tx.us/statutes/statutes.html*. The Texas Administrative Code is available at *http://lamb.sos.state.tx.us/tac/*. Studies referred to in the rule can be obtained by contacting the commission at (512) 239-0914. Publication of this material as an appendix to the rule may not be possible since the *Texas Register* will not publish information that is "cumbersome."

Austin County and HCPID commented that an index to the rules would greatly simplify finding information. Austin County and TOWA requested that if a section is on more than one page, the section number be displayed on each page. Austin County commented that having two different page numbers on each page is very confusing.

The commission appreciates the comments. Publication of the official version of the rules in the *Texas Register* is governed by

the APA. However, the commission believes these comments relate to the rule and guidance documents published by the commission after the adoption of the current rule in 1997. If the commission decides to publish these rules following adoption and publication in the *Texas Register*, the commission will consider the suggestions.

One individual commented that the commission was inaccurate to say that electric company lists of new customers which are forwarded to county judges reflects the intent of the legislature to delegate the program to local authorities, as the requirement also provides for forwarding the lists to the appropriate OSSF permitting authority.

The commission disagrees with the comment. THSC, §366.005, states that "the electric utility shall submit the list to the county judge of the county who shall forward the list to each AA having jurisdiction over an area in which an address on the list is included." The language does not say the list should be sent to the commission and then sent to the appropriate permitting authorities. The commission has determined that this process of sending the list to the county judge reflects the intent that the program should be managed at the local level. No change has been made in response to the comment.

One individual commented that the commission is doing a terrible job of enforcing the existing rules, thus, he questions how the commission will be able to improve its enforcement ability under the proposed rules.

The commission recognizes that enforcement has been problematic in the past, often because the rules were unclear. Many of the changes incorporated into these rules focus on improving readability, clarifying language or meanings, and expanding definitions. The commission has determined these changes will make the provisions of this chapter easier to enforce. Additionally, the roles and responsibilities of owners, installers, DRs, and AAs have been better delineated, as have the possible enforcement actions which may be taken by the commission against violators of these rules. Thus, improvements which enhance enforceability are found throughout this chapter.

One individual commented that the rules and regulations are meaningless unless the public is educated about how an OSSF works and how to maintain an OSSF. Additionally, the individual stated that enforcement needs to be the commission's largest concern, and although the commission wants to raise money by increasing permit and license fees, the commission does not have sufficient manpower.

The commission appreciates the comment and agrees that education of the public and enforcement on violators are necessary for the rules to be effective. These rules were drafted to address many of the enforcement issues that have surfaced since the existing rules became effective in 1997. As a result, many changes were made during the revision process to make the rules more enforceable. Education of the public is a more difficult task. All installers should be educating the owners of the systems they install. The Texas On-Site Wastewater Treatment Research Council funded the development of fact sheets that have been provided to the permitting authorities for distribution to owners. These fact sheets provide information on various types of systems, including operation and maintenance. The commission will continue to explore means to educate the public in the future. No change has been made in response to the comment.

WCCHDES commented that the rule changes are for the best. TAC applauded the efforts of the commission to improve the clarity and readability of the commission's OSSF rules and, based on county staff comments, stated that the changes are generally beneficial and that the commission has done a commendable job re-organizing and clarifying the rules. EZflow commended the commission for making the proposed rule set more readable by removing information that should be in educational or guidance documents.

The commission appreciates the positive comments in support of the rules.

Four individuals commented that they are strongly opposed to any changes to either Subchapter C or Subchapter F.

The commission appreciates the comment. However, the comment does not address any specific areas or issues in Subchapter C or Subchapter F. The changes that were made to these subchapters were in response to comments, concerns, and complaints received since the last changes to the rules became effective on February 5, 1997. Therefore, no changes were made in response to the comment.

Subchapter A. General Provisions.

Subchapter A is adopted to: 1) improve readability; 2) provide consistency and clarify terms used in these rules; 3) relocate rule language and requirements to more logical locations; 4) consolidate generally applicable permitting, construction, and inspection requirements; 5) modify facility planning requirements; 6) clarify requirements associated with the preparation of planning materials; 7) modify cluster system requirements; and 8) clearly define maintenance requirements.

Some definitions have been added and others have been deleted to further help clarify this chapter. The rationale for the addition and deletion of certain definitions is found in the SECTION BY SECTION / RESPONSE TO COMMENTS portion of this preamble in §285.2, Definitions. Because of the addition and deletion of certain definitions, some of the definitions in §285.2 of the rule have been renumbered from the proposal published in the December 8, 2000 issue of the *Texas Register* (25TexReg 12041).

Subchapter A. General Provisions.

§285.1. Purpose and Applicability.

UGRA commented that §285.1(a) uses the word "alteration," which is not defined.

The commission responds that "alteration" is the noun form of the verb "alter." "Alter" is defined in §285.2(2), as a change in an OSSF, thus "alteration" is the result of the change. No change has been made in response to the comment.

The commission changed the language in §285.1(b)(1) from "owns or plans to own" to "has an ownership interest in" to broaden the applicability to more than the owner or potential owner of the system. The new language will clarify that renters are included, which is important because a renter operates the system and could be the responsible party.

The commission changed the language in §285.1(b)(3) from "that is, or desires to be designated" to "that is, desires to be, or was designated." The new language now includes those entities that were previously designated as AAs.

§285.2 Definitions.

The commission has changed the period to a colon at the end of the introductory paragraph of §285.2.

Amstar suggested that the commission add a definition in §285.2 for "...the process of turning rock into soil...."

The commission disagrees with this comment. Soils are defined in §285.30(b)(1)(A), therefore, no change has been made in response to the comment.

FCWD suggested that a definition for stream be included in §285.2 or that creeks and natural water run-offs be included in Table X. In certain situations, creeks supply major water bodies, some of which are water supply reservoirs. The commission should be concerned with protecting contamination to these sources.

The commission responds that there are a variety of names commonly used to identify streams or conveyances of water, including the term "creeks." "Creeks" has been added to §285.91(10) because it is commonly used to identify streams or conveyances of water. Other terms for streams and separation distances from those streams are best determined at a local level because of various colloquialisms. No other changes have been made in response to the comment.

R&R suggested that definitions for "rock" and "caliche" are needed in §285.2.

The commission responds that "caliche" is not used in the rules; therefore, a definition has not been added. "Rock" is not added to the definitions because it is a commonly understood term in the OSSF industry. The United States Department of Agriculture (USDA) soil textural triangle is used to classify soils and it does not address "rock" or "caliche." No further definitions are needed. No changes have been made in response to the comment.

TOWA suggested that the term "break" be added to the definitions in §285.2 and defined as "a slope steeper than 1/1" because this term is used in Table X. Also, TOWA suggested that the term "sharp slope" be added to the definitions and defined as "a slope equal to 1/1" because term is used in Table X.

The commission agrees that the terms "break" and "sharp slopes" are unclear in their usage. To clarify the intent of the terms, the phrase "slopes where seeps may occur" has been added to §285.91(10) to replace "sharp slopes, breaks."

LCST, IS-D, and IS-R commented that a definition for "leaching chambers" is needed in §285.2 for clarity. LCST suggested the following definition: "Leaching Chambers -- are hollow structures with an unobstructed open bottom area constructed of polyolefin material. Leaching chambers must have louvered sidewalls on each side and shall be latched together in series."

The commission disagrees that a definition is needed. Since a leaching chamber is an approved proprietary system that is identified in the rules (§285.33(c)(2)), there is no need to define it. No changes have been made in response to the comment.

Austin suggested adding a definition for "disinfection" in §285.2.

The commission responds that disinfection is a technical term requiring a determination of the level of bacteria and virus that is acceptable. The standards for disinfection are specified in §285.32(e). The commission has made no changes in response to this comment.

Austin suggested adding a definition for "nitrogen reduction" in §285.2. Austin argues that disposal systems requiring secondary treatment should have nitrogen effluent criteria.

The commission responds that a definition for "nitrogen reduction" has not been added since the term is not used in the rules. Furthermore, the commission responds that there are no recognized treatment standards for nitrogen reduction for OSSFs. The EPA may, in the future, develop standards for nitrogen reduction. Requirements to implement these standards will be considered at that time as necessary. In addition, there has been no evidence presented that there is a degradation of the environment due to nitrogen from systems using secondary treatment. Therefore, no changes have been made in response to the comment.

Austin suggested adding a definition for "pollution" in §285.2. Austin commented that the term is defined in TWC, Chapter 26, but is not defined in the rules and should be repeated.

The commission responds that "pollution" is defined in TWC, §26.001(14) and because of this, there is no need to repeat this in the rule. Therefore, the commission has made no change in response to the comment.

Austin suggested adding a definition for "primary treatment" in §285.2 which would provide that first step of sedimentation or flotation to allow some physical removal of solids and floatables before flowing into a secondary treatment unit.

The commission responds that the term "primary treatment" is not used in the rules, therefore, a definition has not been added. Section 285.55 defines a pretreatment tank as a tank that serves the same purpose as "primary treatment" suggested by the commenter.

Austin suggested adding a definition for "geologist" in §285.2 which would read as follows: "A person who has received a baccalaureate or post-degree in the natural science of geology from an accredited university and has training and experience in groundwater hydrology and related fields, or has demonstrated such qualifications by registration or licensing by a state, professional certification, or has completed accredited university programs that enable that individual to make sound professional judgements regarding the identification of sensitive features located in the recharge zone or transition zone." Austin added that the phrase "the identification of sensitive features..." could be replaced with "the suitable geologic conditions for specific OSSF applications...."

The commission responds that the term "geologist" is not used in the rules; therefore, a definition has not been added.

Concerning §285.2, Austin suggested adding a definition for "soil scientist" which would read as follows: "A person who has received a baccalaureate or post-degree in the natural science of soil science from an accredited university and has training and experience in groundwater hydrology and related fields, or has demonstrated such qualifications by registration or licensing by a state, professional certification, or has completed accredited university programs that enable that individual to make sound professional judgements regarding the identification of sensitive features located in the recharge zone or transition zone." Austin added that the phrase "the identification of sensitive features..." could be replaced with "the suitable geologic conditions for specific OSSF applications..."

The commission agrees that a definition should be included for "certified professional soil scientist" since it is used without a definition. The following definition has been added to §285.2(9): "An individual who has met the certification requirements of the American Society of Agronomy to engage in the practice of soil science."

Concerning §285.2, UGRA suggested that a definition should be added for "surface water." UGRA suggested that the definition include the underflow of a stream, as found in 30 TAC Chapter 297.

The commission responds that "surface water" is a term used throughout commission rules to refer to waters that exist above ground. Subsurface water is referred to as groundwater. These rules address separation distances from OSSF systems to both surface water and groundwater. Therefore, a definition has not been added.

UGRA commented that the definition for the word "alter" in §285.2(2) appears to be a voluntary determination made by the owner.

The commission disagrees with the comment. Any of the changes to an OSSF listed in the definition will require a permit as described in §285.3. No change has been made in response to the comment.

The commission modified the definition of "alter" in §285.2(2) by adding the word "permitted" in §285.2(2)(A) and (B). Since the word "alter" would apply primarily to systems that have been permitted, there is a need to specify what flow and influent is being altered.

HCEH suggested that §285.2(2) should be changed to "an increase, lengthening, replacement or expansion of the treatment or disposal system."

The commission responds that the word "replacement" used by the commenter is part of the definition for "repairs." "Repairs" better covers the concept because it is all inclusive. No change has been made in response to the comment.

The commission has modified the definition of "authorization to construct" in §285.2(5). The phrase "showing the date the permission was granted" has been added to §285.2(5) to clearly define an "authorization to construct." The date is important so all parties know the exact date the permission was granted. This date is also important because §285.3(d)(1) states that an authorization to construct is valid for one year from the date the permission is granted.

The commission has modified the definition of "certificate of registration" in §285.2(8) by adding the words "that is" before "issued by the executive director" for clarity.

The commission has modified the definition of "cluster system" in §285.2(11), formerly §285.2(10). The words "into the system" have been deleted from the definition to avoid confusion and to remove redundancy.

Concerning §285.2(11), R&R commented that the proposed definition of commercial or institutional facility needs to be clarified to avoid interpretations by a DR that an additional restroom being added to accommodate a swimming pool or a sink and toilet in a separate garage constitutes a commercial or institutional facility. LCST, IS-D, and one individual commented that the commission failed to consider non-commercial buildings (i.e., horse barn, hobby shop, detached garage with grey and/or blackwater fixtures) located on residential property. The individual added that this should exclude barns with an apartment as long as no business with employees exists; if a business exists, then the OSSF system should obtain a commercial license and be sized for an apartment with additional sizing being required for the employees so that only one permit must be obtained. An individual suggested the definition of "commercial" be revised to indicate that it is a building used as a business for over 60 days per year as a profit making center. LCST and IS-D recommended modifying the definition of commercial or institutional facility by adding at the end of the sentence "...and/or detached building located on residential property that is used for non-commercial or institutional purposes." TCAO commented that they could not find where "commercial or institutional facility" is used in the rule, and asked why this definition was in the rules.

The commission agrees that the definitions for "commercial or institutional facility" and "single family dwelling" do not clearly address the situations noted by the commenters. Detached buildings on residential property which are routinely used only by members of the single family dwelling are not considered commercial or institutional property. Because of this, the definition for single family dwelling in §285.2(69) has been modified to include "all detached buildings routinely used only by members of the household of the single family dwelling." "Commercial or institutional facility" is used in §295.91(3), therefore, the commission has left the definition in the rules.

Concerning §285.2(12), one individual supported defining the term "compensation."

The commission appreciates the positive comment in support of the rule.

Concerning §285.2(15), one individual asked if it was necessary to define "construct." The definition for "construct" in the proposed rule is accurate, but the commenter believes that it would have been easier and more efficient to reduce the number of words that are defined in the rules and use the word "install" instead.

The commission responds that it is necessary to define "construct" for better enforceability of these rules. "Construct" has a variety of interpretations, thus the commission has determined that a definition is necessary to clearly delineate what activities are regulated.

The commission has modified the definition of "construct" in §285.2(16), formerly §285.(15). The sentence "activities relating to a site evaluation are not considered construction" has been added for clarity. The phrase "all activities from disturbing the soils" could be interpreted to include the site evaluation since soils are being disturbed. Construction does not include the site evaluation.

HCPID, TOWA, and one individual commented that the definition of DR in §285.2(17) should be modified to "Designated representative - An individual who holds a valid license issued by the ED and who is designated by the regional office of the commission or the authorized agent to conduct site evaluations, review or prepare system planning materials, and inspections." HCPID, TOWA, and an individual suggested the change because they think that employees of the commission should follow the same rules as AAs and DRs. Additionally, HCPID, TOWA, and one individual suggested deleting percolation tests for consistency with the remainder of the rules, and changing system design to "planning materials" for consistency with the terminology elsewhere in these rules and exemptions set forth in the Engineering Practices Act.

The commission responds that the definition of "DR" is the definition used in THSC, §366.002(3). Therefore, no change has been made in response to the comment. Since the effective date of the current rules in 1997, employees of the commission performing the duties and responsibilities of a DR have been required to take

the DR course and pass the examination. However, a license is not issued to employees. The commission further responds that to remain consistent with THSC, §366.002(3), no changes have been made with regard to deleting percolation tests or changing system design to "planning materials."

The commission has deleted the definition of "evapotranspiration (ET) system" in proposed §285.2(23). The definition has been removed since it is only used in §285.33(b)(2) where it is defined. An additional definition is not necessary.

HCPID suggested that the definitions of "flood plain" and "floodway" in §285.2(25) and (26) include " ... As determined by FEMA or the county engineer." HCPID stated that the additional language would make §285.2(25) and (26) consistent with the requirements of §285.30(b)(3).

The commission responds that not all counties have FEMA floodplain maps or a county engineer. Additional information is not needed in the definition, because the concept is covered in §285.30(b)(3) and §285.31(c)(2). No change has been made in response to the comment.

HCPID suggested the definition of "gravel-less drainfield pipe" in §285.2(27) be amended to include language that the product has been approved by the ED to be consistent with §285.33(c)(1).

The commission responds that gravel-less pipe is a proprietary product that is approved by the ED. No additional wording has been added to the definition as a result of this comment.

The commission has modified §285.2(28). The definition for "gravel-less drainfield pipe" has been revised, because the size is important since this product was only approved for the size given. The words "large diameter" would allow a product that has not been approved to be used. The words "intended for use" are redundant and are not needed.

The commission has deleted the definition of "greywater" in proposed §285.2(30). The definition has been removed since it is defined in Subchapter H as laundry water and additional definition is not necessary.

LCRA suggested that the definition for "holding tank" in §285.2(32) be revised to be consistent with the text relative to §285.34(e). Section 285.34(e) authorizes the operation of a holding tank on a site where other methods of sewage disposal are not feasible.

The commission agrees that the definition of "holding tank," now in §285.2(31), and the language in §285.34(e) are not consistent. The phrase "on an interim basis" has been removed from the definition because a holding tank can be used on some basis other than interim. Additionally, the modification provides consistency with the language in §285.34(e).

SOS commented that the definition for maintenance in §285.2(38) is incorrect. According to SOS, maintenance does not include replacement of pumps, except for an extra charge.

The commission disagrees with this comment. In the OSSF industry, maintenance includes replacing pumps, therefore, the commission has made no change in response to this comment.

In the definition of "maintenance company" in §285.2(38), formerly §285.2(39), LCST and IS-D suggested additional language: "A person that works for a company who must hold an Installer II certification or a Class D or higher wastewater operator certificate and be certified by the appropriate manufacturer's maintenance program for the proprietary unit being maintained." According to LCST and IS-D, this will clarify the term "person."

The commission responds that the language suggested by the commenters is already in §285.7(b). No changes have been made in response to the comment.

The commission has modified the definition of "manufactured housing community" in §285.2(41), formerly §285.2(42). The definition has been modified to clarify that only areas developed or used for lease or rental are included.

The commission has deleted the definition of "mound drainfield" in proposed §285.2(43). The definition has been removed since it is defined in §285.33(d)(3) and additional definition is not necessary.

The commission has modified the definition of "notice of approval" in proposed §285.2(45), now cited in §285.2(43). The word "written" has been added to be consistent with the definition for "authorization to construct." In addition, it is important that the "notice of approval" be given in writing to provide a record of the notice to the owner.

TCAO commented that the definition of "multi-unit residential structure" in proposed §285.2(44) is unclear. TCAO asked if the intent of the definition was to describe apartment-type structures. TCAO suggested the phrase "combination of structures designed to house two or more families" could be interpreted to include even a traditional residential subdivision. TCAO suggested describing "multi-unit residential structure as an "apartment-type structure."

The commission disagrees with the comment. The definition of "multi-unit residential development," now cited in §285.2(42), includes more than apartments. This definition includes duplexes, triplexes, four-plexes, condominiums, and other similar developments that are developed or used for lease or rent. The commission added language to clarify that only areas developed for lease or rental of space are included in this definition. Areas such as traditional, residential subdivisions are not included because the commission has determined that multiple ownership of a single OSSF creates issues with: enforcement, fees, permitting, off-site disposal, and ownership. Thus, the commission has determined that these systems are best addressed through the municipal permitting program.

LCRA disagreed with using the term "notice of approval" in proposed §285.2(45). LCRA commented that the public may mistake a notice of approval as the final written approval given to an installer at the completion of an installed OSSF. LCRA suggested using the terms of "permit to construct" and "license to operate."

The commission acknowledges "license to operate" is a term that has been used by many permitting authorities. However, the term "license" is defined in §285.2(35) as "a document issued by the ED approving an individual to perform duties authorized under this chapter." This definition is separate and distinct from the definition of "license to operate" recommended by the commenter. Section 285.2(43) defines "notice of approval" as permission to operate an OSSF. To avoid confusion between licenses issued to individuals and permission to operate an OSSF, the commission has not made any changes in response to the comment.

An individual commented that the old definition of OSSF in §285.2(47)(A), which was taken from the statute, is better. The individual questioned whether a pipe to a road ditch, which

disposes but does not treat sewage, or a septic tank and failing drainfield, which treats but does not dispose of sewage, are now considered to be on-site sewage facilities.

The commission agrees with the comment. An on-site sewage disposal system was defined in proposed §285.2(47) as a system that does not treat and dispose of more than 5,000 gallons of sewage each day. In response to the comment and to be consistent with THSC, Chapter 366, the commission has modified the definition, now in §285.2(45), by replacing the word "and" with the word "or." This clarifies that a pipe to a road ditch, which disposes but does not treat sewage, or a septic tank and failing drainfield, which treats but does not dispose of sewage, are not considered to be on-site sewage facilities.

UGRA suggested that the term "site" in the definition of an on-site sewage disposal system in proposed §285.2(47)(B) needs to be defined as a "tract, lot, etc."

The commission disagrees with the comment. The use of "tract" or "lot" does not provide a more meaningful definition. Therefore, no change has been made in response to the comment.

The commission added the definition of "owner's agent" to new §285.2(50) to clarify who can submit the permit application and planning materials. The definition now allows installers, professional sanitarians (PSs) and professional engineers (PEs) to submit materials to the permitting authority.

Concerning §285.2(51), one individual commented that the definition of owner in the proposed rules will allow for multiple owners. For example, under the proposed definition, both the buyer and seller (or note holder) of a mobile home, or the buyer and financier of land would be considered owners.

The commission responds that THSC, §366.002(8) defines an owner as a person who owns a building or other property served by an OSSF. In some cases there may be multiple owners, however, because this is a statutory definition, no changes have been made in response to the comment.

The commission modified the definition of "pretreatment tank" in §285.2(55), formerly §285.2(56). The language was changed due to a typographical error.

LCST and IS-D suggested that the definition for "pretreatment tank" should be the same as "septic tank" in §285.2(56) and §285.2(70).

The commission disagrees with these comments because the function of a pretreatment tank is different than that of a septic tank and needs to be defined accordingly. A pretreatment tank intercepts materials potentially harmful to treatment unit components and may be a separate unit from the septic tank. The septic tank receives, stores, and treats sewage. Therefore, no change has been made in response to the comment.

In the definition for "professional sanitarian" in proposed §285.2(58), now cited as §285.2(57), UGRA suggested the phrase "to carry out" should be changed to "having."

The commission responds that "to carry out" is the phrase used by the statute to describe the duties of a PS. Civil Statutes, Title 71, Art. 4477-3, §2(b), Vernon's Texas Civil Statutes, 1999. Therefore, no change has been made in response to the comment.

TSPE suggested that "professional sanitarians" read "registered sanitarians" in §285.2(58). TSPE commented that sanitarians are not licensed practitioners and it is misleading to the public to classify them as professionals. TSPE added that insurance underwriters indicate that they cannot offer sanitarians "professional liability insurance" since there is no well-defined study and training curriculum for their work and therefore, the public is not offered the same type of protection that is found in state law for "professionals."

The commission responds that "professional sanitarians" is the title used by the statute. Civil Statutes, Title 71, Art. 4477-3, §2(b), Vernon's Texas Civil Statutes, 1999. Therefore, no change has been made in response to the comment.

The commission modified the definition of "proprietary system" in proposed §285.2(59), now cited in §285.2(58). The definition has been revised to clearly define a proprietary system. All proprietary systems must be tested before they can be used in the state, and without the word "tradename" in the defintion, products which require testing could be installed without the required tests.

For the definition of "repair" in §285.2(62), formerly §285.2(63), LCRA commented that it is unclear if the entire OSSF must be brought up to current standards if only the treatment tank needs to be replaced. LCRA suggested that including this language in the rules would greatly assist AAs in administering the rules since the difference between only replacing a tank and modifying the entire system to current standards may cost a property owner $10,000 or more.

The commission responds that to protect human health and the environment the entire OSSF must be brought up to current standards even if only the treatment tank needs to be replaced. Additionally, THSC, Chapter 366, requires that a permit be issued if an OSSF is repaired, and the issuance of a permit is only allowed when the entire system meets the standards of this chapter. The definition of "repair" in §285.2(62) states that the replacement of tanks is considered a repair and that there needs to be a permit issued. Therefore, language has been added to the definition to clarify that the permit is for the entire OSSF system.

The commission deleted the definition of "reprimand" in proposed §285.2(64). The definition has been removed since reprimand is defined in §285.64(c) and additional definition is not necessary.

Regarding the definition for "restrictive horizon" in §285.2(65), HCPID suggested that definitions should be added for the terms "significant observable changes in density, clay content, or particle size, which restricts the movement of water." HCPID commented that since these parameters are not defined, they are subject to a wide variety of interpretations.

The commission agrees that the definition for "restrictive horizon" is subject to a variety of interpretations and is not consistent with the language in §285.30(b)(1)(C). A "restrictive horizon" is more easily identified in the field by the definition in §285.30(b)(1)(C). Therefore, the definition has been deleted instead of providing additional definitions that will have the same language in §285.30(b)(1)(C).

LCST and IS-D commented that the definition of "restrictive horizon" in proposed §285.2(65) needs to specify who is accountable for determining the restrictive horizon. LCST and IS-D suggested the site evaluator be held accountable.

The commission appreciates the comment. Due to the Attorney General opinion (No. JC-0020) in 1999, the commission cannot license a person to perform site evaluations. Therefore, these rules do not specify who can perform site evaluations, however,

the rules require that a site evaluation be performed and the site evaluation must meet the criteria in §285.30. The site evaluation, which includes determining the restrictive horizon, must be included with the planning materials required in §285.3(b), thus it is ultimately the owner's responsibility to ensure that a site evaluation is properly performed. No change has been made in response to this comment.

The commission modified the definition of "septic tank" in proposed §285.2(70), now cited as §285.2(67). Punctuation was corrected due to a typographical error.

Brown recommended that the definition of sewage in proposed §285.2(71) include "(C) a risk to human health, and may be harmful to the environment," while UGRA commented the following terms used in the definition of sewage need to be defined: "waste, primarily organic, biodegradable, or decomposable." UGRA suggested the definition include water quality standards that could be used in defense against unauthorized, illegal discharge. UGRA added that the water quality standards will need to be more stringent than the levels specified in §285.32(e) and should be similar to the limits for municipal or state wastewater permitting allowed under 30 TAC Chapter 309.

The commission responds that the definition of "sewage" is the same as used in THSC, §366.002(9). Additionally, sewage that is properly treated and disposed of does not pose a risk to human health and the environment, therefore, no change has been made in response to the comment. The commission disagrees with UGRA's suggestion regarding new definitions for: "waste," "primarily organic," "biodegradable," or "decomposable" because these terms are not used elsewhere in the rule and they have no special scientific or technical meaning specific to the OSSF industry, therefore no change has been made in response to this comment. Further, the commission's standards for secondary treatment are addressed in §285.32(e), therefore, no change has been made in response to this comment.

An individual noted punctuation errors in the definition of "sewage" in proposed §285.2(71) and suggested that the first and fourth commas be removed.

The commission agrees with the comment. To agree with the definition in THSC, §366.009, the commas have been deleted as suggested.

The commission deleted the definition of "sewage disposal plan" in proposed §285.2(72). The term "sewage disposal plan" is not used in the rules and does not need to be defined.

Regarding the definition of "single family dwelling" in §285.2(69), formerly §285.2(73), one individual asked how the intentions of individuals will be determined.

The commission agrees that the intention of an individual would be hard to determine. Therefore, the definition has been changed to remove the necessity to demonstrate intent, and to focus on how a structure is actually used.

The commission modified proposed §285.2(73), now in §285.2(69). The commas were deleted from around the phrase "or brought to" within the definition of "single family dwelling" for clarity and readability.

LCST and IS-D suggested that the definition of "soil absorption system" in proposed §285.2(76) needs to address the soil's ability to treat sewage. LCST and IS-D suggested that the definition read as follows: "A subsurface method for the treatment and disposal of effluent which relies on the soil's ability to treat and absorb wastewater and allow its dispersal by lateral and vertical movement through and between individual soil particles."

The commission agrees with these comments, because the suggested language better defines that the soil in a soil absorption system treats the sewage. Therefore, the suggested language has been added to the definition.

LCST and IS-D suggested that soil's ability to treat sewage needs to be addressed in the definition of "subsurface sewage facility" in proposed §285.2(77).

The commission responds that the phrase "subsurface sewage facility" is not used in the rules. Therefore, a definition is not needed, and has been deleted.

TCAO commented that the definition of "subdivision" in proposed §285.2(78) needs to be broader. TCAO suggested "property divided by platting, field notes, or otherwise into two or more parts which are transferred by deed, contract for deed or otherwise." The phrase "or otherwise" would provide flexibility to address unforeseen and nontraditional developments.

The commission responds that the definition for "subdivision" is consistent with the definition used in Local Government Code, Chapter 232. Therefore, no changes have been made in response to the comment.

§285.3. General Requirements.

Concerning §285.3, Brown suggested that the notice of approval for an OSSF be effective for five years and be renewed 30 days prior to its expiration. According to Brown, after five years the property owner should pay a reinspection and renewal fee. To renew a notice of approval, an owner should have to go through reinspection by the permitting authority, and provide proof to the permitting authority that their treatment tank(s) have been pumped or the maintenance company has recently inspected the OSSF.

The commission disagrees with the concept of permit renewals because to effectively implement such a program would require the permitting authorities to inspect the systems routinely which would require resources not currently available. Additionally, it would require the owner to uncover his system for each inspection when such inspections have not been shown to provide added environmental and health protection. Therefore, no change has been made in response to the comment.

The commission has modified §285.3(a). The words "to construct or operate" were deleted and replaced with "for."

Concerning §285.3(a)(1), LCST and IS-D commented that the term "resolution" in this section is unclear and that if it is referring to the issuance of an arbitrary policy, then such resolutions cannot be in conflict with or supercede §285.3, "General Requirements."

The commission responds that the term "resolution" refers to the legal document used by some of the local governmental entities, that do not have order or ordinance making authority, to adopt rules for implementing the OSSF program. A resolution does not create policy; rather, it is effectively the same as an order or ordinance. A resolution, like a county order or a city ordinance, must be approved by the ED to become effective. The commission has made no change in response to this comment.

The commission has modified §285.3(a)(1). The word "permitting" has been added to include the process elsewhere in §285.3.

The commission has modified §285.3(a)(2). The words "staff from the" were added for clarity, since an office cannot be responsible for implementation of this chapter.

The commission has modified §285.3(a)(3). The language "unless a different process is required by the AA's order, ordinance, or resolution" was deleted since the process in §285.10, relating to Delegation to Authorized Agents, covers the statement. If the statement was left here, it should have been included with all applicable sections of the rule.

Concerning §285.3(a)(3), Brown suggested that permits should be issued in the name of the owner and that in addition to the sale of an OSSF, deed transfer or inheritance of OSSFs should be addressed by the rules. Also, the DR should be required to keep up to date records for the owner (physical and mailing address and phone number).

The commission agrees in part and disagrees in part with this comment. The commenter is correct that there are other ways to transfer property besides selling it. Therefore, the language has been changed to include "other legal transfers." The commission disagrees with Brown's suggestion that DRs keep current records of the owner's address and telephone number because it would be a burdensome requirement and would not provide information that is not otherwise available. Therefore, no change has been made in response to that comment.

UGRA suggested that §285.3(a)(3) should be deleted. According to UGRA, an inspection should be required at some "triggering" event to protect public health and safety.

The commission does not agree with this comment. The commission assumes, based on the fact that this particular subsection of the rules refers to the transfer of property, that UGRA is referring to real estate transfers as a "triggering event" and the commission does not have authority under THSC, Chapter 366, to perform real estate inspections. Additionally, the commission disagrees with the concept of inspections at some "triggering event" because to effectively implement such a program would require resources not currently available. Moreover, it would require the owner to uncover his system for each inspection when such inspections have not been shown to provide added environmental and health protection. Therefore, no change has been made in response to this comment.

LCST and IS-D commented that electronic application forms in §285.3(b)(1)(A) should be available.

The commission responds that the rule does not preclude the use of electronic forms. Each permitting authority, at its option, can choose to use electronic forms. However, not all permitting authorities have the resources at this time to use electronic forms. Additionally, the commission is not currently prepared to receive these particular forms electronically. No change has been made in response to this comment.

The commission modified §285.3(b)(1) to clarify that is it the owner or owner's agent's responsibility to obtain authorization to construct from the permitting authority, and to submit all required documentation to the permitting authority.

One individual commented that affidavits referred to in §285.3(b)(3) are not worth the effort it takes to enforce them and that this requirement should be removed.

The commission agrees that an affidavit is not the best method to alert new owners of the need to maintain the OSSF. Deed recording is the appropriate method to alert new owners of the need to maintain an OSSF. When the property is sold, a deed search will reveal the deed recording, and the prospective buyer will be made aware of the need for maintenance of the system. Without this requirement, the new owner may not be made aware of the need for a maintenance contract, and maintenance may not be performed. Affidavits are however, the appropriate way to notify the permitting authority that deed recording has taken place. The commission has made corresponding changes in this rule.

LCST and IS-D supported the affidavit requirement in §285.3(b)(3) for all systems identified in Table XII.

The commission appreciates the positive comment in support of the rule.

HCPID commented that the following sentence should be added to §285.3(c): "Only plans bearing the permitting authority approval mark(s) pursuant to the authorization to construct and the subsequent system installation." HCPID believes the additional language will ensure that only the approved design is installed, that all changes will be approved, and that there is consistency with the Engineering Practices Act.

The commission responds that the comment is not clear, therefore, no changes have been made in response to the comment. It appears the commenter is trying to ensure that OSSF systems are installed following the approved planning materials. The construction inspection performed by the DR should insure that the system is installed according to those plans.

TOWA and MCGC suggested that the language in §285.3(c) be revised to require a response within 30 days of receiving an application, regardless of whether the application is complete. LCST suggested inserting the term "completed" before the word "application" in the last sentence. LCST, TOWA, and MCGC commented that under the proposed language, the permitting authority could "sit on an application indefinitely" simply because it is missing materials. TOWA and MCGC commented that if an application is incomplete, it should be denied. LCST added that 30 days to review OSSF applications by permitting authorities is excessive. LCST suggested that seven to ten days is sufficient.

The commission agrees with some of these comments. The permitting authority should respond to the owner or the owner's agent within 30 days of receiving an application, regardless of whether the application is complete. Therefore, the suggested change has been made. Additionally, the commission did not add the word "completed" into the last sentence because the permitting authority should respond to the owner or the owner's agent within 30 days of receiving an application, regardless of whether the application is complete. Thus, the commission has deleted the words "a complete" before "application" in the first sentence. The commission disagrees with LCSTs suggestion that seven to ten days is sufficient because the number of applications received by some permitting authorities does not allow a ten-day review period. Therefore, the suggested change has not been made.

LCST suggested changing the term "owner" to "applicant" in §285.3(c) which would include applications submitted by the installer, or designer. HCEH suggested that if an application is denied, the permitting authority should be allowed to provide the

reason for denial to either the owner or the owner's agent, typically the designer. HCEH believes that a homeowner may be confused with the technical comments on an OSSF design.

The commission agrees with both of these comments. The application for a permit may be submitted by the owner or the owner's agent. The commission has determined that the term "owner's agent" is more accurate than "applicant." The owner's agent can be an installer, a PS, or a PE. Therefore, the term "owner's agent" has been added to reflect that an individual representing the owner may submit the application and, therefore, should be notified, along with the owner, of any deficiencies in the application. A definition has been added to §285.2(50) defining "owner's agent" to include installer, PS, or PE.

One individual supported the addition of administrative provisions in §285.3(d)(1) for permitting authorities to follow. The individual commented, however, that this section needed some clarification since it implies that if the authorization to construct expires, then the owner must submit a new application and fee whether they still intend to install the OSSF or not. The individual suggested the last part of the last sentence read: "...the owner will be required to submit a new application and application fee to install the OSSF."

The commission appreciates the positive comment in support of the rule. Since there is no need to resubmit an application and fee if the owner decides not to install an OSSF, language has been added to clarify that a new application and fee are not required if the owner decides not to install an OSSF. The commission added language to clarify that the authorization to construct expires after one year.

LCST commented that in §285.3(d)(2) five days is excessive because of changes in weather conditions. According to LCST there have been a number of systems damaged due to waiting five days for an inspection, causing unnecessary cost. QCP disagreed with the "TNRCC policy requiring 5 business days notification for inspection on OSSFs." QCP commented that five business days usually translates to seven calendar days and since the OSSF industry is "greatly effected by weather," the installer will have to do one of two things: "A) Dig the hole, set the tanks, and leave the excavation open for 5 to 7 days waiting for an inspection. This leaves the installer open to greatly increased liability, and possibly having a system float due to rain. Many systems need to be secured by having the tanks backfilled. Or, B) be able to predict the weather better than professional meteorologists, and divine when they will be able to excavate and install a systems 4 to 6 days ahead of time." QCP suggested a quicker response time by the state is needed. LCST suggested the time frame be two days.

The commission responds that the five-working-day notification for an inspection is a requirement of THSC, §366.055(c). Permitting authorities are encouraged to inspect as quickly as possible. Therefore, the commission has made no change in response to the comment.

The commission modified §285.3(d)(2). The word "calendar" was added to clarify the number of days and to be consistent with other similar changes.

The commission modified §285.3(d)(3). The word "final" has been deleted since permitting authorities may perform another inspection after the construction inspection. This change keeps from limiting them to one inspection.

Concerning §285.3(d)(4), LCST and IS-D suggested that the term "owner" be changed to "applicant" which would include the installer, or designer in the notification that the OSSF cannot be used until it passes inspection.

The commission agrees with the intent of the comment. The application for a permit may be submitted by the owner or the owner's agent. The commission has determined that the term "owner's agent" is more accurate than "applicant." The owner's agent can be an installer, a PS, or a PE. Therefore, the term "owner's agent" has been added to reflect that an individual representing the owner may submit the application and, therefore, should be notified, along with the owner, that the OSSF cannot be used until it passes inspection. A definition has been added to §285.2(50) defining "owner's agent" to include installer, PS, or PE. Additionally, the commission has determined that it is important to notify the owner and the owner's agent of the deficiencies noted during the inspection, so that the deficiencies can be corrected as quickly as possible. For this reason, language has been added to §285.3(d)(4) to reflect that notice of the deficiencies identified must be provided by the permitting authority. The commission has further determined that, when possible, the owner and owner's agent should be notified at the close of the inspection of the deficiencies identified and the fact that the OSSF cannot be used yet. However, this is not always possible at the close of the inspection, because the owner is not required to be present for the inspection, and further, the installer is not always required to be present. Therefore, §285.3(d)(4) has been split into two subparagraphs. Subparagraph (A) requires that the permitting authority notify the owner and owner's agent, if present at the close of the inspection, of the deficiencies noted and that the system cannot be put into use. Subparagraph (B) requires that, in all cases, within seven calendar days after the inspection, the permitting authority must notify the owner and the owner's agent in writing of the specific deficiencies noted and that the system cannot be used until it passes inspection. The commission has determined that a time frame for the permitting authorities to issue this written notice should be established to ensure that an indefinite period of time does not lapse between the inspection and issuance of the notice, and that seven calendar days should be the maximum period of time allowed, to ensure that the project is not unduly delayed.

Concerning §285.3(d)(5), one individual asked how reinspection fees will be set by AAs. The individual noted that many AAs will not go through the effort of changing their order unless they absolutely have to.

The commission responds that the fees charged by an AA are not included in the AA's order, ordinance, or resolution. The fee process is addressed separately by the AA. No changes have been made in response to the comment.

The commission has modified §285.3(d)(5). The term "authorized agent" in the first sentence has been replaced with the term "permitting authority," which includes the AAs and the ED. Therefore, the remaining language has been deleted since it becomes unnecessary.

LCRA, LCST, and IS-D commented that §285.3(d)(6) of the rules should not specify who is responsible for paying the reinspection fee, rather the rule should only require the reinspection fee. LCST and IS-D suggested that the fee may be paid by the installer, engineer, sanitarian, or owner. Additionally, HCPID commented that the rule should require that the inspection fee must be paid when the reinspection is requested. According to

HCPID, this will prevent an installer from paying for inspections in the field.

The commission agrees that the installer may not be the individual responsible for paying the reinspection fee and has determined that the language needs to be more enforceable. The reference to who must pay has been deleted. This will allow anyone to pay the reinspection fee. It is important that the fee is paid before the reinspection is conducted to ensure prompt payment of the fee. Therefore, the language has been changed to indicate that the fee must be paid before the reinspection is conducted. Furthermore, the Government Code, §311.016, states that the word "must" creates a condition precedent, therefore, "will" has been changed to "must."

LCST commented that a time frame should be specified in §285.3(e)(1) regarding when the notice of approval will be issued by the permitting authority. LCST suggested the time frame be two days.

The commission agrees that a time frame to issue a notice of approval should be established to ensure that an indefinite period of time does not lapse between the inspection and the issuance of the notice of approval. However, the commission does not agree that two days is an adequate period of time, and has therefore added language to §285.3(e)(1) specifying that the notice of approval must be issued by the permitting authority within five calendar days after the inspection in which the system was approved. Further, the commission has added language to this paragraph specifying that the notice of approval must be issued, in writing, to either the owner or the owner's agent.

An individual supported the inclusion of exceptions in §285.3(f) into the proposed rules.

The commission appreciates the positive comment in support of the rule.

The commission modified §285.3(f)(1). The reference to "development of planning materials" has been deleted from this paragraph because the development of planning materials is included in the permitting process, thus it was redundant.

UGRA suggested that §285.3(f)(1)(A) either be deleted or the rule should be amended to allow for the inspection of a pre-existing OSSF. Inspections of pre-existing OSSFs would be used to determine if subsurface nuisance conditions exist, system alterations have been made, or repairs are needed.

The commission disagrees with the concept of inspections of pre-existing OSSFs because to effectively implement such a program would require the permitting authorities to inspect the systems routinely, which would require resources not currently available. Additionally, it would require the owner to uncover his system for each inspection when such inspections have not been shown to provide added environmental and health protection. Therefore, no change has been made in response to the comment.

TCAO asked for clarification in §285.3(f)(1)(A) regarding the grandfathering of systems built before September 1, 1989. TCAO is concerned that Travis County has required permits since 1983, and the rule appears to override Travis County's requirements.

The commission agrees that the language is not clear. The intent was to grandfather systems permitted before September 1, 1989, because these systems were designed and installed according to the construction standards in place when they were installed. Therefore, a new §285.3(f)(1)(B) has been added to clarify that systems permitted under an approved program are grandfathered. Additionally, proposed §285.3(f)(1)(B) has been renumbered to §285.3(f)(1)(C).

Concerning §285.3(f)(2), ECS commented that this section should only apply to counties with a population of 40,000 or less, because "Counties with larger populations and faster growth rates are prone to have more public health concerns."

The commission responds that no change has been made to the rules since this is a statutory exemption under THSC, §366.052.

UGRA suggested that an inspection provision be added to §285.3(f)(2). UGRA stated that, without an inspection, human health and safety cannot be protected. UGRA noted that Kerr County records indicate approximately 50% of new OSSFs installed are on properties greater than ten acres.

The ED is not authorized under THSC to issue permits for an OSSF that serves a single family dwelling on a piece of property that exceeds ten acres. Authorized agents may not issue permits for OSSFs unless specifically addressed by their ED approved order, ordinance, or resolution. Inspections are part of the permitting process; therefore, if there is no permit required, there is no mechanism for an inspection. Thus, the commission cannot mandate inspections of OSSFs that serve a single family dwelling on a piece of property that exceeds ten acres without a legislative change to THSC. The commission has made no changes in response to this comment.

The commission modified §285.3(f)(2). The term "planning materials" was added to more closely match the language in the statute.

The commission modified §285.3(f)(2)(B). The revision was made to clarify that all parts of the OSSF system are at least 100 feet from the property line.

TOWA suggested that §285.3(f)(3) should be deleted entirely, and one individual suggested that the phrase "or manufactured homes" should be deleted. Their rationale is that manufactured homes can have different rates of flow, depending on the size of the home; therefore, if the size of the home changes, the designer and the permitting authority should review the system to make sure it is still in compliance. In further support of their position, TOWA and the individual added that a manufactured home that is moved on and off a lot for sale is no different from one that is moved on and off a lot for lease, yet a manufactured home that is moved on the lot for sale would be subject to review, while a manufactured home on the lot for lease would not be subject to review. Furthermore, the individual asked how the overuse of an OSSF would be prevented if a home larger than planned or permitted is moved onto the lot. According to the individual, the only way is with a permit review.

The commission disagrees that §285.3(f)(3) should be deleted. The commission has determined that connecting recreational vehicles or manufactured homes to an existing OSSF, providing the OSSF is not altered, does not require a permit because the permit applies to the OSSF, and not the recreational vehicle or manufactured home. However, the commission agrees that the language was not clear. Therefore, the language has been changed to indicate that connection of a recreational vehicle or a manufactured home is not considered construction if the OSSF is not altered. The permitting authority does not have control over how many people live in any structure. The commission calculates the flow based on the size of the recreational vehicle

or manufactured home based on the information in Table III in §285.91(3). It is the responsibility of the owner of the OSSF to ensure that the OSSF meets the requirements in the permit. Any flow greater than what is authorized in the permit is a violation and is subject to enforcement action.

Concerning §285.3(g), LCRA commented it would be beneficial to AAs if there was language in the rules stating if an existing OSSF exceeds 5,000 gallons per day (gpd), the owner must obtain an individual Texas Pollutant Discharge Elimination System permit from the commission. LCRA suggested that, due to the length of time required to obtain an individual wastewater discharge permit, an "action" limit should be established at 90% of 5,000 gpd. The action limit would prevent the owner from operating a facility without a permit, unless it can be demonstrated through an engineering report to the AA that the effluent flow will not exceed 5,000 gpd.

The commission responds that this suggestion reflects the requirements for an individual wastewater treatment permit. The commission has determined that a "75/90 Rule" similar to that used in the municipal wastewater program is not applicable to OSSFs because OSSFs are designed to meet an actual, current usage, not a projected flow. Furthermore, Chapter 285 requires that any flow over 5,000 gpd must be authorized by a municipal wastewater permit and no longer meets the definition of an OSSF. Therefore, no change has been made in response to the comment.

GSC disapproved of the proposed change in §285.3(g)(1). GSC suggested that there should not be a minimum tract size criteria for "large tracts" and there should not be a special system separation distance. GSC recommended a conservative density or concentration of wastewater discharge for tracts which will exceed a collective discharge of greater than 5,000 gpd and suggested the density be 250 gpd per acre. TCAO asked what the basis was for establishing a 500 acre threshold. TCAO commented that if the separation and volume thresholds of that subsection will be met, the size of the tract seems irrelevant to whether the system should be permitted as an OSSF or municipal facility. R&R asked why the rules require 1,000 feet between drainfields on a piece of property greater than 500 acres, but the rules do not require 1,000 feet between drainfields in subdivisions. CES and TSPE recommended the separation distance between on-site wastewater systems be revised from 1,000 feet to 500 feet. TSPE commented that the exclusion is a very positive step forward but the 1,000 feet separation seems arbitrarily high, and not based on realistic separation distances found on many properties across the state.

The commission responds, based on the comments provided, that this requirement needs further study, and therefore, the proposed language for large tracts of land in §285.3(g)(1)(A) - (C) has been deleted. The proposed separation distances and acreage are not based on technical standards. The commission will be exploring other options for separate rule making that will address the large tract of land issue.

CES and TSPE recommended §285.3(g)(4) be deleted. CES and TSPE commented that individual OSSFs use the same types of technologies as cluster systems serving small numbers of homes (less than 5,000 gpd total), and it is often cost-prohibitive to go through the commission's municipal permitting process for systems of this size. Thus, according to CES and TSPE, cluster systems should continue to be reviewed and permitted under Chapter 285 rules. CES and TSPE suggested that the commission should incorporate certain technical requirements for management and that the rules should be revised to allow cluster systems for new development.

The commission responds that the use of cluster systems for wastewater treatment and disposal is not prohibited by the commission. The commission has determined that the permitting of cluster systems should be done under 30 TAC Chapter 205 or 305 instead of Chapter 285. Issues have been raised regarding: responsible parties in a cluster, multiple ownership, collection of fees, the possibility of being a utility, off-site disposal, stream standards and groundwater monitoring. These issues are best addressed by the municipal permitting program, which has an existing infrastructure for addressing these issues. No changes have been made in response to the comments.

One individual commented that proposed §285.3(h) will result in a takings to homeowners of "existing small lots." Additionally, the commenter stated that the proposed rule poses "de facto condemnation" issues, if a variance is not granted by a permitting authority. The individual suggested the commission add new language to §285.3(h) that would require a permitting authority to grant a variance for certain existing small lots. The individual suggested: "§285.3(h)(2) A variance shall be granted if the owner of an existing small lot that was built out with substantial permanent improvements prior to 1988 demonstrates that (a) the system in place met standards in effect at the time of construction, (b) conditions are such that the provisions of this chapter cannot be met, (c) compliance with these rules will cost in excess of $10,000, or (d) the requested variance provides greater protection or (sic) public health and the environment than maintenance of the system in place."

The commission agrees that the proposed language for variances is too restrictive and leaves the individual preparing planning materials unsure whether a variance can be obtained. The proposed language was intended to address variance requests related to separation distances and not other areas of the rules. Therefore, the phrase "the provisions of this chapter cannot be met and that" has been deleted, and a statement has been added to indicate that variances for separation distances will not be granted unless the provisions of this chapter cannot be met. The suggested language regarding cost would be very difficult to address until the design is complete. Therefore, the suggested change has not been made.

CES, HLE, TSPE, WCCHDES, and one individual expressed concern regarding variances in §285.3(h)(1). HLE commented that the rules should specify the conditions under which a variance may be granted by a DR. CES and TSPE recommended deletion of the phrase "that conditions are such that the provisions of this chapter cannot be met and" from the proposed rule. WCCHDES suggested that the language in this section be modified to "A variance may be granted if the owner demonstrates to the satisfaction of the permitting authority that conditions are such that the provisions of this chapter cannot be met (or can be substantially improved) and that equivalent or greater protection of the public health and the environment can be provided by other means." CES and TSPE commented the proposed requirement would discourage the use of solutions that might result in substantial cost savings to property owners, and which also provide equal or greater public and environmental health. WCCHDES stated that its suggested language will allow variances for design requirements that are better than those listed in the rules. CES and TSPE added that creativity and innovativeness should be accommodated, rather than discouraged in the rules. According to WCCHDES, if the ability to design a better system is taken

out of the rules, the rules are not providing greater protection to the public health and safety. According to the individual, the proposed section would restrict new construction because "No trees on lots or new structures built before getting a permit can be justified as a reason for a variance."

The commission agrees that the proposed language is too restrictive and leaves the individual preparing planning materials unsure whether a variance can be obtained. The proposed language was intended to address variance requests related to separation distances and not other areas of the rules. Therefore, the phrase "the provisions of this chapter cannot be met and that" has been deleted and a statement has been added to indicate that variances for separation distances will not be granted unless the provisions of this chapter cannot be met.

HCPID suggested the language in §285.3(h)(1) be changed from "A variance may be granted if the owner demonstrates to the satisfaction of the permitting authority...." to "A variance may be granted if the designer demonstrates to the satisfaction of the permitting authority...." HCPID states the change will provide for consistency with §285.3(h)(2). LCST suggested that the term "owner" be replaced with "applicant" to include the installer or designer.

The commission agrees that the owner or a PS or PE representing the owner can submit a variance request. Therefore, to provide language consistent with what occurs in practice and rather than use the word "designer" the commission has changed the language to "owner or a professional sanitarian or professional engineer representing the owner."

Concerning §285.3(h)(2), R&R, LCST, and IS-D suggested that an installer should be able to, at the discretion of the permitting authority, submit certain variance planning materials based upon the technical merits of the variance request. LCST and IS-D commented that to require all variance requests to be prepared and sealed by either a PS or PE places an undue expense and burden on the consumers in our state, and in many cases without justification. R&R added that DRs should have the option of determining when a PE or PS should, based upon the level of water quality treatment, be used to ensure public safety.

The commission responds that a variance should only be granted if it can be technically justified to the permitting authority. To be technically justified, it must be demonstrated that the alternate means will provide equivalent or greater protection of the public health and the environment. Since the greater protection may be accomplished through a wide variety of techniques, it is not possible to list all conceivable variance requests in a rule. The commenters are correct that some variance requests may be simple enough that an installer might be able to adequately prepare the variance request; however, many variance requests are complex, and thus, must be prepared by a PE or PS. Since the commission cannot predict the technical issues which may arise in the future, the commission cannot delineate which variances can be prepared by an installer, versus those that must be prepared by a PE or PS. Therefore, no change has been made in response to the comment.

The commission modified §285.3(h)(2). A sanitarian is not required to seal documents like the engineers. Therefore, the language was changed to "appropriate seal, date, and signature." This is consistent with language in other areas of the rules.

The commission modified §285.3(i). The words "boreholes, cesspools, and seepage pits that" have been used instead of "these systems" since these are not systems, as well as for clarity.

§285.4. Facility Planning.

Regarding §285.4, Austin suggested regulating lot sizes in the Barton Springs Recharge and Contributing Zones (Barton Springs Zone). Austin commented that various lot sizes are needed because over two-thirds of the Barton Springs Zone are not regulated by Austin. Austin suggested modeling the sizing requirements after Hays County's model. Austin argues that additional protection through sizing requirements is necessary on the state level to protect the aquifer and to compensate for limits on inspection and enforcement abilities of the commission.

The commission responds that these rules set minimum health and water quality related standards. The commenter is suggesting more stringent standards that are not justified because increasing lot size alone does not guarantee environmental protection. Other factors impacting environmental protection include soil conditions and meeting the standards of this chapter. In addition, an AA can set more stringent standards if the standards are justified as providing greater protection of health and safety. Therefore, the commission has made no change in response to this comment.

Concerning §285.4, TCAO commented that the rules rely heavily on traditional concepts of subdivision platting which do not accommodate the innovative means used today by developers to divide property. TCAO asked: regardless of the result, does the commission intend that its AAs apply the rules and their terminology literally; if not, what degree of flexibility do AAs have to apply or interpret the rules to achieve a workable solution that is protective of the environment and public health. TCAO also asked, to what extent does the commission believe AAs should rely on granting variances in situations where the rules do not "fit squarely within the precise terminology used in chapter 285." TCAO suggested that some guidance by the commission on these issues would be of help to AAs dealing with these situations.

The commission responds that these rules should be taken literally and should be followed by all AAs. An AA can approve variances if equivalent environmental protection is provided and justified. No changes have been made in response to the comment.

Concerning §285.4(a), Austin suggested that in all circumstances, the required space available for an OSSF on each lot should be the larger of 5,000 square feet per single family dwelling or two times the design area.

The commission responds that this requirement would be a more stringent standard than in the current rules and that there is no technical basis for such a requirement statewide. No changes have been made in response to the comment.

The commission modified §285.4(a) by moving "the following requirements apply" to the end of the introductory paragraph, and adding "to all sites where an OSSF may be located" for clarification.

Concerning §285.4(a)(1)(A), Austin suggested that the minimum lot size for a lot served by a public water system be increased to 0.75 acres. Austin provided the following technical reasons for justifying the increase in lot size: "for site design, disposal fields are difficult to site if the lot's length to width ratio is less than 1, particularly for OSSF setbacks from adjacent properties; with a 0.5 acre lot, siting the drain fields, home, garage, would be

infeasible if any other home improvements were added prior to installation of the drain field. Problems also will occur if property owners change arrangements on the lots. These problems create potential health and environmental problems and enforcement problems for local permitting authorities."

The commission responds that this suggestion is more stringent than the current rules require. The commission has determined that the suggestion regarding increasing the lot size to 0.75 acre is not technically justified, and Austin did not present any evidence indicating that the existing lot sizing of 0.5 acre is creating an environmental or health problem. Additionally, the 0.5 acre requirement has been in place since 1990, and the commission has no documentation suggesting that this has created any human health or environmental problems. Therefore, no changes have been made in response to the comment.

The commission has modified §285.4(a)(1)(A). The term "OSSF methods" has been replaced with "OSSFs." This better describes what is used and agrees with language in §285.4(a)(1)(B).

Concerning §285.4(a)(2), HCEH suggested the overall density of a manufactured housing community or multi-unit residential development should be restricted to one-half acre if the community has a public water supply and one acre if the community uses private water.

The commission responds that these rules set minimum health and water quality related standards. The commenter is suggesting more stringent standards that are not justified because controlling development density alone does not guarantee environmental protection. Other factors impacting environmental protection include soil conditions and meeting the standards of this chapter. In addition, an AA can set more stringent standards if justified as providing greater protection of health and safety. Therefore, the commission has made no change in response to this comment.

The commission modified §285.4(a)(2). The language has been changed to indicate that the owners of manufactured housing communities and multi-unit developments submit the materials instead of the communities or developments.

Concerning §285.4(a)(3), Austin County commented that it agrees with the elimination of the requirement to conduct a site evaluation to evaluate the subdivided property for its soil suitability, especially on tracts of land larger than one acre in size.

The commission appreciates the positive comment in support of the rule.

The commission modified §285.4(b). The term "OSSF systems" has been added since it is the systems being approved, not the lots or tracts. The subsection was divided into separate paragraphs to separate thoughts. As a result of this division, §285.4(b)(1) - (3) is now §285.4(b)(1)(A) - (C) and a new §285.4(b)(2) has been added.

UNRMWA commented that requiring "system rebuilds" in §285.4(b)(3), now cited in §285.4(b)(1)(C), to conform to the current standards for all systems, including those that serve property that do not meet the current minimum lot size requirements will pose a severe economic hardship to many people.

The commission responds that to protect human health and the environment, the entire OSSF must be brought up to current standards even if only part of the system needs to be repaired. The commission has determined that the minimum lot size that is protective of human health and the environment is 0.5 acre, thus, any time any part of the system needs to be repaired, the system, regardless of the lot size, must be brought to current standards. Additionally, THSC, Chapter 366, requires that a permit be issued if an OSSF is repaired, and the issuance of a permit is only allowed when the entire system meets the standards of this chapter. No changes have been made in response to this comment.

The commission modified §285.4(b)(2). This paragraph was added to clarify how to address small lots or tracts without enough acreage to install a system. This situation exists across the state and is a major issue, especially for retired or economically distressed owners.

Concerning §285.4(c), TCAO commented that the 45-day approval deadline for planning materials conflicts with the statutory deadline applicable to counties (see Texas Government Code, §232.0025) which allows counties a 60-day deadline for approving subdivision plats. TCAO added that the materials the commission requires an AA to review are typically reviewed by counties in conjunction with the review of a developer's proposed subdivision plat. TCAO suggested that the commission should follow the 60-day deadline set by the legislature. According to TCAO, a single deadline would improve administrative efficiency.

The commission responds that the subdivision or development review of planning materials under these rules and the approval of the subdivision plat are separate processes. The 45-day approval time will allow 15 days for the county to complete the subdivision plat review for approval. No changes have been made in response to the comment.

§285.5. Submittal Requirements for Planning Materials.

Apex commented that the deletion of existing §285.5(2)(D) and the addition of the language in §285.5(a)(3)(B) in the proposed rule gives the impression that only PEs can submit planning materials for "all standard or proprietary treatment systems that utilize surface application disposal." Apex is opposed to limiting the submittal of the planning materials by engineers.

The commission responds that the language in §285.5(a)(2) and §285.91(9) allows the preparation of planning materials by either a PS or a PE for the systems described by the commenter. No change has been made in response to the comment.

Concerning §285.5(a), HCPID, TOWA, and one individual suggested the first sentence be revised to allow "an owner's agent" to submit planning materials on behalf of the owner. HCPID, TOWA, and the individual stated that it is important to authorize the owner's agent to submit the permit and planning materials since many owners do not live in the area when permits must be obtained, and thus, may not be able to answer detailed questions asked by the permitting authority. Often the questions can be better addressed by the designer, contractor, etc. Additionally, HCPID stated that requiring the owner to submit the permit and planning materials may create a hardship on the owner. TOWA and the individual commented that installers, designers, and homebuilders, not the homeowner, are the ones who prepared and understand the planning materials and would be the one able to answer the DR's questions. The individual also suggested that the owner be required to sign the application, and maybe even the planning materials to indicate he has seen them, but there is no need for the owner to actually come in to the office with the planning materials. LCST suggested that the term "owner" be replaced with "applicant" to include the installer, or

designer to submit planning materials and that separation distances of all items in Table X should be required on the scaled drawing.

The commission responds that the permit application and the planning materials are not only submitted by the owner, but could be submitted by the owner's agent, which could be either an installer, a PS, or a PE. Therefore, the term "owner's agent" has been added to allow an individual representing the owner to submit the application and planning materials. A definition has been added in §285.2(50) for "owner's agent" to include installer, PS, and PE. The commission has determined it is not necessary to require the owner to sign the application or the planning materials because often the owner does not participate in the planning and design of the OSSF and merely viewing the documents does not ensure compliance with these rules. However, many permitting authorities do include this requirement. Thus, no change was made in response to this comment.

Concerning §285.5(a), HCPID commented that "the structure served by an OSSF is part of the system, but may be on a separate piece of property." HCPID suggested §285.5(a) should be changed to read: "...A scale drawing and legal description of the *property* where an OSSF *system* is to be installed must be included with the permit application..." (Emphasis added)

The commission responds that the definition of "OSSF" in §285.2(46) defines that "OSSF" is an on-site sewage disposal *system* (emphasis added). The language in §285.5(a) has been clarified to ensure that all scale drawings include the OSSFs, structures served by the OSSF and the items specified in §285.30(b) and §285.91(10). Additionally, the commission clarified that the legal description must include the entire property where the OSSF will be located. Finally, the word "land" was changed to "property" for consistency with other parts of these rules.

Concerning §285.5(a)(1), Austin County expressed concern with the proposed language and asked if the intent of the change was to allow either an owner or installer to conduct site evaluations. Additionally, Austin County asked if allowing either an owner or installer to conduct site evaluations would encourage abuse.

The commission appreciates the comment. The intent of §285.5(a)(1) is to identify who can submit planning materials, not who can do site evaluations. Due to the Attorney General opinion (No. JC-0020) in 1999, the commission cannot license site evaluators. Therefore, these rules do not specify who can perform site evaluations. No change has been made in response to this comment.

CES suggested §285.5(a)(1) and (2) be revised to allow registered sanitarians and other "non-engineers" to design systems if they have system specific training. According to CES, registered sanitarians should only be authorized to design systems with flows less than 500 gpd. CES commented that because "unsuitable" conditions exist in many parts of the state, more complex systems are being installed. In addition, according to CES the designing of larger systems makes it critical for designers to have sufficient training in fundamental engineering principles.

Section 285.5(a)(1) authorizes planning materials for some systems to be prepared by the installer or the owner. Section 285.5(a)(2) authorizes PEs or PSs to prepare planning materials for systems that are not listed in §285.5(a)(3). To ensure the public health and safety and the environment are protected, the commission has determined that all systems listed in §285.5(a)(3) must have planning materials prepared by PEs. The commission does not provide, nor is it aware of, any training that would provide PSs and other "non-engineers" with the level of expertise necessary to prepare the planning materials for the systems listed in §285.5(a)(3). As CES noted, there are a wide variety of site conditions in the state that require an engineer's specialized knowledge to prepare the planning materials, therefore, the commission has determined that PEs must prepare the planning materials for the OSSFs listed in §285.5(a)(3). No changes to the rule have been made.

TSPE suggested language is needed in §285.5(a)(1) and (2) to better define the restrictions for designs of systems in Texas by "non-engineers" which includes designs for publicly owned entities or properties with construction costs greater than $20,000 (or in some cases $8,000).

The restrictions on design by "non-engineers" are defined by the interrelationship of §285.5(a)(3) and §285.5(a)(1) and (2). Section 285.5(a)(3)(A) requires that all systems, regardless of type, must have planning materials prepared by a PE if the structure to be served by the OSSF is not exempted by the Texas Engineering Practice Act. Sections 285.5(a)(1) and (2) allow a system to be planned by someone other than a PE, only if the limitations imposed by §285.5(a)(3)(A) do not apply. Therefore, no changes to the rule have been made.

Regarding §285.5(a), TSPE commented that Texas should require technical training and experience for sanitarians that is specific to the design of onsite wastewater systems. According to TSPE other states do require technical training and experience for sanitarians specific to the design of OSSFs. TSPE noted that training in hydraulics, physical and biological treatment systems, and "electromechanics" is needed for many of the complex designs used today and should be mandated for sanitarians before they design an OSSF.

Sanitarians are allowed to perform the function specified in §285.5(a)(2) because they hold a sanitarian license. The commission does not propose to require specific training for PSs as it does not have authority to specify the sanitarian licensure requirements. The training requirements to hold a sanitarian license are specified by the Texas Department of Health. Similarly, the commission does not have authority to require specific training for PEs because the training requirements to be a PE are specified by the Texas Board of Professional Engineers. No changes to the rule have been made.

With regard to §285.2(57), TSPE stated that the definition of a sanitarian §285.2(57) only authorizes them to carry out "educational and inspectional" duties.

The commission responds that the definition of "sanitarian" in §285.2(57) is the statutory definition in Texas Civil Statutes, Title 71, Art. 4477-3, §2(b), Vernon's Texas Civil Statutes, 1999. The statute is implemented by 25 TAC, Chapter 265. Section 265.142(23) states "Scope of professional practice - Includes, but not limited to, evaluating, planning, designing, managing, organizing, enforcing, or implementing programs, facilities, or services that protect public health and the environment. The scope of practice also includes educating, communicating, and warning communities of factors that may adversely affect the general health and welfare. The scope of practice may be in the areas of food quality and safety, on-site wastewater treatment and disposal, solid and hazardous waste management, ambient and indoor air quality, drinking and bathing water quality, insect and animal vector control, recreational and institutional facility inspections, consumer health and occupational health and safety."

The requirements for sanitarians as specified in Chapter 285 are within the scope of professional practice for PSs; therefore, no changes have been made in response to the comment.

R&R suggested that Installers Class II should be allowed to design the systems identified in §285.5(a)(2). R&R commented that a DR reviews and approves such plans, therefore, the DR should have the discretion as to whether a particular design requires the further analysis of a PE or registered sanitarian.

The commission responds that §285.5(a)(1) authorizes installers to prepare planning materials. However, due to the complexity of the systems identified in §285.5(a)(2) and the need to address soil permeability, pressure distribution, and other standards, PSs or PEs are needed to prepare planning materials for the systems identified in §285.91(9). No changes have been made in response to the comment.

The commission modified §285.5(a)(2)(A) by changing the word "and" to the word "or" since a proposal could be for either one.

HCEH suggested that the language in §285.5(a)(2)(B) should be reworded to add OSSFs serving commercial or institutional facilities to the list of OSSFs that planning materials must be prepared by a PE or PS.

The commission responds that not all OSSFs for commercial or institutional facilities need to have planning materials prepared by a PS or a PE because a commercial or institutional facility does not necessarily require a complex system able to handle a large flow. It would be difficult to delineate by rule which commercial or institutional facilities would require planning materials prepared by a PS, a PE, or an installer. Therefore, no changes have been made in response to the comment.

The commission modified §285.5(a)(2)(B) by changing the word "and" to the word "or." The use of the word "and" means that all of these situations have to occur to submit planning materials. Actually, planning materials must be prepared by a sanitarian or engineer in any of these situations.

Austin County commented that since §285.5(a)(2) authorizes both PEs and PSs, §285.5(a)(3) should also include PSs.

To ensure the public health and safety and the environment are protected, the commission has determined that all systems listed in §285.5(a)(3) must have planning materials prepared by PEs. There are a wide variety of site conditions in the state that require an engineer's specialized knowledge to prepare the planning materials, therefore, the commission has determined that PEs must prepare the planning materials for the OSSFs listed in §285.5(a)(3). No changes to the rule have been made.

The commission modified §285.5(a)(3)(A) by changing the word "and" to the word "or." The use of the word "and" means that all of these situations have to occur to submit planning materials. Actually, planning materials must be prepared by an engineer in any of these situations.

Concerning §285.5(b)(2), Amstar commented that the commission should develop guidance for DRs to determine what are "similar" site conditions. Alternatively, Amstar suggested that DRs should not be authorized to determine what are similar site conditions. Amstar stated that various DRs have interpreted "similar" site conditions in different ways, which has lead to inappropriate systems being installed.

The commission responds that the language used is "same site conditions," not "similar site conditions" as indicated by the commenter. This distinction is significant because DRs are capable of determining if the site conditions are the same as those previously approved. When the ED approves non-standard planning materials, the ED will initially identify the site conditions that will have to be met for any subsequent approvals. No changes have been made in response to the comment.

Austin County commented that there may be a conflict between §§285.5(b)(2), 285.32(d), and 285.33(d). Austin County asked if §285.5(b)(2) means that all non-standard planning materials have to be submitted to the ED for approval and if so, how long will the commission have to review the planning materials. Austin County further stated that the commission will need to keep in mind that the permitting authority has 30 days to approve or deny the application. Austin County also asked if §285.5(b)(2) authorizes the use of the planning materials or the concept at other locations. Finally, Austin County commented this provision is discouraging to residents.

The commission agrees that there is a conflict between §§285.5(b)(2), 285.32(d), and 285.33(d). The proposed language indicated that all non-standard systems would need to be reviewed by the ED. This is incorrect. The language should have referred to §285.33(d)(6), which applies to a limited number of systems. Therefore, the citation has been changed to §285.33(d)(6). The commission agrees that because the proposed language did not specify a time period for the ED to respond, it would have been possible for the ED to respond after the 30-day time period referred to by Austin County. Therefore, a ten-calendar-day response time for the ED to review and respond to the initial planning materials has been added. Additionally, the commission deleted the word "local" because it was redundant.

LCST and IS-D suggested that all products (systems) using similar technology should be held to similar testing and evaluation standards in §285.5(b)(3). LCST and IS-D commented that in the past, testing protocol and monitoring of test systems have not been uniformly applied to products of similar classifications, which has resulted in products entering the Texas market that have not met previously established standards.

The commission appreciates the comment and agrees that proprietary treatment and disposal systems should be tested and evaluated before they are allowed to be used. The commission agrees that, in the past, systems have been approved for use without appropriate testing and evaluation due to lack of adequate and standardized testing protocols. Under §285.32(c)(5), these systems will be reevaluated in the future. Since 1997, the commission has consistently reviewed and evaluated all proprietary systems before allowing them to be sold in Texas, and intends to continue to do so. No changes have been made in response to this comment.

§285.6. Cluster Systems.

TSPE suggested §285.6 be revised to incorporate certain technical requirements for management, allow cluster systems for new development, and provide standard forms of management agreements that would be acceptable to the commission. TSPE commented that there should be an attempt to have reasonable consistency with requirements under 30 TAC Chapter 317 for alternative (small diameter) collection systems, without unnecessarily increasing costs for smaller systems. TSPE added that the commission should specify the key provisions to the management agreements that would assure the commission that sufficient management responsibility has been assumed.

The commission responds that the use of cluster systems for wastewater treatment and disposal are not prohibited by the commission. The commission has determined that the permitting of cluster systems should be done under Chapter 205 or Chapter 305 instead of Chapter 285. Issues have been raised regarding: responsible parties, multiple ownership, collection of fees, the possible creation of a utility, off-site disposal of sewage, stream standards, and groundwater monitoring. The commission had determined that cluster systems should not be included in this chapter because the municipal permitting program has the existing infrastructure to address the stated issues.

§285.7. Maintenance Requirements.

Concerning §285.7, TOWA, and one individual suggested that the term "maintenance" be changed to "service" through out the document. In addition, the individual suggested that the term "Maintenance findings" be changed to "Service report." According to both TOWA and the individual, the term "service" will be better understood by the public and is a better representation of what is being done. The individual added that many manufacturers refer to this policy as a service policy and, therefore, the terminology would remain consistent. SOS suggested that the term "maintenance" used in such phrases as "maintenance company, maintenance contract, etc" should be changed to "monitoring." SOS commented that monitoring more accurately describes the intent of the requirement and is consistent with the terminology of the municipal permitting rules. Additionally, according to SOS, "maintenance" creates a mistaken belief that the contract is an extended warranty of sorts, which it is not. SOS wanted to clarify that the "maintenance" activities required by this rule are not the same as the NSF requirements for two years service provided in the sale of the proprietary system.

The commission responds that it did not make any of the commenter's suggested changes because "maintenance," "maintenance findings," and "maintenance contracts" are terms of art that have been used in the OSSF industry since 1990. There has been evidence presented that the lack of maintenance as defined and used in the industry is causing an environmental or health problem. Therefore, the commission has made no change in response to this comment.

FCWD states that §285.7(g) of the current rules adopted in 1997 does not specify who will be responsible for stopping the transfer of property if terms of this section are not fulfilled and suggests that without specifying who is responsible the section is not enforceable.

The commission responds there is no specific affidavit requirement for surface application systems in the proposed rule. All affidavit requirements are found in §285.3(b)(3). However, the commission cannot hold up the transfer of property under these rules. The permitting authority can take enforcement action against the owner of the property for not having a maintenance contract since the owner's name would be recorded in the deed records. No changes have been made in response to this comment.

Concerning §285.7, HCEH commented that the maintenance requirements for surface application systems need to be "stronger," and that more surveys of these systems should be made after the new rules are in place. HCEH suspects that 85% of these systems are malfunctioning in some respect.

The commission responds that there has been considerable effort during this rule revision process to strengthen requirements for maintenance, maintenance companies, and maintenance contracts for all systems using secondary treatment, not just for surface application systems. For example, there are increased contract requirements in §285.7(c) and increased training requirements in §285.7(b). The commission also responds that additional surveys are not necessary because there has not been any evidence presented to the commission that 85% of surface application systems are failing. Authorized agents can authorize such surveys or evaluations if the agent thinks it is necessary. No changes have been made in response to this comment.

Concerning §285.7, LCST and IS-D supported the proposed maintenance requirements and applaud the commission's efforts to protect the consumers of Texas.

The commission appreciates the positive comment in support of the rule.

The commission deleted the last sentence of §285.7(a), which read, "More stringent maintenance requirements may be included in the planning materials approved by the permitting authority." The language was deleted since the use of the term "more stringent" was not appropriate. The intent of the commission was to address additional permit-specific maintenance requirements that are covered during the review of the application and planning materials, and therefore the language is not necessary in this subsection.

Concerning §285.7(b)(1), LCST and IS-D suggested that a maintenance company, at a very minimum, "shall" have a individual who holds an Installer II license and a Class D (or higher) wastewater operator license. Both commented that any mechanically operated wastewater treatment process should be maintained by an individual holding a Class D or higher wastewater treatment plant operator license.

The commission disagrees with the comment. The training by the manufacturer, which will now be required to be approved by the ED, is the important part of the maintenance process. This training should provide the necessary information on the system. This coupled with the training received to become either an Installer II or a Class D Wastewater Operator is sufficient to maintain the systems that require secondary treatment. The commission has not seen evidence that the individual needs to hold both an Installer II and a Class D Wastewater license to maintain these systems. No changes have been made in response to this comment.

Concerning §285.7(b)(1), Austin suggested that the individual with a maintenance company hold a Class C rather than a Class D wastewater operator license since Class D operators are only required to have 20 hours of training with no relevant experience.

The commission disagrees with the comment. The knowledge needed to maintain an aerobic treatment unit would be learned by an individual taking the Class D license course and exam. Additionally, their knowledge is demonstrated because they must pass the class and exam. Therefore, the commission has made no change in response to the comment.

Concerning §285.7(b)(1)(A), GCHD commented that manufacturers and maintenance companies will go out of business, thus, there will not be any way to certify individuals to maintain existing systems.

The commission agrees that the manufacturer going out of business could present difficult issues that will need to be addressed

on a case-by-case basis. However, until a specific situation occurs, language cannot be developed. If a maintenance company goes out of business, the maintenance company must notify the permitting authority, owner and manufacturer as required in §285.7(c)(3)(B). The owner will then be responsible for finding a new company to maintain the system from a list provided by the manufacturer. No changes have been made in response to this comment.

Regarding §285.7(b)(1)(A), GCHD commented that the commission should provide training for maintenance companies on how to "...generally maintain systems...," while CES recommended that the commission sponsor, with required participation from manufacturers, "group" training for installers and operators or others wishing to service proprietary systems. According to GCHD, if the commission were to maintain a library of specific maintenance requirements for all systems approved to be installed in the state, the number of maintenance companies available to maintain OSSFs in Texas would be increased. According to CES, under the current and proposed manufacturer approval process, manufacturers limit the number of service providers for their systems, which reduces competition and results in property owners being charged uncompetitive prices for maintenance on their systems. CES also claims that property owners are rarely informed of this lack of alternatives before the system is installed in their yard. GCHD stated the additional maintenance companies would help ensure that maintenance companies are available in isolated areas of the state.

The commission disagrees with the comment that the commission should provide training on the manufacturers' systems. While this process would probably make more companies available to owners, the commission staff would not be able to provide the necessary training on the individual systems. The commission has deleted §285.7(b)(3) because further study needs to be conducted regarding what constitutes an "adequate number of companies." The commission may address this in future rulemakings. No other changes have been made in response to the comments.

Regarding §285.7(b)(1)(A), HEM suggested that the ED adopt, in separate rule making, standards for the approval of a training class which must be conducted by manufacturers for maintenance companies. In the alternative, the commission should publish a guidance document specifying the standards for an approved training class. HEM commented that it is appropriate that manufacturers be "apprised" of what standards the ED expects concerning the approval of maintenance companies but feels the proposed rule gives the ED too much discretion in approving training.

The commission agrees that the manufacturers need to know what will be expected when the rule is implemented. Therefore, as part of the implementation of the rule, the manufacturers will be provided guidance on the standards for approval of the training classes. No changes have been made in response to the comment.

QCP asked if under §285.7(b)(1)(A) the manufacturer is required to certify individual installers to perform a service or if the certification can be done by the company who owns and controls the product. QCP commented that they manufacture and distribute an aerobic treatment unit that they license from another company; and asked if this would make them responsible to certify individuals who want to maintain the aerobic treatment unit.

The commission responds that the manufacturer is required to train and certify individuals to install and maintain their system (§285.7(b)(1)(A)). The distributors are not responsible for the training unless designated by the manufacturer. No changes have been made in response to this comment.

The commission clarified §285.7(b)(1)(A) by adding a date certain by when a manufacturer shall certify a qualified individual. The time frame which was added will give adequate time for the manufacturers to develop a training course and get it approved.

HEM commented that there is an inconsistency between §285.7(b)(1)(A) and (3) since one section requires a manufacturer to train and certify an individual and the other section requires a manufacturer to train a maintenance company. HEM stated that the commission needs to make this consistent.

The commission agrees that there is an inconsistency between §285.7(c)(1)(A) and §285.7(b)(3). The manufacturer should be training individuals, not companies, since only individuals hold certifications under these rules. Therefore, the language in §285.7(b)(3) requiring training of an adequate number of maintenance companies has been deleted. The commission has withdrawn this subsection because further study needs to be conducted regarding what constitutes an "adequate number of companies." The commission may address this in future rulemakings.

Austin County recommended that non-proprietary be defined. Austin County points out that this term is only used in §285.7(b)(1)(B) and is not referenced in any of the following: §285.33(b) - (d) and 285.91(9). Austin County asked if non-proprietary was the same as non- standard.

The commission agrees with this comment. The term "nonproprietary" is not defined and is not appropriate for use in these rules. The word used should have been "non-standard." Therefore, the suggested change from "nonproprietary" to "non-standard" has been made.

Concerning §285.7(b)(1)(B), HCEH commented that the designer certification will be "difficult to obtain on a system that has been in use for several years and the owner switches maintenance companies."

The commission agrees that for professionally designed non-standard systems, there may be a limited number of individuals trained on the system. The DRs should request a copy of the maintenance and operation manual for the system as part of the planning materials. If the owner changes maintenance companies, the new maintenance company would have a manual to follow if the PS or PE is not available. No changes have been made in response to this comment.

The commission changed the word "certified" to "trained" in §285.7(b)(1)(B) because the individual will be trained rather than certified by either the PE or PS who designed the system.

Concerning §285.7(b)(3), GCHD, HEM, and two individuals commented that the term "adequate" should be defined. Specifically, GCHD asked who will determine what is an adequate number of companies for an area, and what action will be taken if an adequate number is not available in a particular area. Additionally, GCHD asked whether the AA can place a moratorium on the installations of systems that belong to manufacturers that fail to maintain an adequate number of maintenance companies in a particular area. One individual asked how the requirement for manufacturer's to have "an adequate number of maintenance companies in each county" will be enforced, suggesting that the

commission not require maintenance companies to be certified by the manufacturer, which would eliminate any concerns as to whether the manufacturer has trained an adequate number of maintenance companies. Another individual asked if the number will be the same in every county, and is "adequate" a minimum or maximum number, or just a range?" HEM stated that the proposed rule is vague and that the commission needs to clarify this standard. HEM commented that one maintenance company for a county of 50,000 persons or less appears to be adequate but the issue arises as to how many will be adequate for Harris County, which has millions of citizens.

The commission has withdrawn this subsection because further study needs to be conducted regarding what constitutes an "adequate number of companies." The commission may address this in future rulemakings.

NETMWD suggested that §285.7(c)(1) should require that all maintenance contracts either specify the components of the system that will be inspected each visit and at what frequency the components should be inspected, or refer to the manufacturer's specific maintenance requirements.

The commission responds that the frequency of maintenance checks and testing is listed in §285.7(c)(1)(D) as one of the items to be included in the maintenance contracts. The frequency of testing is provided in §285.91(4). A sample testing and maintenance report is provided in §285.90(3). No changes have been made in response to this comment.

Concerning §285.7(c)(1) and (2), one individual supported the minimum requirements for a maintenance contract that were proposed in these rules.

The commission appreciates the positive comment in support of the rule.

ECS and HCEH commented that §285.7(c)(1)(B) should specify how long a maintenance company has to respond to an owner's complaint, or call. ECS suggested that 48 hours is reasonable for problems concerning effluent quality. ECS further suggested that the maintenance provider could determine the appropriate response time for problems that do not affect effluent quality. HCEH added that many companies do not return phone calls to homeowners who are having problems.

The commission responds that the time for responding to complaints by the maintenance company should be included in the contract between the owner and the maintenance company instead of a rule because each maintenance company will have different resources available to meet their contract provisions. Therefore, no changes have been made in response to the comment.

QCP commented that §285.7(c)(1)(C) and (3)(A) place a burden on maintenance companies. QCP provided the following example: "My company retains the services of 3 people who posses(s) Installer II licenses, as well as several other people we have trained to perform maintenance. We do not always have the same person performing the maintenance on a given system." According to QCP, they would unnecessarily have to notify the customer and the DR that issued the permit each time a different person performed their maintenance. QCP suggested that only the company name be listed so that only the company name would need to be changed if the company no longer retained the services of a person with either an Installer II license or Class D wastewater license.

The commission disagrees with this comment because one of the requirements of a maintenance company is that at least one employee of the company be trained by the manufacturer of the system. By identifying the individual who has been trained by the manufacturer, the owner and the permitting authority know who is responsible for ensuring the maintenance is performed correctly. Therefore, no changes have been made in response to this comment.

The commission deleted the word "qualified" from §285.7(c)(1)(C) since the word is redundant because the meaning of "qualified" is given at the end of the subparagraph. Additionally, the commission has deleted the phrase "will be responsible for fulfilling the requirements of the contract and" since this is already stated in §285.7(b)(2) and is not necessary to repeat in this subparagraph. Finally, the commission has deleted the words "to maintain the system" since this is already stated in §285.7(b)(1)(A) and is not necessary to repeat in this subparagraph.

The commission changed the words "the individual" to "who is" in §285.7(c)(1)(E) to better address the responsible party.

Concerning §285.7(c)(2), GCHD commented that it is not fair to force an owner to contract with a valid maintenance company that the homeowner finds unacceptable if no other maintenance company is available.

The commission understands there are concerns regarding this issue. The commission has received numerous complaints from the public about the lack of a sufficient number of maintenance companies certified by the manufacturer to perform maintenance of their systems. The majority of complaints and problems which result from the inability to access certified individuals occurs because of the limited number of maintenance companies that manufacturers will certify. The commission has determined that lack of maintenance companies reduces the ability of OSSF owners to obtain immediate assistance in case of a problem, and limits the resources that can be applied to ensure that OSSF systems in a particular area are regularly and properly maintained. However, further study needs to be conducted regarding maintenance companies. The commission may address this in future rulemakings. No changes have been made in response to this comment.

Austin County disagreed with the proposed §285.7(c)(2). TOWA suggested that the maintenance contract be provided to the permitting authority before the notice of approval rather than before the authorization to construct is issued since the owner of the property may not be determined yet. SOS suggested that maintenance contracts should not be required until final inspection. TOWA agreed that it is essential to have a contract. TOWA suggested, however, that the contract could be required before the notice of approval. SOS commented that requiring a contract before the final inspection creates a mismatch between the start date of the contract and the date the system is placed into operation. SOS added that to start the maintenance contract and use of the system on different dates does not make sense, and it creates unnecessary friction between the permitting authority, system owner, and maintenance provider. Austin County commented that "the initial property owner could be required to pay for maintenance for a system even if he no longer owns the property. It is very unrealistic to hold someone responsible for something he no longer has in his name."

The commission responds that it is important that the maintenance contract be submitted with the planning materials so that

all materials can be reviewed. The ED has found that waiting until the notice of approval to require proof of a contract will result in the system being used by the owner without a contract. Section 285.7(c)(2)(A) has been changed to indicate that the initial maintenance contract will be effective from the date the OSSF is first used. For a new single family dwelling, the date will be the date of the sale by the builder and the contract will be with the new owner. For an existing single family dwelling, the date will be the date of the notice of approval.

WCCHDES supported the proposed requirement in §285.7(c)(2) for maintenance contracts to be provided to the permitting authority before the authorization to construct is issued.

The commission appreciates the positive comment in support of the rule.

Concerning §285.7(c)(2), TAC commented that the inspection and review of maintenance contracts places a burden on counties that use contract DRs because income is not generated for this responsibility. As a result, the responsibility becomes a burden for the conscientious DR, is ignored by less responsible DRs, and makes the DR position less remunerative, and therefore, less desirable to prospective DRs. TAC concluded this requirement makes it increasingly difficult for counties who contract DRs to adequately administer an OSSF program.

The commission responds that the inspection and review of maintenance contracts by a DR is not a new requirement. This has been a requirement since 1997. If this review is creating resource issues for the AAs, fees can be increased for systems that require maintenance contracts. No changes have been made in response to the comment.

The commission modified §285.7(c)(2) by adding "Unless excepted by §285.7(c)(4), a" to the beginning of §285.7(c)(2) to clarify that there is an exception to the requirement.

UGRA commented that §285.7(c)(2) and (3)(D) appear to conflict with each other. UGRA noted that §285.7(c)(3)(D) allows for a contract to be submitted 30 days after a contract has been terminated while §285.7(c)(2) requires that a copy of a new contract be submitted to the permitting authority at least 30 days before a contract expires.

The commission responds that §285.7(c)(3)(D) and §285.7(c)(2) are not in conflict. Section 285.7(c)(2) is a requirement for contract submittal for systems with a new permit. Section 285.7(c)(3)(D) is a requirement for a contract that has been terminated. Since these are two different situations, different requirements do not create a conflict. No changes have been made in response to the comment.

Concerning §285.7(c)(2)(B), On-Site commented that after the initial two-year maintenance contract, the property owner or any licensed Installer II should be authorized to repair the OSSF. On-Site commented that the requirement that maintenance must be performed by an individual trained by the manufacturer will "over-regulate and create undue hardship, cost, and bureaucracy."

The commission disagrees with this comment. It is important that only individuals certified by the manufacturer maintain and repair the system to avoid changes to the system from what was originally tested and to ensure that the system receives the appropriate maintenance and repair. Any changes could affect the operation of the system, and protection of public health could be compromised. Therefore, no changes have been made in response to this comment.

HCEH commented that the renewal period for maintenance contracts in §285.7(c)(2)(B) should be at least two years.

The commission responds that the renewal period is more appropriately a contract issue between the owner and the maintenance company and not a rule. As a contract issue, it will provide greater flexibility to both parties. No changes have been made in response to this comment.

One individual expressed doubt that §285.7(c)(3)(A) would ever be enforced. The individual asked what will happen when a maintenance company has multiple individuals that are properly licensed and certified.

The commission responds that changes have been made in §285.7(c)(1)(C) that the contract specify the name of the individual employed by the maintenance company who is certified by the manufacturer instead of specifying who would be responsible for fulfilling the requirements of the contract. This will allow any of the certified individuals to perform the required maintenance. No changes have been made in response to this comment.

The commission added language to §285.7(c)(3)(A) to ensure that a copy of the new contract is submitted to the permitting authority.

With regard to §285.7(c)(3)(B), LCST and IS-D suggested that all correspondence dealing with contract termination by a maintenance company should be done by certified mail, return receipt requested in order to establish a verifiable tracking mechanism to assure compliance.

The purpose of §285.7(c)(3)(B) is to ensure that OSSF owners, the permitting authority, and the manufacturer are aware that the maintenance contract has been discontinued. As long as all three are notified in writing, the commission has decided not to dictate the method by which the notice must be given. Therefore, no changes have been made in response to the comments. However, in the event of an investigation into a violation of this provision, the maintenance company must be able to provide verification that written notice was provided. The maintenance company is responsible for maintaining verification that such notice was properly provided.

With regard to §285.7(c)(3)(B), HEM suggested that when a maintenance company discontinues a maintenance contract, the maintenance company should be required to notify the manufacturer. HEM stated that a manufacturer needs notice of the maintenance company's discontinuance of service to a unit. HEM stressed this revision is important so that the manufacturer can determine if, in that county, additional maintenance companies, or individuals employed by maintenance companies require training.

The commission agrees with this comment. The manufacturer needs to be notified by the maintenance company that a contract is being discontinued. This will allow the manufacturer to determine if other maintenance companies are available to perform maintenance on their system, or if the maintenance company needs to train other individuals. Therefore, the suggested change has been made.

With regard to §285.7(c)(3)(C), LCST and IS-D suggested that all correspondence dealing with contract termination by an owner should be done by certified mail, return receipt requested in order to establish a verifiable tracking mechanism to assure compliance.

The purpose of §285.7(c)(3)(C) is to ensure that the maintenance company and permitting authority are aware that the maintenance contract has been discontinued. As long as both are notified in writing, the commission has decided not to dictate the method by which the notice must be given. Therefore, no changes have been made in response to the comments. However, in the event of an investigation into a violation of this provision, the owner must be able to provide verification that written notice was provided. The owner is responsible for maintaining verification that such notice was properly provided.

HEM suggested that when an owner discontinues a maintenance contract, the owner should be required to notify the manufacturer, and §285.7(c)(3)(C) should include a statement that when an owner refuses to renew a contract or discontinues a contract with a maintenance company, the manufacturer will not be held responsible for malfunctions of the system.

The commission agrees in part with the comment and has added the manufacturer to the list of entities that the owner must notify when the owner discontinues a maintenance contract. However, the commission has determined that it is not appropriate to include a statement that the manufacturer will not be held responsible for malfunctions of the system when an owner refuses to renew or discontinues a maintenance contract because under certain circumstances the manufacturer may be responsible for the malfunction, regardless of whether a maintenance contract is in place; this can only be determined on a case-by-case basis and may be a contractual issue between the owner and the manufacturer. The commission does not have jurisdiction to dictate contractual requirements between third parties that do not impact the commission. Therefore, no change has been made in response to this comment.

With regard to §285.7(c)(3)(D), LCST and IS-D suggested that all correspondence dealing with contract renewal by an owner should be done by certified mail, return receipt requested or be received and stamped by hand by the permitting authority in order to establish a verifiable tracking mechanism to assure compliance.

The purpose of §285.7(c)(3)(D) is to ensure that the permitting authority is aware that a new maintenance contract has been signed. As long as the permitting authority is notified in writing, the commission has decided not to dictate the method by which the notice must be given. Therefore, no changes have been made in response to the comments. However, in the event of an investigation into a violation of this provision, the owner must be able to provide verification that written notice was provided. The owner is responsible for maintaining verification that such notice was properly provided.

The commission has modified §285.7(c)(3)(D) by moving "no later than 30 days after termination" to the end of the subparagraph to reflect that the owner must both obtain a new maintenance contract and provide a copy to the permitting authority no later than 30 days after termination.

With regard to §285.7(c)(4), Austin County and NETMWD commented that documentation should be on file with the permitting authority that shows the property owner was trained by the installer before the property owner begins to maintain the OSSF. NETMWD suggested that the documentation should consist of a written statement from the owner and the installer of the system stating the owner has been trained to maintain the system. Austin County also asked if there will be a penalty for installers who refuse to either offer training documentation, or train the property owner. Austin County commented that currently, the installers are not willing to provide training to the property owners who want to maintain their own OSSFs. Additionally, according to Austin County, property owners are not obtaining maintenance contracts. Austin County stated that it needs some sort of enforcement authority to protect the health and safety of the public and environment from the OSSFs that are not being properly maintained.

The commission agrees that the owner should provide documentation that he has been trained by the installer or the manufacturer. Without the documentation, there is no way to know that any training has occurred. Language has been added to §285.7(c)(4) to require that the owner provide documentation suggested by NETMWD. The commission does not have statutory authority to enforce against an installer who refuses to provide training, nor does the commission have statutory authority to provide AAs with any additional enforcement power. However, TWC, §7.173(a) and §7.351(b) provide both AAs and the commission with the same authority to enforce violations of THSC, Chapter 366 which would include owners not obtaining maintenance contracts. Section 285.7(c) requires owners to have maintenance contracts, except when the criteria of §285.7(c)(4) is met. If an owner does not meet the criteria of §285.7(c)(4) and does not have a maintenance contract, the owner is in violation of these rules and the permitting authority can take appropriate enforcement action. No other changes have been made in response to this comment.

Brown asked how, in §285.7(c)(4), will the installer become qualified to administer approved training to a homeowner who wishes to perform their own maintenance and asks whether the installer will be liable for any actions or damages that the homeowner may cause to other property, individuals, or the environment.

The commission responds that the installer should contact the manufacturer for training requirements. The commission will provide guidance to the manufacturers regarding the basic elements of the installer training class. Brown's comment regarding liability is very broad. The commission is not in the position to address the installer liability issues raised in this comment because of the many factors involved in determining liability. No changes have been made in response to this comment.

Brown commented, in §285.7(c)(4), that the Texas Legislature needs to revisit the issue of counties with a population of less than 40,000 where the owners may perform their own OSSF maintenance. An estimated 152 counties have a population of less than 40,000 with an average of 3,000 OSSFs in each county which puts the state's population at risk. This situation prevents regulatory enforcement from being applied equally across the state. "Pollution such as a sewage spill or failing OSSF where liquid has surfaced doesn't stop at the county line, it just does damage to our property, contaminate groundwater and surface waters as well as endanger the public health of our citizens. We must do what's best for Texas as a whole!"

The commission responds that no change has been made in response to this comment since there is a statutory requirement under THSC, §366.0515, which allows owners in counties with a population of less than 40,000 to perform their own maintenance

Austin County commented that the last sentence of §285.7(c)(4) conflicts with §285.7(c)(2) because §285.7(c)(2) requires an initial two-year maintenance contract and §285.7(c)(4) states the permitting authority cannot require a contract as a condition of approval for a permit in counties with a population of less than

40,000, if the owner chooses to maintain the system. Austin County suggested that the maintenance contract be continued unless the property owner provides proof of receiving training from the installer.

The commission agrees that §285.7(c)(2) and the last sentence of §285.7(c)(4) could have been misinterpreted. In order to clarify these sections, the commission added "Unless excepted by §285.7(c)(4), a" to the beginning of §285.7(c)(2). The maintenance contract will have to be extended until the owner demonstrates proof of training as required in §285.7(c)(4).

ECS commented that the exceptions to a maintenance contract in §285.7(c)(4) should be eliminated. According to ECS, the exception is politically motivated and is not in the best interest of public health.

The commission responds that no change has been made in response to this comment since this is a statutory requirement under THSC, §366.0515.

On-Site commented that the requirement for reporting on each field inspection in §285.7(d)(1) should be removed. If the field inspection finds the system being operated incorrectly, the owner should be given ten days to correct the problem. If the owner does not correct the problem, the maintenance company should report the problem to the permitting authority for enforcement.

The commission disagrees with the comment. The permitting authority needs a report on each maintenance check, regardless of the reason for the check, so that the permitting authority can ensure that required maintenance is being performed. If the maintenance company finds the owner is not operating the system properly, the maintenance company should explain the proper operating procedures to the owner. Enforcement action may be taken if there is a violation of these rules, THSC, Chapter 366 or TWC, Chapter 26. No changes have been made in response to this comment.

With regard to proposed §285.7(d)(1), Austin County commented that "subsection (c)(4) of this section" as referenced does not exist.

The commission responds that "subsection (c)(4)" refers to §285.7(c)(4), which is the section on testing and reporting. No changes have been made in response to the comment.

TOWA suggested extending to 30 days the time in §285.7(d)(1) to submit maintenance reports to the permitting authority. According to TOWA, the extra time is necessary because it usually takes at least seven days to get the test results on BOD and TSS.

The commission agrees that the proposal of ten days to submit a report to the permitting authority is not sufficient. Therefore, the time has been changed to 14 days. This amount of time should be sufficient to obtain all laboratory reports, enter the data on the report, and submit the report to the permitting authority without adding more time than is necessary.

The commission added the words "owner's finding" to §285.7(d)(1). This change was made since an owner can maintain his own system as indicated in subsection (c)(4).

One individual supported §285.7(d)(2), but advised it may be too prescriptive.

The commission appreciates the positive comment in support of the rule. However, in response to the concern that the requirements may be too prescriptive, the commission has determined that these are the minimum standards necessary to ensure that the owner is provided a record of maintenance checks, which has been a problem for owners in the past. No change to the rule has been made.

HCPID suggested that to assist the regulator, and to provide for tag consistency, the additional tag requirements should be added to §285.7(d)(2): "(A) The tag must be weather resistant; (B) The tag must have the maintenance company's name, address, and service number; (C) The tag must have the permit number for the system; (D) The tag must be indelibly marked with the date of each visit; and (E) The tag must be indelibly marked with the start date of the current maintenance contract."

The commission agrees that additional language is needed. The commission agrees that the tag, or other identification, should be weather resistant so that the information does not wash off in the elements. The commission further agrees that other information should be included. Therefore, the suggestions are added for: (1) weather resistant tags; (2) the name and telephone number of the maintenance company; (3) the date of the start of the contract; and (4) the indelibly marking of the tag. The commission has determined that these are the minimum standards necessary to ensure that the owner is provided a record of maintenance checks, which has been a problem for owners in the past. The commission has determined that the permit number for the system does not need to be included on the tag because the purpose of the tag is to let the owner know that his system has been maintained.

The commission changed the words "site visits" to "tests" in §285.7(d)(3) to be consistent with the requirements in §285.7(d)(1).

Subchapter B. Local Administration of the OSSF Program.

Existing Subchapter B has been repealed and has been replaced by adopted Subchapter B. The subchapter has been organized in an effort to make the subchapter more readable. The subchapter has been rewritten to: 1) address the rights and responsibilities of the AAs when implementing the OSSF program; 2) clarify the substantive and procedural requirements for both the ED and the local governmental entity regarding delegation of authority, relinquishment of authorization, and revocation of authorization; 3) make the language more readable; and 4) clarify the requirements for a review of the AA's program by the ED.

§285.10. Delegation to Authorized Agents.

Amstar commented that §285.10 allows the commission to circumvent the Engineering Practices Act. Amstar added the section requires the commission to approve changes to the model order, or ordinance requested by the local governmental entities, even if those changes involve the review of non-standard systems. Amstar stated that the design, analysis and review of non-standard OSSF systems fall within the jurisdiction of the Texas Engineering Practice Act.

An AA's order, ordinance, or resolution, or amendments to them, do not specify particular OSSFs that may or may not be used. Thus, when the commission reviews proposed orders, ordinances, or resolutions, or proposed amendments to them, the commission only evaluates the amendments to ensure they provide for greater public health and safety protection, which does not constitute engineering. Therefore, the Texas Engineering Practice Act does not apply. No change was made in response to the comment.

Concerning §285.10, TMHA commented that the proposed rules do not define when the commission will revoke an AA's delegated authority. TMHA suggested that the commission define in the rule the process of reviewing complaints received regarding an AA's failure to comply with, or its abuse of, its delegated OSSF authority and clarify when the commission will revoke one AA's OSSF authority. TMHA recommended revocation when an AA unfairly or inconsistently enforces its authority, enforces standards other than those properly authorized by the commission, or routinely enforces standards that exceed those approved by the commission.

The commission will start the process to revoke the AA's delegated authority on a case-by-case basis. Revocation may be initiated after a compliance review which indicates that the AA is failing to implement, administer or enforce the OSSF program according to it's approved order, ordinance, or resolution, Chapter 285, or THSC Chapter 366. THSC §366.035 authorizes the commission to investigate an AA to determine if the AA is complying with the conditions of its order, ordinance, or resolution, and if it is not, the commission must hold a hearing to determine if the AA's order, ordinance, or resolution should be revoked. Additionally, the complaint process used by the ED regarding an AA is already included in the rules. Specifically, §285.20(b) and §285.70(a) describe the actions the ED shall take in response to OSSF-related complaints of any kind, including those where the AA is unfairly or inconsistently enforcing its order, ordinance, or resolution, or enforcing more stringent standards than provided in its order, ordinance, or resolution. No changes have been made in response to these comments.

The commission added "in its area of jurisdiction" to §285.10(a) to clearly indicate that the local governmental entity is an AA only within its area of jurisdiction.

The commission added language in §285.10(b)(4) to clarify the steps involved when the local governmental entity proposes more stringent standards.

The commission deleted language from the first sentence of §285.10(b)(4)(A) since the language is included in §285.10(b)(4).

Concerning §285.10(b)(4)(A), TMHA commented that the proposed language does clarify that an AA must express a reason for a more stringent standard, however, the rule does not expressly require the commission to review the basis of the justification. TMHA commented that AAs use the ability to implement more stringent standards under the OSSF program to effect zoning where the AA may not have authority to implement such limitations. TMHA suggested that, under the current standard, an AA could propose the complete elimination of OSSFs with the justification that it would provide near complete protection of public health and safety from the possible failure of these systems. According to TMHA, it would be almost impossible for the AA to demonstrate that there was an actual need for this level of protection. TMHA suggested amending the rules to require an applicant to demonstrate the need for a more stringent standard and require the commission to make a finding that such a need exists.

THSC, §366.032 limits the more stringent standards which the commission may approve in an AA's order, ordinance, or resolution, to those that *provide greater public health and safety protection* than the model standards. While the commission recognizes that an AA's more stringent standards may have unintended results, the commission does not delve into further motives of the AA if the statutory requirements are met. No changes have been made in response to the comments.

The commission added language in the first sentence of §285.10(b)(5) to clarify the next step in the process for either an entity with more stringent standards or for an entity without more stringent standards.

The commission deleted the first sentence of §285.10(b)(6), which references the effective date of the ED's signature, from this paragraph since this is not the place for that statement. It is covered appropriately in §285.10(b)(8).

The commission deleted §285.10(b)(6)(E) since the written justification for more stringent standards is addressed in §285.10(b)(4)(A).

TMHA commented that §285.10(b)(7)(A) allows the ED to act upon an application for delegation of OSSF authority even when a protest has been received by the commission. TMHA stated that under TWC, §5.122(a)(3)(A), the authority of the commission to delegate decisions to the ED is limited to applications or requests that are uncontested and do not require an evidentiary hearing. TMHA urged the commission to amend the proposed rules to require final action by the commission on contested or protested applications.

There is no specific statutory right to hearing on an application for delegation of the OSSF program. However, the commission has determined that the right to an appeal is appropriate. Therefore, §285.10(b)(9) provides that an appeal of the ED's decision shall be done according to 30 TAC Chapter 50, §50.39 of this title (relating to Motion for Reconsideration). Additionally, TWC, §5.311 authorizes the commissioners to delegate responsibility to hear any matter to the State Office of Administrative Hearings. This is the appropriate route for an appeal of the ED's decision because THSC, Chapter 366 does not specifically provide for a contested case hearing. Therefore, the commission has made no changes in response to this comment.

The commission added "After the review has been completed" in §285.10(b)(7)(A). The language is needed to clarify that the review needs to be completed before the ED signs the order.

The commission added "during the review" to §285.10(b)(7)(B) for clarity.

The commission modified the language in §285.10(b)(9) to clarify that the title of the section referenced is "Motion for Reconsideration."

Concerning §285.10(c), QCP raised concerns that the rules do not have any provisions for enforcing the statute. QCP commented that many AAs change the requirements for OSSFs without following the stated procedure to publish the proposed changes, have public hearings, and receive approval from the ED for those changes. According to QCP, the installer is placed in a difficult position because the AA has gone beyond its authority with no provision for recourse, or relief for such a situation in which the AA may be angered when the installer tries to have the AA adhere to the approved provisions of its order.

The commission responds that any amendment to the local governmental entity's order, ordinance, or resolution is required to be approved by the ED before it is effective according to THSC, §366.032(c). If the AA is regulating the OSSF program by an amended order, ordinance, or resolution that is not approved by the ED, the AA is in violation of these rules and is subject to

revocation of its delegation as given in THSC, §366.034(b). If this situation occurs, the commenter should inform the commission's appropriate regional office. No change has been made in response to the comment.

The commission modified §285.10(d)(1) to grammatically agree with the remaining subparagraphs.

The commission modified §285.10(d)(1)(A) to grammatically agree with the remaining subparagraphs.

The commission added language to §285.10(d)(1)(C) to ensure that the public is aware of the full impact of relinquishing the OSSF program before the authorized agent actually relinquishes the program.

The commission modified §285.10(d)(1)(D) to clarify that the local governmental entity must formally decide whether to repeal it's order, ordinance, or resolution at this time, rather than actually repeal it. The commission added a new §285.10(d)(4) to clarify when the local governmental entity shall repeal it's order, ordinance, or resolution, and to specify that the local governmental entity must forward a certified copy of the repeal to the ED. Additionally, §285.10(d)(4) was renumbered to §285.10(d)(5) as a result of the addition of the new §285.10(d)(4).

The commission modified §285.10(d)(1)(E) to grammatically agree with the other subparagraphs.

The commission modified language in §285.10(d)(3) to clarify the process for relinquishment.

The commission modified §285.10(e)(2)(C)(i) - (iii) by inserting language moved from §285.10(e)(2)(C)(i) - (iii), because publication of the notice should be done before the public hearing. Additionally, the language was changed to require the ED to publish notice.

The commission modified §285.10(e)(2)(D) by changing "intent to revoke" to "possible revocation of" to more accurately reflect the process.

The commission deleted §285.10(e)(2)(C)(I), (ii), and (iii) and moved the language from this sections to §285.10(e)(2)(C)(i) - (iii).

Concerning §285.10(e)(2)(C)(i), one individual, HCPID, and Urban Counties suggested the commission should be required to publish the notice of public hearing, instead of the AA, if the commission is revoking a local program. HCPID stated that the commission should pay for the notice because the commission initiates the revocation action. Additionally, HCPID commented that the commission could assess an administrative penalty to recover the expense of publication fees and hearings if the AA's status is revoked. Urban Counties commented that §285.10(e)(2)(C) requires the ED to hold a public hearing; then, in §285.10(e)(2)(C)(i), the AA is required to publish notice of the ED's public hearing. The end result is that the language requires the AA to give notice of a public hearing for which it is not responsible. Additionally, Urban Counties points out that the placement of this requirement in the rules is not in proper chronological order.

The commission agrees with these comments. Since the commission initiates the revocation process, the commission should be responsible for publishing the hearing notice. Therefore, the suggested change has been made. Additionally, because notice should be given before the meeting, this requirement has been moved to §285.10(e)(2)(C)(i).

The commission modified §285.10(e)(5) by deleting "or commission action" from the end of the paragraph. This was done to reflect that, even when the AA consents, the commission must still take action to formalize the revocation.

§285.11. General Requirements.

Concerning §285.11, LCRA suggested that the commission add a new section to the rules to clarify an AA's authority to continue operating under the AA's existing order, until the AA can amend its existing order to follow the revised rules.

The commission responds that any revisions to Chapter 285 are automatically incorporated into the local order, ordinance, or resolution. This is referenced in the order, ordinance, or resolution. In most cases, there is no reason for the local governmental entity to amend its order, ordinance, or resolution every time Chapter 285 is revised. A local governmental entity is allowed to enforce and operate under the more stringent requirements in its order, ordinance, or resolution, provided the requirements continue to be more stringent than the revised Chapter 285. However, the commission may require the local governmental entity to amend the order, ordinance, or resolution, in order to remove less stringent or outdated criteria. Therefore, no change has been made in response to the comment.

The commission modified §285.11(c) by adding language to provide a specific time frame in which the AA must investigate and to provide assurance to the complainant that appropriate action will be taken within that time frame.

The commission deleted the word "local" from §285.11(d) for clarity. Additionally, the two sentences were combined for clarity.

The commission added the word "after" to §285.11(e)(1) to clarify the date when the AA needs to notify the ED.

The commission modified §285.11(e)(2). The language has been revised to clarify the date the materials are due. The list of items to include on the report have been deleted since the language indicates the form will be provided by the ED. Deletion of the list allows the report to be changed as necessary without changing the rule.

Concerning §285.11(e)(2), TAC commented that requiring AAs to provide monthly reports, which identify the number of subdivision reviews completed, complaints received, enforcement actions initiated, OSSF applications processed, OSSF disposal systems permitted, and inspections conducted, to the ED within ten days of the first of the month will burden current county staff and contract DRs and make adequate enforcement difficult.

The commission disagrees with this comment. This does not present an added burden because AAs have been required to submit a report which provides this information since August of 1992. No changes have been made in response to the comment.

§285.12. Review of Locally Administered Programs.

ECS suggested that "All review and compliance procedures in §285.12 should also include regional offices of the TNRCC."

The commission appreciates the comments suggesting that the commission's OSSF programs in the regional offices be reviewed in the same manner as the AAs are reviewed. The commission acknowledges the need for a review of the regional offices, and notes that a review process was initiated last year. It is not appropriate to include internal review procedures in this rule because commission review procedures may be continually reevaluated, and thus, should not be specified in any

rule. Therefore, no change has been made in response to the comment.

The commission deleted the words "adequate performance and" from §285.12. The words "adequate performance" are part of compliance and are not necessary.

§285.13. Charge-back Fee.

In the preamble to the proposed rule (published in the December 8, 2000 issue of the *Texas Register* (25 TexReg 12041)) there was a special notice specifically requesting comments on the proposed charge-back fee. The commission received 21 comments regarding the proposed charge-back fee from 15 different sources. Five commenters (ECS, LCST, On-Site, TOWA, and one individual) supported the charge-back fee, and ten commenters (Armstrong County, Borden County, Burleson County, CJCAT, TAC, TML, UNRMWA, Urban Counties, and two individuals) did not.

The commission has determined that it is appropriate to leave the permit fee unchanged from the current rule to minimize the financial impact of the rule changes on individual homeowners and business owners. The commission has withdrawn the charge-back fee provision from the proposed rule published in the December 8, 2000 issue of the *Texas Register* (25 TexReg 12041). In the preamble to the proposed rule the commission specifically solicited comments on the charge-back fee. The commission received numerous comments regarding the charge-back fee, some of the commenters supported the charge-back fee as proposed, while other commenters suggested various modification to the charge-back fee. As a result of the varied comments received, the commission has opted to withdraw the charge-back fee, so that the executive director may continue to study the issue.

Concerning §285.13, On-Site commented that counties that do not have OSSF delegation should be charged $500. On-Site stated that for the OSSF program to be effective it needs to be managed on the local level, and thinks that a charge-back fee of $500 would be an incentive to the counties to obtain delegation of the OSSF program. Additionally, On-Site commented that the charge- back fee should be retroactive to 1995. An individual supported the charge-back fee, stating it would encourage local delegation and would provide the commission with an incentive to use on AAs who are not properly running their programs. The individual commented that the charge-back fee should not exceed $350 since there are some local governmental entities that do not have enough activity to support their own OSSF programs and cannot find anyone qualified to run the programs. ECS supported the proposed rule on charge-back fees. ECS commented that charge-back fees are an excellent way to get local AAs to follow the rules, and will provide a penalty for AAs that choose to not obey the rules they are supposed to enforce.

The commission agrees that a charge-back fee would provide an incentive, however, there are many counties with small populations in Texas where there are only a few OSSFs installed each year. Many of these counties have not received delegation of the OSSF program because it is not cost effective for them to do so. The commission is aware that many counties with small populations are already experiencing fiscal difficulties and has determined that additional time is necessary to determine the impact of the charge-back fee on all counties. Thus, the commission has withdrawn the charge- back fee provision from the proposed rules published in the December 8, 2000 issue of the *Texas Register* (25 TexReg 12041).

Concerning §285.13, one individual cautioned that if the charge-back fee is too high, "you may force these entities to contract with a weasel as their DR." ECS commented that some AAs tend to "pick and choose the rules they want to obey." The individual suggested the language should be clear as to which governmental entity will be responsible for paying the charge-back fee when there is a potential for overlapping jurisdictions (e.g., Municipal Utility Districts, or River Authorities and counties).

The commission has determined that a charge-back fee for local governmental entities may be an appropriate incentive to continue to run the program according to the rules, however the commission has determined that additional time is necessary to determine the impact of the charge-back fee. Thus, the commission has withdrawn the charge-back fee provision from the proposed rules published in the December 8, 2000 issue of the *Texas Register* (25 TexReg 12041). Additionally, if a DR is not complying with his duties and responsibilities according to this chapter, he is subject to enforcement.

Concerning §285.13, SOS commented that there must be a mechanism to penalize an AA if the AA is not properly performing its assigned duties. SOS suggested that the penalty should either be a charge-back fee, or a fine.

If the AA is not properly performing its assigned duties, the AA is in violation of these rules and is subject to revocation of its delegation as given in THSC, §366.034(b). If this situation occurs, the commenter should inform the commission's appropriate regional office. The commission does not have statutory authority to fine an AA for not properly performing its assigned duties.

Concerning §285.13, TOWA and Austin County agreed with the proposed rule change.

The commission appreciates the positive comments in support of the rule. The commission, however, has withdrawn the charge-back fee provision from the proposed rules published in the December 8, 2000 issue of the *Texas Register* (25 TexReg 12041). The commission received numerous comments regarding the charge-back fee, some of the commenters supported the charge-back fee as proposed, while other commenters suggested various modification to the charge- back fee. As a result of the varied comments received, the commission has opted to withdraw the charge-back fee, so that the executive director may continue to study the issue.

Concerning §285.13, Armstrong County, Borden County, Burleson County, CJCAT, Urban Counties, LCS, TML, UNRMWA, and two individuals opposed the proposed $350 charge-back fee to counties. Borden County suggested that counties with a history of five or fewer on-site sewage permits required per year should be exempt.

The commission has withdrawn the charge-back fee section from the proposed rules published in the December 8, 2000 issue of the *Texas Register* (25 TexReg 12041). As a result the comments from LCS, TML, UNRMWA, and the two individuals, as well as all of the comments received relating to the charge-back fee, the commission has opted to withdraw the charge-back fee, so that the executive director may continue to study the issue.

Concerning §285.13, LCST commented that the charge-back fee is excessive and it is without merit based on the number of permits issued by the commission's regional offices and that if you consider the proposed permit fee plus the proposed charge-

back fee, this would be equal to or greater than 20% of the average cost of an OSSF. LCST suggests the charge-back fee be set at $150.

The commission has withdrawn the charge-back fee section from the proposed rules published in the December 8, 2000 issue of the *Texas Register* (25 TexReg 12041). As a result the comments from LCST, as well as all of the comments received relating to the charge-back fee, the commission has opted to withdraw the charge-back fee, so that the executive director may continue to study the issue.

Concerning §285.13, TAC stated that a failure to provide technical assistance to counties could result in revocation of licenses, decrease the reputation of DRs and subject counties to charge-back fees.

The ED's staff has always been available to provide technical assistance to local governmental entities, and the staff will continue to be available. It is not the intent of the commission to tarnish the reputation of DRs, nor to unfairly penalize local governmental entities that have received OSSF program delegation. If a local governmental entity is concerned that it is not properly implementing the OSSF program it should contact either the commission's regional office, or the OSSF central office staff at (512) 239-0914. Furthermore, according to THSC §366.035 the commission must hold a hearing to determine if the local governmental entity's order, ordinance, or resolution, should be revoked. The hearing process will ensure that a local governmental entity's order, ordinance, or resolution, is not unjustly revoked. The executive director has determined that additional time is necessary to determine the impact of the charge-back fee on counties. Thus, the commission has withdrawn the charge-back fee provision from the proposed rules published in the December 8, 2000 issue of the *Texas Register* (25 TexReg 12041).

Concerning §285.13, TAC commented that counties with limited resources and professional staff are already penalized, even without a charge-back provision because regional staff cannot assist an AA where an order is in place. TAC suggested that increasing the program requirements increases the financial strain on counties, particularly small counties, and may result in the poor counties being unable to comply with the rules. TAC concluded that the improvement in compliance with OSSF rules, as a result of the charge-back fee, will be marginal and not worth the additional costs to the counties.

The commission has withdrawn the charge-back fee provision from the proposed rules published in the December 8, 2000 issue of the *Texas Register* (25 TexReg 12041). The commission received numerous comments regarding the charge-back fee, some of the commenters supported the charge-back fee as proposed, while other commenters suggested various modification to the charge-back fee. As a result of the varied comments received, the commission has opted to withdraw the charge-back fee, so that the executive director may continue to study the issue.

CJCAT stated that the charge-back fee in §285.13 would be poor public policy. According to CJCAT, most of the charge-back fees would be assessed against sparsely-populated, poor counties. Urban Counties supported the comments of the CJCAT. According to Borden County, the proposed charge-back fee imposes an unfair burden on the tax payers of Borden County because of the cost of training personnel, office space, filing space, and time for inspections.

The commission is aware of CJCAT, Urban Counties, and Borden County's concerns. In response to these types of concerns, the executive director has determined that additional time is necessary to determine the impact of the charge-back fee on all counties. Thus, the commission has withdrawn the charge-back fee provision from the proposed rules published in the December 8, 2000 issue of the *Texas Register* (25 TexReg 12041).

Concerning §285.13, one individual commented that the cost of the charge-back fee will be charged to all county taxpayers and, as a result, the people that have the least amount to do with OSSF systems will probably pay the ultimate cost.

The commission has withdrawn the charge-back fee provision from the proposed rules published in the December 8, 2000 issue of the *Texas Register* (25 TexReg 12041). The commission received numerous comments regarding the charge-back fee, some of the commenters supported the charge-back fee as proposed, while other commenters suggested various modification to the charge-back fee. As a result of the varied comments received, the commission has opted to withdraw the charge-back fee, so that the executive director may continue to study the issue.

Concerning §285.13, UNRMWA commented that: "The charge-back fee system appears to be another example of TNRCC imposing their statutory duties on local governments placing local governments in a position of recovering exorbitant fees from those who can ill-afford to pay or absorb this cost."

The THSC, §366.059(b) provides the commission with the authority to charge local governmental entities, that do not administer the OSSF program, a charge-back fee. The commission, however, has withdrawn the charge-back fee provision from the proposed rules published in the December 8, 2000 issue of the *Texas Register* (25 TexReg 12041) because of the numerous comments regarding the charge-back fee. Some of the commenters supported the charge- back fee as proposed, while other commenters suggested various modification to the charge-back fee. As a result of the varied comments received, the commission has opted to withdraw the charge-back fee, so that the executive director may continue to study the issue.

TAC raised concerns about the coercive nature of the charge-back fee in §285.13, stating that the imposition of the fee would compel counties to adopt programs while increasing technical requirements would result in a decrease in the ability of counties to fulfill their obligations. CJCAT believes that the proposed charge-back fee is "intended to intimidate counties and other local governmental entities into accepting the OSSF program under rules and conditions dictated by the TNRCC." Borden County commented that the rule "appears to be designed to 'punish' and coerce counties into serving as authorized agent of the commission and agreeing to administer the OSSF program."

The commission responds that, at the guidance of the legislature, the commission will continue to encourage participation in the program, however participation remains purely voluntary. As a result the comments from TAC, CJCAT, and Borden County, as well as all of the comments received relating to the charge-back fee, the commission has opted to withdraw the charge-back fee, so that the executive director may continue to study the issue. Therefore, the commission has withdrawn the charge-back fee provision from the proposed rules as published in the December 8, 2000 issue of the *Texas Register* (25 TexReg 12041).

TML commented that the coercive nature of the charge-back fee in §285.13 runs against the more successful approach of implementing state programs through the use of education, by providing technical assistance, and by using personal contacts with local government officials.

The commission responds that the commission will continue to encourage local governmental entities to adopt the OSSF program. Additionally the commission will continue to provide as much educational and technical assistance as possible. As a result of this comment, as well as all of the comments received relating to the charge-back fee, the commission has opted to withdraw the charge- back fee, so that the executive director may continue to study the issue. Therefore, the commission has withdrawn the charge-back fee provision from the proposed rules as published in the December 8, 2000 issue of the *Texas Register* (25 TexReg 12041).

Urban Counties believes that the charge-back fee in §285.13 will "...damage...the careful system of state authority and local option crafted by the legislature for OSSF regulation." Urban Counties stated that the legislature did not mandate that counties or other local governments become local agents, and the charge-back fee would effectively nullify State law. Urban Counties stated that the charge-back fee will allow the commission to remove local agent status from a county, and then charge the county for costs for administering the program, with no incentive for efficiencies. According to Urban Counties, the charge-back fee is similar to placing a gun to the head of counties that have chosen to act as the State's local agent, and thus, is not conducive to the positive development of the partnership between the commission and Texas counties. CJCAT stated that the charge-back fee would violate legislative intent, because the legislature intended for counties to voluntarily participate in the OSSF program. TML states the use of the charge-back fee runs counter to the legislative intent of Chapter 366 because the scheme of the chapter holds the commission primarily responsible for administering the OSSF program, while allowing the commission to designate a local governmental entity as an AA if the entity notifies the commission of its desire to be an AA. TML argues that Chapter 366 does not require local governments to act as AAs and that it does not authorize the commission to mandate that local governments become AAs. According to TML, the commission, by using the charge-back fee, is trying to coerce local governments into assuming commission status.

As a result of these comments, as well as all of the comments received relating to the charge- back fee, the commission has opted to withdraw the charge-back fee, so that the executive director may continue to study the issue. Therefore, the commission has withdrawn the charge-back fee provision from the proposed rules as published in the December 8, 2000 issue of the *Texas Register* (25 TexReg 12041).

Concerning §285.13, one individual noted that THSC, §366.058 and §366.059 seem to be in conflict. According to the individual, §366.058 allows the commission to establish and collect a reasonable permit fee to cover the costs of issuing permits and administering the permitting system. Further, the individual contends that §366.059 allows the commission to assess a charge-back fee to a local governmental entity for the administrative costs relating to the permitting function that are not covered by the permit fees collected. The individual asked which takes priority.

According to the Code Construction Act, Govt. Code §311.021(2), it is presumed that the entire statute is intended to be effective. Thus, neither section takes priority, rather, both sections are effective. Therefore, the commission may charge both a permit fee and a charge-back fee. Consequently, the commission has determined that it has statutory authority to assess both a permit fee and a charge-back fee; however, the commission has opted to withdraw the charge-back fee, so that the executive director may continue to study the issue. Thus, the commission has withdrawn the charge- back fee provision from the proposed rules published in the December 8, 2000 issue of the *Texas Register* (25 TexReg 12041).

Concerning §285.13, one individual concluded that if it is the intent of the commission to "get out of the OSSF business" the ED should propose to delete Subchapter C in it's entirety and hide behind "legislative intent."

The commission responds that it is not attempting to shirk any of its statutory duties. The commission, however, received numerous comments regarding the charge-back fee; hence, the commission has opted to withdraw the charge-back fee, so that the executive director may continue to study the issue. Thus, the commission has withdrawn the charge-back fee provision from the proposed rules published in the December 8, 2000 issue of the *Texas Register* (25 TexReg 12041).

Concerning §285.13, one individual commented that it is illegal for a governmental agency to expend public funds to improve private property except as allowed under certain programs with restricting guidelines (e.g., assistance to low income families, etc). The individual added that a governmental entity paying for a portion of the permit (which is what the charge-back fee is) is helping the property owner improve his property.

In THSC §366.059, the legislature authorized the commission to assess a charge-back fee to local governmental entities that do not have OSSF program delegation, to cover the commission's administrative costs relating to the permitting functions that *are not* covered by the permit fees collected, thus it is not illegal for the local governmental entity to pay the charge-back fee. However, the commission has withdrawn the charge-back fee provision from the proposed rules as published in the December 8, 2000 issue of the *Texas Register* (25 TexReg 12041). The commission received numerous comments regarding the charge-back fee, some of the commenters supported the charge-back fee as proposed, while other commenters suggested various modification to the charge-back fee. As a result of the varied comments received, the commission has opted to withdraw the charge-back fee, so that the executive director may continue to study the issue.

Concerning §285.13, TML claims that the commission is exceeding its authority because the commission is allowed to collect fees from a local government only when the cost of issuing the permit is not covered by the permit fee. According to TML, collecting the charge-back fee under these rules will result in a windfall to the commission. TML also states that if the legislature intended to authorize the commission to force local governments to become AAs, then §366.059 may be unconstitutional. Article 8, §3 of the Texas Constitution, states that the legislative body responsible for spending funds is responsible for determining what constitutes a public purpose. According to TML, the decision of a local governmental entity to not "spend its public funds on a state program for which it is not required to spend public funds, cannot be overturned by the rules of a state agency." TML argues that a state agency has no authority to substitute its judgment for a local governmental entity by forcing it to pay charge-back fees if it does not decide to become an AA.

The commission has withdrawn the charge-back fee provision from the proposed rules as published in the December 8, 2000 issue of the *Texas Register* (25 TexReg 12041). The commission received numerous comments regarding the charge-back fee, some of the commenters supported the charge-back fee as proposed, while other commenters suggested various modification to the charge-back fee. As a result of the varied comments received, the commission has opted to withdraw the charge-back fee, so that the executive director may continue to study the issue.

TML commented that the charge-back rules in proposed §285.13, if adopted, will generate opposition to the OSSF program, antagonism, political controversy, and probably litigation, rather than a rush of local governments seeking AA status.

The commission appreciates this comment. In response to this comment, as well as the other comments received regarding the charge-back fee, and to give the executive director time to study the issue, the commission has withdrawn the charge-back fee provision from the proposed rules as published in the December 8, 2000 issue of the *Texas Register* (25 TexReg 12041).

CJCAT stated that the charge-back fee in §285.13 would contravene the commission's statutory duties. CJCAT contends that THSC, §366.031(a) requires the commission to recover the entire cost of issuing an OSSF permit from the permit fee only. CJCAT stated that the charge-back fee is not authorized by THSC. According to CJCAT, if the commission charges the appropriate permit fee, there will not be any administrative cost to be collected through a charge-back fee.

The commission disagrees with this comment. The THSC, §366.058, specifically states that "The commission by rule shall establish and collect a reasonable permit fee to cover the costs of issuing permits under this chapter and administering the permitting system." The THSC, §366.059(b), specifically states that "The commission may assess a charge-back fee to a local governmental entity for which the commission issues permits for administrative costs relating to the permitting function that are not covered by the permit fees collected." The Govt. Code §311.021(2) states that it is presumed that the entire statute is intended to be effective; additionally, as recently as 2000, the Supreme Court of Texas has held that in construing a statute it is presumed that the Legislature intended the entire statute to be effective. *Texas Workers' Compensation Insurance Fund v. DEL Industrial Inc.*, 35 S.W.3d 591 (2000). Thus, the commission is required to reconcile both THSC, §366.058 and §366.059. Therefore, the commission has determined that it may assess both a charge-back fee and a permit fee. However, the commission has withdrawn the charge-back fee provision from the proposed rules as published in the December 8, 2000 issue of the *Texas Register* (25 TexReg 12041), so that the executive director may evaluate the impact of the charge-back fee.

Concerning §285.13, TML added that the commission cannot arbitrarily set a specific charge-back fee in these rules because, THSC, §366.059 states the fee can only be collected after the commission has determined that the permitting fee does not cover the cost of issuing the permit. TML states that charge-back fees can only be charged after the permit fee has been collected and must be based "on a geographic jurisdictional basis."

As a result of this comment, the commission has opted to withdraw the charge-back fee, so that the executive director may continue to study the issue. Therefore, the commission has withdrawn the charge-back fee provision from the proposed rules as published in the December 8, 2000 issue of the *Texas Register* (25 TexReg 12041). The commission received numerous comments regarding the charge-back fee, some of the commenters supported the charge-back fee as proposed, while other commenters suggested various modification to the charge-back fee.

Subchapter C. Commission Administration of the OSSF Program.

Existing Subchapter C is repealed and has been replaced with adopted Subchapter C. The permitting requirements in existing Subchapter C, §285.20 have been moved to Subchapter A, §285.3 for better organization. The language used in adopted Subchapter C that was used in existing Subchapter C has been revised for readability and clarity. Additional requirements have been added to Subchapter C regarding appeals, complaints, and fees.

§285.20. General Requirements.

TOWA and one individual suggested adding a new §285.20(d) requiring the ED to review the commission's regions that administer the OSSF program. TOWA and one individual commented that the commission should set the example and should make sure that the regions are implementing the program in full compliance with their own rules. TOWA and one individual also suggested that the "compliance reviewer" of the AAs must be reviewed as well. TOWA suggested the following language: "Review of the regional office administered program. Not more than once a year, the ED shall review a regional office's program for adequate performance and compliance with requirements established by the THSC, Chapter 366 and this chapter. If the executive director's review determines that a regional office is not properly implementing, administering or enforcing its requirements of this chapter, or the THSC, the ED shall take action as discussed in §285.64 of this title." An individual added that the internal review would eliminate the need for or reduce the amount of charge- back fees by improving the efficiency of the inspection program.

The commission appreciates the comments suggesting that the commission's OSSF programs in the regional offices be reviewed in the same manner as the AAs are reviewed. The commission acknowledges the need for a review of the regional offices, and notes that a review process was initiated last year. It is not appropriate to include internal review procedures in this rule because commission review procedures may be continually reevaluated, and thus, should not be specified in any rule. Therefore, no change has been made in response to the comment.

The commission deleted the parenthesis in §285.20(a). The change is due to a typographical error.

The commission modified §285.20(b) by adding language to provide a specific time frame in which the commission must investigate and to provide assurance to the complainant that appropriate action will be taken within that time frame.

Concerning §285.20(c), one individual supported the language clarifying the appeals process for the commission's regional offices.

The commission appreciates the positive comment in support of the rule.

The commission deleted the word "agency" in §285.20(c) because it is not necessary since it is part of the definition for "regional office."

§285.21. Fees.

In the preamble to the proposed rule (published in the December 8, 2000 issue of the *Texas Register* (25 TexReg 12041)) there was a special notice specifically requesting comments on the proposed permit fee. The commission received 12 comments regarding the proposed permit fee from 12 different sources. Two commenters (Austin County and one individual) supported the permit fee, and ten commenters (Burleson County, IS-R, LCST, On-Site, R&R, UNRMWA, and four individuals) did not.

The commission has determined that it is appropriate to leave the permit fee unchanged from the current rule at $200 to minimize the financial impact of the rule changes on individual homeowners and business owners.

Burleson County, R&R, UNRMWA, On-Site, LCST, IS-D, and three individuals disagreed with increasing the current residential permit fee in §285.21. R&R, UNRMWA, LCST, IS-D, and two individuals commented that increased permit fees will lead to more people installing their own system or having their system "bootlegged" that will not meet minimum standards unless they go through the permitting process, resulting in pollution to the surface water and aquifers. According to UNRWMA, the increased permit fees will encourage both installers and owners to find "loopholes." UNRWMA also stated that the increased fees will result in system failures being concealed. Finally, UNRWMA argues that the permit fee increase will pose a serious economic hardship to many people who must bring a system on a small lot into compliance with the current rules. An individual commented that an average homeowner, who pays $3,000 for an OSSF, will have already paid the state $187.50 in state taxes. Local taxes also increase the cost of OSSFs for homeowners.

The commission agrees that increasing the permit fee would be an economic hardship to some, would potentially lead to systems being improperly installed, and would not provide any additional protection to human health and safety or the environment. Thus, the commission will not enact the proposed permit fee of $350 but will leave the permit fee in the current rules, which is $200.

Concerning §285.21, LCST commented that the commission is increasing the fee without providing any additional services or personnel to perform additional services.

The commission responds that the permit fee is not being increased. The commission will not reduce the service provided to homeowners, AAs, or DRs, nor will staffing levels change. No changes have been made in response to this comment.

Concerning §285.21, one individual stated that in his experience the commission already charges more than any county. The individual suggested that if the commission wants out of the business of inspection and permitting OSSFs, then the commission should amend its rules to reflect this, lay off regional employees, and close the regional offices, as this would save everyone money. Burleson County estimated it took approximately 15 minutes to issue a permit, therefore, the state should charge $300 to take care of everything and eliminate the need for a charge-back fee. An individual commented that the commission has become greedy and has lost the purpose of what it was established for, and has become an unmanageable bureaucracy.

The commission responds that in many cases local administration of the program is more efficient and more responsive. Because local administration of the program requires less travel, it is more timely and cost-efficient, thus, it costs less to implement the program at the local level than at the state level. The commission will continue its policy of encouraging local governmental entities to assume the OSSF program in order to reduce bureaucracy at the state level. No changes were made in response to this comment.

Concerning §285.21, UNRWMA, LCST, and IS-D suggested the current regulation regarding fees remain at $200 for a single family dwelling. On-Site commented that the permit fee should remain $200, and the remaining $500 should be charged to the county. On-Site stated that to be effective, the OSSF program needs to be managed on the local level, and the charge-back fee of $500 would be an incentive to the counties to obtain delegation of the OSSF program.

The commission agrees that increasing the permit fee would be an economic hardship to some, would potentially lead to systems being improperly installed, and would not provide any additional protection to human health and safety or the environment. Thus, as suggested, the commission will not change the permit fee, rather, it will leave the $200 permit fee that is in the current rules. The commission agrees that the OSSF program is best managed at the local level.

Brown suggested in §285.21 charging a renewal fee of $25 for a single family dwelling, and $50 for other types of OSSFs.

The commission disagrees with the concept of permit renewals because to effectively implement such a program would require the permitting authorities to inspect the systems routinely which would require resources not currently available. Additionally, it would require the owner to uncover his system for each inspection when such inspections have not been shown to provide added environmental and health protection. Therefore, no change has been made in response to the comment.

Austin County agreed with the proposed §285.21.

The commission determined that increasing the permit fee would be an economic hardship to some, would potentially lead to systems being improperly installed, and would not provide any additional protection to human health and safety or the environment. Thus, the commission has reduced the proposed permit fee of $350 back to the permit fee in the current rules, which is $200.

Concerning §285.21(a), one individual commented that the applicant should pay the full cost of the permitting program. The individual added that the problem does not appear to be holding the applicant responsible for his own costs, rather, the ED may have a problem in how the costs of the permit were determined.

The commission determined that requiring applicants to pay the full cost of the permitting program would potentially lead to systems being improperly installed and would not provide any additional protection to human health and safety or the environment. Thus, the commission has chosen to not recover the entire cost of the permitting program from the applicant and has instead decided to keep the permit fee in the current rules, which is $200.

Concerning §285.21, one individual concluded that the efficiency of the regional offices must be addressed, just as every local program has to address these issues annually during their budget process and that this could be done through a compliance review as proposed earlier.

The commission appreciates the comments suggesting that the commission's OSSF programs in the regional offices be reviewed in the same manner as the AAs are reviewed. The commission acknowledges the need for a review of the regional offices, and notes that a review process was initiated last year. It is not appropriate to include internal review procedures in this rule because commission review procedures may be continually reevaluated, and thus, should not be specified in any rule. Therefore, no change has been made in response to the comment.

One individual asked why, in §285.21(a), the fee for a residential permit was raised and the fee for a commercial system was not raised. The individual inquired as to how the cost assessment of $700 per permit was determined, by program cost account (PCA) code or by actual full time employee (FTE) in the OSSF program. The individual commented that in some regions, permitting OSSFs is only a fraction of the inspector's total duties and asked if the proposed permit and charge-back fees include the OSSF inspector's time while conducting compliance reviews of an AA and inspecting public water supply systems. The individual noted disparities in the proportion of inspectors to permits issued in the regional offices. The commenter also commented that a typical contract DR charges between $100 to $150 per OSSF permit and asked whether local programs are so much more efficient than the commission.

The commission responds that the proposed permit fee of $350 will not be adopted, rather, the commission will keep the current fee of $200. With regard to the ED's calculation of the cost of a permit, the average total cost was calculated using full time equivalents (FTEs). Furthermore, the commission responds that in many cases local administration of the program is more efficient and more responsive. Because local administration of the program requires less travel, it is more timely and cost- efficient, thus, it costs less to implement the program at the local level than at the state level. No changes have been made in response to the comments.

The commission deleted the parenthesis in §285.21(a). The change is due to a typographical error.

LCST suggested language for §285.21(c) that would allow payment by company check and change the term "owner" to "applicant" to allow payment by an installer or designer.

The commission agrees with both of these comments. The application for a permit may be submitted not only by the owner, but by the owner's agent, which could be either an installer, a PS, or a PE. Since someone beside the owner could submit the application, the fee may be paid with a company check. Therefore, the term "owner's agent" has been added to allow an individual representing the owner to submit the application. A definition has been added for owner's agent to include installer, PS, or PE. In addition, the language for fee submittal has been changed to money order or check. This would allow a personal, cashier's, or company check to be submitted.

Subchapter D. Planning, Construction, and Installation Standards for OSSFs.

The commission has repealed existing §§285.30, 285.31, and 285.39. These sections have been rewritten and are adopted as new sections for the reasons mentioned here.

Subchapter D has been revised: 1) for readability, consistency between sections, and clarity of technical requirements; 2) by reorganizing it to make the chapter more understandable; 3) to delete the site evaluator requirement; 4) to add new requirements for evaluating potential sites for OSSF installations; and 5) to make it more enforceable.

§285.30. Site Evaluations.

Concerning §285.30, Amstar, CES, TSPE, EZflow, and Austin commented that the soil structure analysis should be retained in §285.30. EZflow commented that it is not aware of any state where site evaluations are performed, and an analysis of the soil structure is not performed as part of the site evaluation. According to EZflow, soil structure analysis is a skill that only takes education and practice. Austin commented that soil structure analysis is one of the most easily identified soil properties in the field since it is a visually observable physical soil property which is critical for the determination of soil water movement and aeration in site evaluations. According to Austin, soil texture and restrictive horizons do not adequately reflect sites that are unsuitable for an OSSF system. Amstar noted that the North Carolina Department of Environmental and Natural Resources Guidance Manual, dated March, 1996, contained a much more detailed discussion on soil structure. Additionally, Amstar commented that the commission did not receive adequate input from others regarding soil structure. Amstar recommended that the soil structure analysis should also address the suitability or unsuitability of prismatic and columnar structures to equal the requirements of North Carolina. Amstar commented that if the evaluator was unsure of the soil structure, the evaluation should look at the soil profile pit, and if necessary, compare the soil in the pit with photographs of platy and blocky soils found in various manuals.

The commission responds that it is not appropriate to consider soil structure because prismatic, granular, and platy structures are not common in this state, and soil structure only needs to be considered when these structures are frequently found. Additionally, the structure versus the lack of structure and water movement issues are adequately addressed by texture and restrictive horizon parameters. Therefore, no change has been made in response to the comment.

Amstar commented regarding §285.30 that the commission received insufficient input from others regarding gravel analysis and groundwater evaluation. CES and TSPE commented that coarse rock fragments found in soils should be clearly distinguished from "gravel." EZflow commented that the gravel analysis in Class II and III soils is unnecessary. According to EZflow, the percent of gravel in a profile or pit can be estimated, just as the percent of mottling is estimated using the guide pages in the front of the "Munscell Color Book." EZflow added that this is a skill that can easily be learned.

The commission proposed numerous changes regarding gravel analysis and groundwater evaluation in response to comments received during the rules review and stakeholder meetings while developing this rule. Briefly, the commission added requirements for gravel analysis and modified the methods for determining the presence of groundwater. Those comments were published with the proposed version of this rule in the December 8, 2000 issue of the *Texas Register* (25 TexReg 12250).

Gravel analysis was added to be consistent with USDA recommendations. According to the *National Soil Survey Handbook* (Soil Survey Staff, 1993b) soils with 50% stones larger than three inches have severe limitations for standard drainfields. Based on comments addressed in the December 8, 2000 issue of the *Texas Register* (25 TexReg 12250) and the *National Soil Survey Handbook*, the commission determined that Class II and

Class III soils with gravel may be suitable for standard subsurface absorption systems as indicated in Table V in §285.91(5). Coarse rock fragments can be distinguished from gravel using the information in Table V in §285.91(5). The commission disagrees that estimating the percentage of gravel in a pit is an easy task. The commenter compared estimating the percentage of gravel to estimating the percentage of mottling using the Munscell Color Book, however, there is not a similar book for estimating the gravel content. Therefore, the commission requires that gravel be estimated using a sieve analysis referenced in §285.30(b)(1)(B).

Groundwater evaluation is a difficult parameter to evaluate. The presence of soil mottles is typically used as an indicator of groundwater, however, the presence of soil mottles is not always a reliable indicator of soil wetness. Additionally, soils that have been saturated for only a few days may cause raw sewage to surface but would not generate a drainage mottle in most cases. To assist the DR and the individual who performs a site evaluation in agreeing on the presence of groundwater, the commission added an option of using the Natural Resources Conservation Service soil survey or obtaining the opinion of a certified professional soil scientist.

Regarding §285.30, TSPE and CES recommended that the requirements for percolation testing in accordance with the 1990 TDH OSSF rules be reinstated in addition to the current requirements for profile hole examinations. However, CES wanted them limited to cases where infiltration rates and conditions are variable (such as limestone derived or "caliche" soils) as was required in the 1990 OSSF rules. CES commented that percolation testing can be useful in evaluating the wastewater treatment capabilities for different types of soils. TSPE commented that hydraulic behavior and suitable soil loading rates are better determined from percolation test results than from removing rock fragments (which are often mistaken as the "gravel" fraction) from the soil and conducting a sieve analysis.

The commission disagrees with these comments. Percolation tests were used to determine what type of OSSF was appropriate for a given location, based on the movement of water through the soil. A percolation test, however, measures the movement of clean water as an indication of the movement of wastewater. Since wastewater moves differently than clean water, percolation tests often result in misleading information regarding the soil conditions. Additionally, percolation tests do not provide useful information when infiltration rates and conditions are variable nor does this test provide suitable soil loading rates. Since percolation tests are often inaccurate, OSSFs that are not suitable for the existing soil conditions have been frequently installed. Thus, the commission has determined that soil conditions must be determined by a site evaluation because it evaluates the actual soil present at a site resulting in a more reliable determination of the types of soils and presence of groundwater. The commission replaced the percolation test with a site evaluation in the 1997 rules to ensure that appropriate OSSFs are installed in all areas of the state.

Austin suggested that soil depth analysis be retained since it is not mentioned in §285.30 and is only addressed for standard subsurface disposal systems in §285.91(5). Austin also stated that soil depth analysis needs to be addressed in §285.33 for each disposal system.

The commission responds that soil borings are required in §285.30(b)(1) to determine the characteristics of the soil. In addition, the vertical separation distance to a restrictive horizon and to groundwater for each system are addressed in §285.33 and §285.91(13). Therefore, no change to this provision has been made in response to the comment.

The commission has revised §285.30(a) by removing the parenthesis from the term "OSSF." Additionally, the commission revised the language to clarify that a report providing the site evaluation must be submitted with the planning materials. This report is essential since the selection of the OSSF is based on the information determined during the site evaluation. It is necessary that this report be submitted to the permitting authority for the review with the planning materials.

The commission has revised §285.30(b) by deleting the reference to §285.31(b) since the reference is unnecessary.

One individual commented that in §285.30(b)(1) conducting an observation to a depth of two feet below the proposed excavation or to a restrictive horizon is not sufficient. The individual provided an example where 50 inches of fine sandy loam lies over a clay. Under the current and proposed rules, this soil profile would be deemed suitable. According to the commenter, this soil profile exists in the eastern part of the state and could have high groundwater during part of the winter. Groundwater could come within less than two feet of the surface in most years, and yet no drainage mottles may be present. The individual recognizes that the evaluator cannot be expected to "dig to China," but believes that the evaluator must be aware of the existence of clay-pan restrictive horizons, even if they are not encountered in a standard auger hole. The individual suggested that the evaluator should be required to examine the soil survey and determine if a clay-pan could be present within 60 inches of the surface. If the soil survey shows a clay-pan within 60 inches, it should be assumed to be there unless otherwise demonstrated by a Certified Professional Soil Scientist.

The commission understands the concerns of the commenter. The commission addressed the groundwater issue through the groundwater evaluation in §285.30(b)(2). In addition, §285.30(a) requires that a complete site evaluation be performed on each tract of land where an OSSF will be installed. If performed properly, this evaluation will identify many of the groundwater problem areas including the presence of clay-pans. Clay-pans are considered restrictive horizons and should be identified during the site evaluation. The commission has determined that if there is two feet of suitable soil between the bottom of the excavation and a clay-pan, an OSSF may be installed because the two feet of soil will provide adequate treatment of the wastewater. Additionally, the commission has determined that it is not appropriate to require site evaluators to use soil surveys to determine if a clay-pan is present, because a clay-pan is more accurately located during field observations. Therefore, no change has been made in response to the comment.

UGRA suggested that a new subparagraph (D) be added to §285.30(b)(1). The new subparagraph should read "Limestone or calcareous material content. Soil content shall be greater than 50% of a soil sample after being subject to an acid analysis and gravel separation." UGRA stated that this section is needed so that "any and all non-soil components can be identified and the soil content determined in relation to original ambient soil conditions."

The commission disagrees with this comment. Limestone or calcareous materials are rocks, and the presence of any rock limits the type of OSSF system that can be installed on the site. Performing an acid analysis to determine limestone or calcareous

material content would not change the type of OSSF installed at the site. Additionally, the USDA Soil Textural Triangle identifies all soil components. If a component does not fit into the soil triangle, then the component is not soil. No change has been made in response to this comment.

Austin commented that in §285.30(b)(1), caliche materials like weathered limestone, should not be considered soil. Austin suggested that "caliche materials can be evaluated for use in disposal areas using soil evaluation procedures-only after the calcium carbonate ($CaCO_3$) is removed prior to textural analysis, using accepted standard methods for calcium carbonate removal." Austin added that "After the amount of calcium carbonate removed is evaluated by weight, that amount of $CaCO_3$ material must be subtracted from the amount of material in and below the disposal fields. $CaCO_3$ as a precipitate is not a soil particle, and therefore cannot be considered an absorptive surface, and with increased amounts of water percolating through the material, the calcium carbonate will dissolve over time. In addition, only caliche materials with root penetration should be considered for use disposal areas (sic)."

The term "caliche" is a very broad, ambiguous, and sometimes misleading term, and different soil types are called "caliche" in various areas of the state. However, all "caliche" soils consist of sand, silt, and clay, which can fit into the soil textural triangle. The commission responds that all soils will fit into the soil textual triangle in §285.91(6), regardless of the local name for the soil. Systems must be selected on the basis of that determination. No change is proposed in response to this comment.

Austin further commented regarding §285.30(b)(1) that, "It is noted that caliche itself will remove phosphates and pathogenic microorganisms, but will not remove nitrates. It is also important to note that since the volume of $CaCO_3$ is so high in caliche materials, and since $CaCO_3$ is easily dissolved in the presence of water, development of preferential flow paths for effluent movement outside the drainfield will occur. This results in dramatically reduced residence times for treatment in the drainfield."

The term "caliche" is a very broad, ambiguous, and sometimes misleading term, and different soil types are called "caliche" in various areas of the state. However, all "caliche" soils consist of sand, silt, and clay, which can fit into the soil textural triangle. The commission responds that no evidence has been provided to suggest that caliche will remove phosphates and pathogenic microorganisms, but not nitrates. In fact, in a paper presented by Dr. Larry Wilding at the On-Site Wastewater Treatment Research Council Conference in February 2001, Dr. Wilding stated that caliche materials, even those containing high amounts of $CaCO_3$, do not weather rapidly. Based on Dr. Wilding's findings, preferential flow paths will not be present and residence times will not be reduced. No changes have been made in response to this comment.

Regarding §285.30(b)(1), Austin continued that, "The United States Department of Agriculture triangle is an accepted standard for soil identification throughout the country -- for soil materials, not non-standard materials. No changes to the well-established scientific principles for the use of the soil triangle should be introduced here."

The commission agrees the soil triangle is an acceptable standard for soil identification and has made no changes in response to this comment.

BCPHD commented that §285.30(b)(1) should address identification of the seasonal water table two feet below a soil substitution or evapotransporation system, which can be installed in a restrictive horizon.

The commission agrees that the depth to groundwater should be addressed for ET and soil substitution systems to avoid these systems being installed in areas where the systems could fail. However, the language needs to be added in the sections of the rule specific to each system. Language has been added to §285.33(b)(2)(A) for an ET system and to §285.33(d)(4) for soil substitution systems.

One individual commented that in §285.30(b)(1)(A) sandy clay should be classified as an unsuitable soil, therefore, the boundary line between Class III and Class IV soils in the soil textural triangle in §285.91(6) should be lowered from 40% to 35%. The individual noted that an exclusion for sandy clay may be made for the High Plains area, but humid conditions in other parts of the state would make sandy clay an unsuitable soil type. Additionally, the individual added that according to the preamble to the proposed rules, changing the boundaries within the Soil Textural Classification triangle would be confusing. According to the individual, this is not true since the triangle is not used at all. The individual commented that the rules use the terms "coarse loamy" and "fine loamy" in reference to Class II and Class III soils respectively. According to the individual, these terms are from Soil Taxonomy and not bound to the Soil Textural Classification triangle. The individual commented that the boundary between fine loamy soils and fine soils as defined by the Soil Taxonomy, and with observed behavior in the field, is 35% and not 40%.

The commission responds that 40% clay in sand has the necessary permeability for standard subsurface drainfields, thus sandy clay is appropriately classified as a suitable soil, thus the boundary line between Class III and Class IV soils has not been changed. Additionally, the commission has determined that, even in areas of the state that have high humidity, the sandy clay soils have sufficient permeability to be classified as suitable soil. Furthermore, the commission responds that the soil textural triangle is used throughout the state as the basis for determining the site's soil texture. The commission agrees that the terms "coarse loamy" and "fine loamy" are not used in the Soil Textural Classification triangle, and therefore has deleted these terms from the rule and replaced them with the terms used in the Soil Textural Classification triangle. Additionally, the commission has addressed the individual's final concern about the boundary between "fine loamy soils" and "fine soils" by removing these terms from the rule because these terms are not used in the Soil Textural Triangle.

One individual commented that in §285.30(b)(1)(A) the 30% gravel in a Class Ib soil does not have a scientific basis.

The commission agrees with the commenter in that there is no scientific basis for any percentage of gravel in soil, including 30%. The commission consulted with a certified professional soil scientist, and based on that discussion, determined that a 30% gravel content is conservative and provides for adequate treatment of wastewater. Additionally, there has not been any evidence presented to the commission that this percentage of gravel is not protective of human health and the environment. No change has been made in response to this comment.

Austin suggested that since the United Stated Department of Agriculture - Natural Resources Conservation Service (USDA-

NRCS) soil triangle is used in §285.30(b)(1)(A), the determinations of soil texture should be based upon acceptable USDA-NRCS methodologies.

The commission is unsure what is being suggested or recommended in the comment. The method of testing soils is not given in the rules. The method accepted by individuals performing soil evaluations, including those working for the USDA-NRCS, is the texture-by-feel method. No changes have been made in response to this comment.

One individual commented that §285.30(b)(1)(B) does not specify what the gravel limits are to determine when Class II and Class III become unsuitable soils.

The commission responds that the gravel limits are given in §285.91(5). A reference to §285.91(5) has been added to §285.30(b)(1)(B) for clarification.

Amstar, CES, TSPE, and EZflow commented that the proposed gravel analysis in §285.30(b)(1)(B) should not be included in the final rule. Amstar does not believe that the gravel analysis has any basis in engineering.

The commission responds that the percentage and size of gravel in the soil affects the soil's ability to effectively treat wastewater. Soil with a high percentage of large gravel will make the soil too permeable which could result in very little treatment. However, small percentages of large gravel (greater than 5.0 mm) or soil with a large percentage of small gravel (less than or equal to 5.0 mm) would not affect the soil's ability to treat the wastewater. Therefore, the commission has determined that the gravel analysis is an important element of the rule and has made no change in response to the comment.

Amstar was concerned that the gravel analysis in §285.30(b)(1)(B) will "certainly permit future pollution of the state's drinking water supplies because it would permit the use of absorptive drainfield systems at rock locations containing only trace amounts of absorptive soil, which are the same locations near the state's lakes and waterways where they are not presently allowed by restrictive horizon restrictions."

The commission disagrees with this comment. The gravel analysis is only one part of a complete site evaluation. A proper site evaluation will identify restrictive horizons, groundwater, and soil texture. The gravel analysis will only be used in Class II or III soils to determine gravel content. If a site evaluation is done properly, the rock content will be determined. Absorptive drainfield systems are classified as standard subsurface absorptive systems according to §285.33(b)(1). Table V in §285.91(5) is used to determine the percentage gravel acceptable for standard subsurface absorptive systems. Thus, standard subsurface absorptive systems can only be installed if the gravel content meets the requirements of Table V. No changes have been made in response to the comment.

Austin suggested that the gravel analysis determination in §285.30(b)(1)(B) should apply to all systems, with the exception of lined evapotranspiration systems with leak detection monitoring.

The commission responds that a gravel analysis is part of a complete site evaluation, which is required by §285.30(a) for every tract of land where an OSSF will be installed. The gravel analysis will only be performed if Class II or III soils are present, because standard absorptive systems cannot be installed in Class Ia or Class IV soils. Additionally, by definition, Class Ib soils can only contain 30% gravel or less. Therefore, the gravel analysis does not apply to Class Ia, Class Ib, or Class IV soils. No changes have been made in response to the comment.

One individual commented that dense clay soil is not well defined in §285.30(b)(1)(C). The individual asked if this means any subsoil with clay, or just "dense" clay? According to the individual, the parameters in Soil Taxonomy for an abrupt texture change were well researched and should be used for restrictive horizons that are not rock.

The commission agrees that the word "dense" does not add anything to the word "clay." The word "clay" is sufficient. Therefore, the word "dense" has been deleted in response to this comment. However, the commission disagrees that any abrupt texture change is a restrictive horizon, because there are many abrupt changes in texture that do not interfere with the treatment of wastewater. Thus, it may be appropriate to place an OSSF in these areas.

R&R suggested that §285.30(b)(1)(C) should be rewritten to better distinguish between the different types of restrictive horizons: 1) abrupt changes in texture of soil, and 2) hard rock materials.

The rules cannot describe every potential change in texture that would be a restrictive horizon because each abrupt texture change must be evaluated in the field on a case by case basis. However, the commission has reformatted §285.30(b)(1)(C) to clarify the distinction between the two types of restrictive horizons.

Austin County, EZflow, Amstar, and one individual disagreed with §285.30(b)(2). Austin County commented that the forward of the soil survey states: "Great (sic) differences in soil properties can occur within short distances." Austin County interprets this to mean that "what is shown on the maps cannot possibly show what the condition would be on a particular site that would be part of one acre." EZflow added that according to the 1989 USDA Covington County, Alabama Soil Survey ' "The objective of soil mapping is not to delineate pure taxonomic classes of soil but rather to separate the landscape into segments that have similar use and management requirements...onsite investigation is needed to plan for intensive uses in small areas." ' EZflow stated that the soil survey objective is found in all USDA soil surveys. Additionally EZflow quoted from the TEEX On-Site Sewage Facilities Site Evaluator Course Manual, 11/97, page 2-15 "Therefore, soil survey information is used as a guide, but does not negate the need for an on-site investigation to determine site and soil suitability for installation of an OSSF" EZflow concluded that the county soil survey should not be used to determine anything "specific to an individual site," including perched or seasonal groundwater table elevations. Amstar was concerned that the Natural Resources Conservation Service soil surveys are not site specific, and are outdated. Austin County added that the soil survey offers good preliminary information about an area, but it is not complete nor a substitute for a field study. The individual agreed that the soil surveys are a good reference, but states they cannot be used as a standard, as they are not conducted on a small enough scale to produce definitive information regarding an individual site.

Soil surveys are intended, among other things, to provide a perspective of the types of soils and the presence of groundwater throughout the county, and are not meant to provide information regarding a particular tract of land. The commission agrees that differences in soil properties can occur within short distances, and that the maps cannot show the conditions on a particular site, which is why §285.30(a) requires a complete, site specific

evaluation for every tract of land where an OSSF will be installed, including the depth of perched or seasonal groundwater. The only time a DR should use a soil survey is if there is a disagreement between the DR and the individual performing the site evaluation about the presence of groundwater. With regard to Amstar's concern that the Natural Resource Conservation Service (NRCS) soil surveys are outdated, the commission responds that even if the soil survey was not prepared recently, the soil properties referenced in them are accurate since the soil properties depicted remain constant for long periods of time. No changes have been made in response to the comments.

With regard to §285.30(b)(2), EZflow commented that the groundwater evaluation section from the current rules should be retained because seasonal groundwater elevations can be adequately determined from redox features. EZflow stated that there are exceptions, where gray soil colors or mottles may originate from parent material, but these exceptions are included as part the site evaluator training program. EZflow added that all states with site evaluation programs, that it is aware of, still use redox features to identify seasonal high water tables.

The commission agrees with the comment. A site evaluation includes a complete evaluation of groundwater through whatever means are available to the person performing the site evaluation. This could include evaluating redox features. No changes have been made to this language with regard to this requirement; the only changes made reflect what may be done if the DR and the individual performing the site evaluation disagree on the presence of groundwater.

Amstar suggested that §285.30(b)(2) should be modified to read "Groundwater evaluation - The soil profile shall be examined to determine if there are indications of groundwater."

The commission responds that the language suggested by Amstar is important, is already included in §285.30(b)(2), and has not been changed. The only changes made to §285.30(b)(2) reflect what may be done if the DR and the individual performing the site evaluation disagree on the presence of groundwater.

One individual suggested the following language in §285.30(b)(2): "The soil profile shall be examined for indicators of groundwater" or "The individual performing the site evaluation shall determine the presence of groundwater."

The commission responds that the suggested language mirrors the language included in §285.30(b)(2) and does not improve readability; therefore, no changes have been made in response to the comment.

With regard to §285.30(b)(2), one individual stressed that the person conducting the site evaluation should be the one to determine if groundwater is present and not the DR.

The commission recognizes that the individual performing the site evaluation is the one to make the initial determination for the presence of groundwater. However, the DR is a representative of the permitting authority, whose responsibility is to ensure that the appropriate type of system is installed based on the specific characteristics of the location. It is the DR's responsibility to approve or deny a permit application based on his assessment of the planning materials and site evaluation, thus it is important that the DR and the individual performing the site evaluation agree on the presence or absence of groundwater. The only changes made to §285.30(b)(2) reflect what may be done if the DR and the individual performing the site evaluation disagree on the presence of groundwater.

Amstar was concerned that, with regard to §285.30(b)(2), there are not enough certified professional soil scientists to perform the work that will be generated by this section. The individual commented that the rules should address who certifies the soil scientist.

The commission recognizes that there are a limited number of certified professional soil scientists in the state. The rules do not require the use of a soil scientist except, at the option of the owner, if there is a disagreement between the DR and the individual performing the site evaluation regarding the presence of groundwater. The commission responds that the definition for "certified professional soil scientist" added in §285.2(9) specifies who certifies the soil scientist. No changes have been made to §285.30(b)(2) in response to Amstar's comments.

Regarding §285.30(b)(2), one individual commented that clearer wording regarding the use of the NRCS soil survey as a default value should be developed. The individual suggested, "In counties having a published detailed soil survey, the county may elect to use the unsuitability (sic) rankings in the soil survey with respect to soil moisture as the default designation. Only a finding by a Certified Professional Soil Scientist could override the designation in the soil survey." HCPID commented that the language regarding groundwater evaluation should be revised to authorize the DR to require that a certified professional soil scientist verify the groundwater evaluation, if NRCS survey is not published or the findings of the site evaluator are in conflict with the NRCS survey.

The commission agrees that the wording in §285.30(b)(2) needs to be clarified. The proposed language implied that the DR would use either a soil survey or an evaluation by a certified professional soil scientist to determine groundwater, instead of using a site evaluation. This is not correct. A complete, site specific evaluation is required for every tract of land where an OSSF will be installed. The DR may use a soil survey or the opinion of a certified professional soil scientist only if there is a disagreement between the DR and the individual performing the site evaluation. Therefore, the language in §285.30(b)(2) has been changed to clarify that if there is a disagreement between the DR and the individual performing the site evaluation, the DR will verify groundwater information by using the NRCS soil survey for that county, if available. If an NRCS soil survey for the county is not available, or if the individual performing the site evaluation disagrees with the DR's initial decision, the owner has the option to retain a certified professional soil scientist to evaluate the presence of groundwater and present his findings to the DR for a final decision.

LCRA commented the proposed rule in §285.30(b)(3) regarding topographical information should be more specific. LCRA suggested the site evaluation should include the percent of slope in the proposed disposal area, and reference any drainage feature, sharp slope, rock outcrop, or other break in contour within 25 feet of the proposed disposal area.

The commission agrees that §285.30(b)(3)(A) needs more detail concerning topographical features to ensure that all features are identified during the site evaluation. Therefore, language has been added that the site evaluation will determine the slope of each tract of land where an OSSF will be installed, areas of poor drainage such as depressions, and areas of complex slope patterns where slopes are dissected by gullies and ravines. Additionally, rock outcrops and other breaks in contour will be identified during the site evaluation in the process of identifying slopes where seeps may occur.

TAC commented the proposed rule change in §285.30(b)(3) will impose additional responsibilities to enforce OSSF regulations within the 100-year flood plain, requiring additional staff time and effort and will make enforcement problematic.

Section 285.31(h) of the current rules states that OSSFs in the 100-year floodplain are subject to special planning requirements. To determine if an OSSF is or will be in the 100-year floodplain, the current rules authorize the use of FEMA maps, or a study prepared by a PE. The only change in §285.30(b)(3)(B) is that a flood study must be prepared by a PE *if a FEMA map is not available* (emphasis added).

It is important to include floodplain information in the planning materials because if the OSSF will be in a floodplain, it becomes subject to special planning requirements. Thus, the commission has determined that the proposed rule will not impose any additional responsibilities, or create any new enforcement problems, and is necessary to protect human health and the environment.

The commission added §285.30(b)(4). Separation distances from the pertinent features listed in §285.91(10) are necessary since the features could either be contaminated by an OSSF, or could prevent the proper operation of the OSSF. These are important elements that need to be determined during the site evaluation. This requirement was implied from the language in §285.31(d); however, it was not clearly stated as a requirement of the site evaluation. Therefore, the language has been added that the separation distances from all features that could be contaminated by an OSSF or could prevent the proper operation of an OSSF shall be determined during the site evaluation.

§285.31. Selection Criteria for Treatment and Disposal Systems.

The commission has changed the section title for §285.31 from "General Criteria for Treatment and Disposal Systems" to "Selection Criteria for Treatment and Disposal Systems." The criteria given in §285.31 is to be used in the selection of an OSSF; therefore, the title has been changed to properly identify the information in the section.

Austin County requested that the items listed within §285.5(a) be required under §285.31.

Section 285.5(a) describes who must prepare and submit planning materials, and applies to all types of OSSFs. Section 285.31 provides guidance on choosing the correct type of OSSF for a particular location. Since the two sections are concerned with different aspects of planning for an OSSF, the commission has determined that it is not appropriate to include the requirements for planning materials with the selection criteria section. No changes have been made in response to this comment.

TCAO commented that in §285.31 it would be helpful if the commission provided guidance on what types of easements affect the placement of OSSF, both for the purposes of separation distances and lot size calculations. TCAO asked if easements can be taken into account in determining lot size, or will there be some flexibility in evaluating an easement when evaluating an application for an OSSF permit.

The commission responds that many easements affect the placement of systems. Easements need to be addressed during the subdivision or development review done according to §285.4(c). Easements are not taken into account when calculating lot sizes. No change has been made in response to the comment.

LCST and IS-D suggested that all types of approved disposal systems be referenced in §285.31(a).

The commission responds that §285.31(a) does address all systems by using the term "an OSSF." No change has been made in response to the comment.

LCST and IS-D suggested that all types of approved disposal systems be referenced in §285.31(b).

The commission agrees that all types of approved disposal systems should be referenced in §285.31(b). Therefore, language has been added that if a standard subsurface absorption system cannot be used, either a proprietary or a nonstandard system may be used, provided all soil and site criteria for that system can be met.

The commission deleted the second sentence in §285.31(b) because it is more appropriately addressed in §285.33(b)(1)(A)(vii) which relates to sizing of the excavation. Therefore, the language has been moved to §285.33(b)(1)(A)(vii).

The commission revised the language in the second sentence of §285.31(c)(1) to clarify that adequate surface drainage needs to be provided over any subsurface disposal field, not just over a soil absorption system. Standing water over a disposal area could result in the system not functioning properly due to an overload of the system. Additionally, the commission revised the language in the third sentence to clearly identify that the subject of this sentence is the excavation for a standard subsurface absorption system, not all systems, and that the excavation should be parallel to the contour of the ground. Other systems can be installed across contours. Furthermore, the commission deleted the last sentence of this paragraph and moved it to §285.30(b)(3)(A) since this information should be determined during a site evaluation.

UGRA commented that in §285.31(c)(2) all components at or up to 12 inches below the ground surface should be sealed from inflow or outflow.

The commission responds that, if the system is in the floodplain or floodway, sealing all components below ground surface will be more likely to result in the system floating during a flood event than if the lid is unsealed. If water can enter the system during a flood, the weight of the water will help keep the system in the ground. No change has been made in response to the comment.

The commission added language to §285.31(c)(2) to clarify the requirements for locating an OSSF in a floodplain. The commission has determined that OSSFs can be installed in floodplains, provided there are sufficient structural controls to prevent damage to the OSSF that would result in contamination to the environment. The commission is aware that OSSFs may be damaged during flood events, but the damage may not result in any contamination to the environment, thus the commission has added the phrase "resulting in contamination of the environment" to clarify appropriate locations for OSSFs in the 100-year floodplain.

Regarding §285.31(c)(2), HCPID asked who at the commission, or the various local health departments, will determine if the floodplain mitigation requirements have been met according to FEMA requirements.

The commission responds that it is the floodplain administrator's job to address floodplain mitigation requirements of FEMA. No changes have been made in response to this comment.

The commission added the word "sprinklers" to the list of components in §285.31(c)(2)(B) because it is one of the components that needs to be installed below ground in a floodplain.

§285.32. Criteria for Sewage Treatment Systems.

The commission revised §285.32(a)(1) by changing words "building's plumbing" to "sewer stub out." "Sewer stub out" is a term of art in the plumbing and OSSF industries and better defines the part of the building's plumbing that the pipe to the OSSF is attached.

R&R asked if cleanouts will be needed at 45 degrees, 22 degrees, etc. in §285.32(a)(5).

The commission responds that cleanouts will only need to be at large changes in direction (90 degree bends) because pipes typically plug at 90 degree bends. Plugging does not normally occur at 45 degree or 22 degree bends. For clarity, the language has been changed to require that cleanout plugs be provided "within five feet of 90 degree bends" instead of "near 90 degree bends."

The commission revised §285.32(a)(5) by changing words "building's plumbing" to "sewer stub out." "Sewer stub out" is a term of art in the plumbing and OSSF industries and better defines the part of the building's plumbing that the pipe to the OSSF is attached.

LCST and IS-D suggested that in §285.32(a)(5) a two-way sewer line cleanout be provided every 75 feet on long runs of pipe, be installed within 50 feet of 90 degree bends, and that all fittings shall be DWV or schedule rated.

The commission responds that 50 feet between cleanouts will allow owners to clean the line without having to purchase additional equipment as would be required if the commission adopted the recommendation. The language has been changed to require that cleanouts be located specifically "within five feet of a 90 degree bend" instead of "near 90 degree bends" to clarify that "near" means five feet. Additionally, the language has been modified to require that the fittings be PVC Schedule 40 or SDR 26 to be consistent with §285.32(a)(1). The commission is not aware of DWV-rated fittings. No other changes have been made.

NETMWD commented that §285.32(a)(5) mentions two-way cleanout plug and additional cleanouts at 50 feet intervals, then §285.32(a)(6) states all cleanout plugs shall be a single sanitary type. NETMD recommended this requirement should be clarified.

The commission agrees that there was a conflict in the proposed rule between §285.32(a)(5) and (6). Section 285.32(a)(5) only applies to the required cleanout plugs, which must have two-way cleanouts. Section 285.32(a)(6) applies to all other cleanout plugs, which must be the single sanitary type. To clarify that §285.32(a)(6) only applies to all other cleanout plugs, the commission changed "all" to "additional."

LCST and IS-D suggested that in §285.32(a)(6) all sewer line cleanouts shall be of the two- way directional type.

The commission responds that there is not a need for all cleanouts to be two-way cleanouts since the distance between required cleanouts is only 50 feet, which should allow adequate space for cleaning the lines. The cleanouts will also be within five feet of a 90 degree bend, which would also allow adequate space for cleaning the lines. No change has been made in response to the comment.

TSPE recommended that in §285.32(b)(1)(A) the minimum tank volume formulas should be revised such that the volume is at least 2.5 times the daily design flow. CES recommended that the minimum tank volume formulas be revised to require at least 2.5 to 3 times the daily design flow for all systems covered under these rules, including "pretreatment" or "trash" tanks. CES commented this is needed to allow for sufficient primary settling. TSPE commented that "for systems with higher flows covered under this rule, insufficient (sic) primary settling capacities are required to ensure that solids are not conveyed (by gravity or pumped) into field lines." TSPE added several technical references are available that support at least 2.5 times the daily flow for settling volume.

The commission responds that there has been no evidence presented to the commission that the tank sizes in §285.91(2) are not sufficient, and that the resulting designs are causing a health problem. Additionally, the pretreatment tank is used to capture trash, not the solids requiring treatment. Therefore, the size does not have to equal the septic tank. TSPE added that several technical references available that support at least 2.5 times the daily flow for settling volume. The commission responds that TSPE did not mention the references by name nor include them with their comments. However, if TSPE provides additional information regarding the documents referred to in their comments, the commission will consider the information. No change has been made in response to the comment.

Concerning §285.32(b)(1)(B), one individual asked what the purpose of the three inch drop (from the inlet tee to the outlet tee) is in the figure contained in §285.90(7). The individual elaborated that if it is to provide extra capacity to attenuate surges, then the three inch drop in a series tank alignment should be between the inlet of the first tank and the outlet of the second tank; otherwise, if it is to keep the inlet above the water, then it should be across the first tank as shown in the figure.

The commission responds that the three inch drop from the inlet "T" to the outlet "T" in the first tank, in a series of tanks, increases the hydraulic head, and thus increases the rate of flow to subsequent tanks. No changes have been made to the figure in response to this comment. However, the commission modified the rule language in §285.32(b)(1)(B) to clarify the location of the three-inch drop.

One individual commented that the language in §285.32(b)(1)(C)(ii) addressing series tanks would exclude the use of a single, two-compartment tank and suggested rewording the provision. The commenter suggested using permissive language instead of mandatory language, suggesting "when multiple tanks are used, two or three tanks shall be arranged in a series."

The commission responds that the language in §285.32(b)(1)(C) does allow either a single, two-compartment tank (baffle tanks, §285.32(b)(1)(C)(i)) or multiple tanks in a series (series tanks, §285.32(b)(1)(C)(ii)). No changes have been made in response to this comment.

The commission revised the language in §285.32(b)(1)(C)(ii) to clarify that there could be more than three tanks in a series. In some systems with large flow, a series of tanks is used, often with more than three tanks. According to the proposed language, this would not be allowed. Since the practice of tanks in a series should continue to be allowed to accommodate large flows, the commission has revised the language to include "two or more

tanks" and has added language addressing four or more tanks in a series.

TOWA and SM suggested that revising §285.32(b)(1)(D) to allow risers to extend to about grade would clarify the requirement. Both TOWA and SM suggested deleting the phrase "no more than" and "the ground" and adding the phrase "within" before the phrase "six inches." SOS suggested that this section be revised to read: "Septic tanks shall have risers over the port openings. The risers shall extend from the tank surface to no less than 3" above grade, be sealed to the tank, and have safety compliant lids (weigh at least 40 lbs, or be secured by mechanical means)." LCST commented that risers should be required to extend to the ground level on all septic tanks. Austin, Brown, and one individual suggested that the inspection ports on septic tanks should be located where they are visible and directly accessible from the surface. Brown added that the risers should be sealed to the tank and capped with removable lids that are secured with stainless steel screws or bolts. According to Brown, this change would allow easy access for inspections and maintenance. The individual commented this would allow for easier access and would prevent an owner's yard from being dug up in trying to locate the access ports. LCST provided several examples of delivery trucks that fell into septic tanks, mainly because no one knew where the septic tanks on the site were located. According to LCST, had risers been extended to the ground level, they might have known the septic tank location and avoided driving over the septic tank areas.

The commission responds that the location of the risers should be specified in the planning materials, which the owner should have. The owner should be able to locate the risers from that material. The commission has determined that keeping the risers within six inches below the ground surface will allow access to the tanks, and will also prevent odors. More importantly, it will prevent children from falling into tanks. The commission understands that the suggested changes would increase access to the tanks for inspection and maintenance purposes, however, these changes could allow access to the tanks by children. No changes have been made in response to this comment.

R&R disagreed with §285.32(b)(1)(D) with the inspection or cleanout port being offset to allow for pumping of the tank. R&R commented that the ports being used today are larger than in the past and allow the pumper more room to pump the tank. R&R asked if the new larger ports caused pumpers to create spills.

The commission disagrees with the comment. The cleanout ports are offset to avoid damage to the interior of the tanks during pumping. The commission is not aware of larger ports causing increased spills. No changes have been made in response to this comment.

Austin suggested that in §285.32(b)(1)(D) all tanks should be tested for leaks and structural integrity by being filled with clean water and checked 24 hours after installation, before final backfill. Austin commented that a visual inspection is not sufficient to check for structural integrity and leaks. A water-tight test will ensure that the installer and DR can identify any structural defects which may allow groundwater to leak into the tank or sewage to leak into the groundwater. TSPE suggested it may be necessary to specify water testing techniques that would be suitable for testing the watertightness of the tank which for concrete tanks would require water be filled to the top surface of the concrete to ensure that the joint between the tank and lid are sealed.

The commission responds that §285.32(b)(1)(F) requires that the tank excavation be left open for inspection. This inspection is used, among other things, to locate structural defects. Conservation of water is the primary reason for not requiring a water-tight test on all tanks. A considerable amount of water will be used in a test without gaining significant additional information. However, if structural defects are obvious during the visual inspection, a water-tight test could then be requested. Since a test for watertightness is not required, the technique is not included in the rules. No change has been made in response to the comment.

CES and TSPE recommended current rule §285.32(b)(1)(G)(ii) be moved to §285.32(b)(1)(E) to make it clear that all tanks must be watertight, and prevent the entrance of groundwater and exiting of wastewater. CES commented that this standard should apply to all tanks, not just to fiberglass tanks. TSPE commented that the rules need to be clear that leaking septic tanks are unacceptable.

The commission agrees that the language in proposed §285.32(b)(1)(E)(ii)(II) should apply to all tanks. All tanks should be designed and constructed to prevent water from entering the tank. Therefore, the language in proposed §285.32(b)(1)(E)(ii)(II) has been moved to proposed §285.32(b)(1)(E). As a result, the proposed §285.32(b)(1)(E)(ii)(III) was renumbered to §285.32(b)(1)(E)(ii)(II).

One individual thanked the commission for requiring tank excavations to be left open for inspection in §285.32(b)(1)(F). The individual recommended future training be developed to educate installers on how to properly secure tank excavations to address installer concerns for safety.

The commission appreciates the positive comment in support of the rule and the suggestion for additional training classes.

HCPID suggested that §285.32(b)(1)(F) should be changed to: "Installation of tanks. For gravity disposal systems, the septic tanks..." HCPID stated that the additional language would provide consistency, and would eliminate confusion with systems that use pumps.

The commission agrees that the proposed language is not clear. Since it was the commission's intent that the requirement apply to gravity disposal systems, the suggested change has been made. The first sentence in §285.32(b)(1)(F) was revised to clarify that the drop in elevation from the tank to the drainfield is only for gravity disposal systems. The drop in elevation is needed to ensure that effluent will flow from tank to the drainfield. In pressurized systems, a pump is used to get the effluent from the tank to the drainfield.

Additionally, in §285.32(b)(1)(F), the commission changed the words "pea gravel" to "one- half inch in diameter" to better define the size of gravel to be used. "Pea gravel" comes in different sizes, and it is important to specify a size because gravel that is too large can damage the tank.

Clearstream commented that the existing language in §285.32(b)(1)(G) should be replaced with: "Pretreatment (Trash) tanks. Aerobic treatment units that are not tested and certified with a pretreatment compartment, chamber, or tank will be required to install pretreatment tanks prior to all units installed in the state. Pretreatment tanks required under this section shall provide at least 1/2 the volume of the rated gallons

per day of treatment of each treatment unit and comply with the structural and fitting requirements of this section."

The commission disagrees with the comment. There has been no evidence presented that the current requirements for pretreatment tanks are causing environmental or health problems. Therefore, no changes have been made in response to this comment.

Regarding §285.32(b)(2), CES, LCRA, and TSPE recommended that detailed guidance is needed on the design and construction of intermittent sand filters, if they are to continue to be categorized as "standard." The guidance should require that all fines, in addition to other ASTM C-33 media sizing requirements, (0-2% passing 100 sieve, and 0% passing 200 sieve) be removed from the media to ensure that clogging of the filters does not occur and that effluent filters/screens should be required as part of the sand filtration system. LCRA suggested that the rules be modified to include specifications for distribution hole sizing, distribution hole spacing, as well as, a requirement for more frequent, smaller doses. LCRA based its comment on a paper titled "Contaminant Distribution in Intermittent Sand Filters," (study) which was presented at the 1998 Eighth National Symposium on Individual and Small Community Sewage Systems. LCRA stated the study concluded that as hydraulic loading rates increase, areas of preferential flow expand, and decrease the intermittent sand filter's ability to adequately remove viruses and minimize preferential flow at high hydraulic loading rates. CES commented that detailed guidance is necessary because intermittent sand filters have not yet been used by enough installers or designers in Texas for them to be very familiar with the "pitfalls" or performance problems caused by improper design and construction. TSPE commented that states where sand filters have been used most successfully have developed and distributed very detailed information for their design and construction. TSPE has received reports of intermittent sand filter failures (clogging) in cases where fines were not removed (washed) from the media.

The commission responds that there are two different types of intermittent sand filter systems that are commonly referenced in the OSSF industry. If the system referenced by the commenters is a professionally designed intermittent sand filter, it is a nonstandard system and is addressed in §285.32(d)(1). The paper "Contaminant Distribution in Intermittent Sand Filters" that LCRA based it comments on, references nonstandard intermittent sand filters, thus, does not apply to this section of the rules. The intermittent sand filter addressed in §285.32(b)(2) is a standard intermittent sand filter that can have planning materials prepared by an installer. The standard intermittent sand filter in §285.32(b)(2) has proven to work without the added specifications suggested by the commenters. There has been no evidence presented that the systems are causing an environmental hazard. No changes have been made in response to this comment.

The commission has revised §285.32(b)(2) by changing the words "Filter bed requirements" to "Requirements"since the items that are listed are for the system, not just the filter bed.

LCST and IS-D suggested that leaching chambers, surrounded in #5 (.05 inch) pea gravel, be included in §285.32(b)(2)(F) as an approved underdrain in a standard intermittent sand filter since the leaching chambers provide increased storage volume and facilitate draining of the underdrain when effluent is being pumped from the system.

The commission responds that the items listed by the commenters are covered under the nonstandard and proprietary treatment and disposal system testing procedures. Because leaching chambers are proprietary systems, they must be tested according to the requirements in §285.32(c)(4)(B). Leaching chambers were not tested in conjunction with intermittent sand filters, therefore, leaching chambers may not be used in conjunction with intermittent sand filters until they have been tested. No changes have been made in response to these comments.

LCRA commented that §285.32(c) references aerobic treatment units that are constructed of precast concrete should conform with American Society for Testing and Materials (ASTM) standard C1227. LCRA noted that the proposed rules only state that standard treatment tanks must conform with ASTM Standard C1227.

The commission responds that the structural integrity of aerobic treatment systems is addressed under NSF Standard 40 which is referenced in §285.32(c)(4)(A). NSF Standard 40 requires the tank to undergo testing to ensure it is structurally sound, while ASTM Standard C1227 is a standard for construction of a tank only. ASTM Standard C1227 does not include any structural integrity testing. No change has been made in response to this comment.

Concerning §285.32(c), SOS suggested adding a new provision that reads: "(6) System serviceability. All service items described in the manufacturer's recommendations for service shall be made accessible by extending risers to at least 3" above grade. Such risers shall be sealed to the tank, and have safety compliant lids (weigh at least 40 lbs., or be secured by mechanical means)."

The commission disagrees with the comment. The commission responds that the location of the risers should be specified in the planning materials, which the owner should have. The owner should be able to locate the risers from that material. The commission has determined that keeping the risers within six inches below the ground surface will allow access to the tanks, and will also prevent odors. More importantly, it will prevent children from falling into tanks. The commission understands that the suggested changes would increase access to the tanks for inspection and maintenance purposes, however, these changes could allow access to the tanks by children. No changes have been made in response to this comment.

The commission has revised §285.32(c) by adding language to clarify that this subsection does not apply to proprietary septic tanks described in subsection (b)(1).

The commission revised §285.32(c)(4) by adding the word "treatment" between "proprietary" and "system" for clarity since this subsection applies to "proprietary treatment systems," not "proprietary disposal systems."

Clearstream commented that the reference to the "Certification Policies for Wastewater Treatment Devices" should be updated from 1997 to 2000 in §285.32(c)(4)(A).

The commission appreciates the comment. However, no change has been made since the 2000 version of this standard has not been approved by NSF International at this time. The 1997 date is still the approved date for the standard. Under the rule, the ED may approve updated or other standards in the future, as appropriate.

HCPID commented that the requirements in §285.32(c)(4)(A) for institutions "who certify products to NSF Standard 40 be ANSI certified needs to be reevaluated." HCPID stated it has found significant differences between approving authorities even though

they are all American National Standards Institute (ANSI) certified. HCPID stated that either a different process should be defined, or each county should be allowed to determine what systems it will allow.

The commission appreciates the concern expressed by the commenter; however, any facility that follows the procedures of NSF Standard 40 should obtain similar results for similar systems. The commission cannot authorize individual counties to develop different procedures for testing proprietary treatment systems because THSC, §366.001 charges the commission with eliminating and preventing health hazards that result from inappropriate OSSFs. To ensure that proprietary OSSFs will protect human health, the commission must retain oversight of proprietary OSSFs installed in the state. No change has been made in response to this comment. Anytime anyone notices a discrepancy between ANSI-accredited testing institutions, the discrepancy should be brought to the attention of the ED.

The commission has revised §285.32(c)(4)(B)(iv)(II) by deleting a sentence about replacing a system if it fails and moving it to §285.32(c)(4)(B)(iv)(III) for better organization. The language is more appropriate in this subclause.

EZflow is opposed to §285.32(c)(5) unless substantial evidence is presented to the commission that such systems are not functioning as originally tested, evaluated, and approved and are causing a health problem.

The commission responds that all proprietary systems should be reevaluated on a periodic basis because the commission has received reports from the permitting authorities that some approved systems have failed after several years of use or have not performed as originally intended. Under the current rules, the commission does not have authority to reevaluate systems other than aerobic treatment systems. The new rules will allow the commission to reevaluate the adequacy of systems that have been approved to ensure that approved systems are performing effectively in the long term. The requirement will enable the commission to actively address structural problems, service problems, maintenance support problems, and system failures. No change has been made in response to this comment.

HEM had no objection with regard to system reviews in §285.32(c)(5), however, they requested that this review be performed by either an ANSI accredited institution or an independent third party and not the ED. HEM commented that the ED is not qualified to perform reviews of proprietary aerobic on-site wastewater treatment systems. According to HEM, if a proprietary aerobic system is successfully reviewed by an ANSI accredited institution or an independent third party, the commission should be bound to include the aerobic systems on the approved list. HEM concluded that the commission should not have discretion to delete a system from the commission approved list if that system passes the required re-certification review.

The commission responds that according to §285.32(d)(5)(A), the reviews will be performed by either an ANSI accredited institution according to the retesting requirements in NSF Standard 40 and Certification Policies for Wastewater Treatment Devices, or by an independent third party for those systems not tested under NSF Standard 40. If the system passes the third-party review the system will remain on the ED's approved list, however, if the system does not pass the third-party review, it will be reviewed. In addition, the language will enable the commission to actively address structural problems, service problems, maintenance support problems, and system failures in the overall determination. No change has been made in response to this comment.

The commission has revised §285.32(c)(5)(A) by changing the word "retesting" to "reevaluation" to agree with the process used under NSF Standard 40.

TSPE suggested in §285.32(d) that the size of disposal fields can be reduced where intermittent sand filtration, recirculating sand filtration, or subsurface flow wetlands pretreatment is provided prior to subsurface disposal. CES recommended a reduction in loading rates when intermittent sand filters, recirculating sand filters, and subsurface flow wetlands are provided before subsurface disposal in Class Ib, II and III soils. CES commented that a reduction should not be allowed for Class IV soils, because research has not proven any benefits in these soils, nor should reductions be allowed for "tank reactors" (or aerobic treatment units) since on-going maintenance is needed (which may in some cases not occur) to ensure that sufficient filtration continues to occur to protect the disposal field. TSPE commented that these three particular treatment processes were selected due to their effectiveness in consistently achieving very low BOD and TSS levels, which research has shown to be critical for higher long term acceptance rates for OSSFs and that these practices have been successfully implemented across the United States to achieve substantial cost savings, particularly for larger onsite systems and in cases where there were lot size constraints. CES added that other states including Missouri and Oregon permit OSSF systems under these circumstances at rates as high as six times the rates required by the commission.

The commission responds that the three treatment processes listed by the commenters are covered under the nonstandard and proprietary treatment and disposal system testing procedures in §285.32(c)(4). These three systems were not tested with reduced drainfields, therefore, they may not be used with reduced drainfields until they have been tested. Once intermittent sand filtration, recirculating sand filtration, or subsurface flow wetland pretreatment systems have been tested, the commission will consider allowing them to be used with reduced drainfields. No changes have been made in response to these comments.

SOS suggested §285.32(d)(5) should be added with the following language: "(5) System serviceability. All service items described in the designer's, supplier's, or the manufacturer's recommendations for service shall be made accessible by extending risers to at least 3" above grade. Such risers shall be sealed to the tank, and have safety compliant lids (weigh at least 40 lbs., or be secured by mechanical means)."

The commission disagrees with the comment. The commission responds that the location of the risers should be specified in the planning materials, which the owner should have. The owner should be able to locate the risers from that material. The commission has determined that keeping the risers within six inches below the ground surface will allow access to the tanks, and will also prevent odors. More importantly, it will prevent children from falling into tanks. The commission understands that the suggested changes would increase access to the tanks for inspection and maintenance purposes, however, these changes could allow access to the tanks by children. No changes have been made in response to this comment.

Amstar expressed concern that in §285.32(d)(2) the commission may be trying to supercede basic engineering principles by stating that "The planning materials for non-standard treatment systems submitted for review will be evaluated using the criteria established in this chapter, or on *basic engineering and scientific principals*," (emphasis added). According to Amstar the commission may be trying to exceed its jurisdiction by reviewing the design, analysis and review of non-standard OSSF systems. SOS commented that evaluating the planning materials for non-standard treatment systems using basic engineering principles requires a PE. Amstar contended that the review of non- standard OSSF systems may only be done by a PE according to the Texas Engineering Practice Act.

The commission responds that the ED's review of planning materials is limited to evaluating the planning materials for compliance with the rules. The Texas Engineering Practice Act only prohibits individuals from performing tasks that "require(s) engineering education, training, and experience in the *application of special knowledge* or judgement of the mathematical, physical, or engineering sciences to . . ." (emphasis added). Tex. Rev. Civ. Stat. Ann. Art 3271a §2(4), 2000. The review performed by the ED does not require the application of special knowledge, thus it is not the practice of engineering. Additionally, a PE supervises the review. No change has been made in response to this comment.

The commission has added a new §285.32(d)(4). Since non-standard systems are systems not specifically described or defined in these rules, the need for maintenance contracts cannot be determined until the planning materials for the system have been developed. Therefore, the commission cannot specify by rule any requirements for maintenance contracts. However, maintenance contracts need to be addressed. Therefore, the commission has added language to clarify the process for determining when maintenance contracts are required for non-standard systems and further, what requirements the contract must meet. The commission has added language that "the need for ongoing maintenance contracts shall be determined by the permitting authority based on the review required by §285.5(b) of this title (Relating to Submittal Requirements for Planning Materials). If the permitting authority determines that a maintenance contract is required, the contract must meet the requirements in §285.7 of this title." As a result of this change, proposed §285.32(d)(4) is now renumbered to §285.32(d)(5).

TSPE and CES suggested §285.32(e) should be revised to be more consistent with the effluent quality requirements set forth in the commission's other rules for systems larger than 5,000 gpd (30 TAC Chapter 210) for reclaimed water, and TSPE went on to state that some of the technological and cost constraints associated with OSSFs must be recognized. UGRA commented that the proposed effluent quality standards are insufficient to protect human health and environmental health for surface applications. TSPE commented that the secondary treatment standards proposed in this rule for surface application are no longer allowed for larger systems (>5,000 gpd) where there is to be public exposure to the effluent, presumably because it is believed that there would be adverse public health risks. TSPE and CES recommended limits for surface application (secondary treatment) systems to be consistent with the commission's Chapter 210 requirements for reclaimed water where public exposure occurs ("Single Grab" sample limits for BOD and TSS is less than or equal to 20 mg/L) and where there is no public exposure to surface application systems or for systems utilizing secondary treatment before subsurface disposal ("Single Grab" sample limits for BOD and TSS is less than or equal to 45 mg/L). TSPE and CES also commented that the "30 day" and "7 day" average concentrations are not meaningful standards for OSSFs, other than those which receive NSF or other allowed testing certification (proprietary systems) and that "Grab" sampling is the only realistic manner in which to monitor or test individual OSSFs. CES commented that the current and proposed rules do not adequately protect public health according to engineering principles and an increasing body of research that shows the long term acceptance rate of soils is greatly improved when BOD and TSS levels remain low, as shown when using higher effluent loading rates to soils following intermittent sand filters, which consistently produce very low levels of BOD and TSS.

The commission responds that the standards used for effluent quality in §285.32(e) are the same standards the commission uses for secondary treatment in other rules, and are protective of human health. These rules are designed to limit public exposure to the treated effluent by requiring that, if the distance between the property line and the edge of the surface application area is less than 20 feet, the sprinkler operation shall be controlled by commercial irrigation timers set to spray between midnight and 5:00 a.m. Additionally, the commission responds that effluent limits for reclaimed water and for systems larger than 5,000 gpd are more stringent than the effluent limits in Chapter 285 because the rules that govern both of these types of systems apply to areas that are accessible to the public, whereas Chapter 285 effluent limits apply to systems that are generally located on private property. The commission further states that the effluent limits in Chapter 285 do not limit the technologies nor increase the costs to the public, and still remain protective of human health. Additionally, the commission has not received any indication that the current effluent limits in the rule are not protective of human health and the environment. With regard to the comment that the "30-day" and "seven-day" averages are not meaningful, the commission responds that these averages are part of the NSF testing certification and are appropriate for approval of the tested systems. The commission further responds that these standards are appropriate for the design of other systems because these are standards that are used in the OSSF industry. Finally, the commission responds that recent research has indicated that improving the level of effluent quality does not mean loading rates can be increased, due to the fact that pathogens are carried farther in soils when the loading rate is increased thereby creating a greater health risk. However, the commission would not necessarily exclude a system from being designed with higher loading rates on a case-by-case basis as a non-standard system as suggested by CES. No changes have been made in response to these comments.

TOWA and MCGC suggested that in §285.32(e) CBOD and BOD be used interchangeably because since 1996 all performance reports (under ANSI/NSF Standard 40) have reported CBOD instead of BOD. Both TOWA and MCGC commented that it is important to leave the BOD term because the BOD test is more readily available to installers for yearly grab samples.

The commission agrees with these comments. All treatment systems tested under NSF Standard 40 since 1996 have been tested using CBOD instead of BOD. Therefore, the figure contained in §285.32(e) has been changed to include both CBOD and BOD to cover systems tested both before and after 1996.

Austin suggested that in §285.32(e) all disposal systems that require secondary treatment should include a nitrogen effluent quality level of less than or equal to 10 mg/L of nitrate-nitrogen

when the minimum vertical separation from evidence of groundwater or a restrictive horizon is two feet or less.

The commission responds that there are no recognized treatment standards for nitrogen reduction for OSSFs. The EPA may, in the future, develop standards for nitrogen reduction. Requirements to implement these standards will be considered at that time as necessary. In addition, there has been no evidence presented that there is a degradation of the environment due to nitrogen from systems using secondary treatment. Therefore, no changes have been made in response to the comment.

The commission added language to §285.32(e) to clarify that the 30-day average is the average of all 30-day averages and the seven-day average is the average of all seven-day averages over the length of the testing period. The commission also added language to the Carbonaceous Biochemical Oxygen Demand (CBOD) table to reflect that CBOD should be measured instead of BOD for proprietary treatment systems tested according to §285.33 after 1996.

§285.33. Criteria for Effluent Disposal Systems.

Austin commented that the minimum vertical separation distances specified in §285.33 are inadequate in a number of situations thereby providing limited protection of groundwater. Austin added that combining secondary treatment with or without disinfection with nitrogen removal with varying soil depths is an adequate approach; however, the soil depths specified from the bottom of excavations or a restrictive horizon are inadequate to protect surface and groundwater from mobile pollutants. In attachments to their comments, Austin provided a rationale for modifications to the minimum vertical separation distances with suggested minimum vertical separation distances.

The vertical separation distances in the proposed rule are the same separation distances that are in the current rule, which have been in place since 1997. While Austin provided information regarding vertical separation distances as an attachment to their comment letter, the information was not sufficient to convince the commission that the vertical separation distances in the current rules are not adequate. Several papers presented at the American Society of Agricultural Engineers Conference in March 2001 stated that, based upon research conducted both in the laboratory and in the field, two feet of vertical separation distances is adequate. Furthermore, based on the experience gained administering the OSSF program, the commission has determined that the vertical separation distances in the rules are protective of human health and the environment. Therefore, the commission has made no changes to the rule in response to this comment.

One individual commented that the language in §285.33(a)(2) should be similar to the language in §285.32(a)(1) to prevent the use of concrete or vitrified clay pipe, which the commenter claims the proposed language would permit. The individual also suggested that "disposal field" be changed to "disposal system" in the first sentence of this provision.

The commission responds that the use of concrete or vitrified clay pipe may be permitted if it can be shown to have equivalent or stronger pipe stiffness at a 5% deflection than the pipes listed. No change has been made in response to this comment. The commission agrees with the second comment. The words "disposal field" has been changed to "disposal system" to agree with language used elsewhere in the section.

LCRA suggested the language in §285.33(a)(3) regarding pipe diameter between all treatment tanks and to the disposal field be revised to allow for disposal through pressurized pipe. LCRA commented that disposal through pressurized pipe usually requires a smaller diameter pipe line to facilitate efficient pump sizing and disposal area.

The commission responds that the pipe used in §285.33(a)(3) refers to pipe used in a gravity disposal system, not in a pressurized system. Therefore, the word "gravity" has been added before "disposal system." No other change has been made in response to the comment.

HCPID suggested that the last sentence in §285.33(a)(3) be modified to: "The pipe must maintain a continuous fall to the disposal field if the system is gravity flow." HCPID believes that additional language will prevent confusion with systems requiring pumps or lift stations to reach the disposal area.

The commission agrees that a change is appropriate. The proposed language for this section was intended to apply to gravity disposal systems and not other systems. Therefore, the commission has modified the language in the first sentence of §285.33(a)(3) from "the disposal field shall" to "a gravity disposal system shall." Additionally, in the last sentence of this subsection, "the disposal field" was changed to "the disposal system."

HCEH commented that §285.33(a)(3) should allow two-inch schedule 40 pipe for the disposal of effluent from the final treatment tanks. According to HCEH, schedule 40 pipe is less likely to crush than a three or four-inch SDR 35 pipe.

The commission disagrees with this comment. To ensure pipes are not crushed, OSSFs are not to be installed where vehicles will drive over the pipe; therefore, the commission has determined that the pipe strengths specified in §285.33(a)(3) are adequate. The rationale for using the pipe with the larger diameter is that the larger pipe will be less likely to clog due to biomat build-up. Therefore, no changes have been made in response to this comment.

LCST and IS-D commented that in §285.33(a)(3), a continuous fall of the effluent line will result in drainfields being too deep, which may require effluent pumping since there is a three-inch hydraulic head already existing in the septic tank. According to LCST and IS-D this causes additional expense without correlating operational benefit. Both LCST and IS-D suggested adding the following language: "The discharge piping shall have a minimum fall of 1/8 inch per foot fall on the first ten feet of discharge piping. Any remaining discharge piping shall be run level to the disposal area."

The commission responds that the phrase "continuous fall to the disposal system" is necessary to avoid installers placing pipe uphill. Disposal systems must be placed downhill from the tanks to allow effluent to properly flow to the drainfield. Section 285.33(b)(1)(A)(i) requires that drainfields be between 18 and 36 inches deep. Additionally, the DRs are required to check systems during their inspections to ensure that drainfields are not installed too deep. No change has been made in response to this comment.

The commission added §285.33(a)(4) to include language that is currently only in the figure contained in §285.90(5). The language is included in the text for clarity.

The commission has revised §285.33(b)(1). The commission added language to this paragraph to clearly define the amount

of suitable soil needed between the bottom of the excavation to either a restrictive horizon or to groundwater. This separation distance is critical for the proper treatment of effluent for absorptive drainfields and needs to be clearly defined in the text.

The commission has revised §285.33(b)(1)(A)(i). The commission has moved the sentence, "Single excavations shall not exceed 150 feet" from §285.33(b)(1)(D) for better organization since it is more appropriate in this clause.

The commission added language to §285.33(b)(1)(A)(iii) to clarify its recommendation that if there are multiple excavations, the ends should be looped together. The excavation ends should be looped together to allow for consistent effluent flow throughout the disposal system. This revision is a result of a comment by LSCT and IS-D regarding §285.33(b)(1)(D).

HCEH commented about §285.33(b)(1)(A)(v) that the bottom of an absorptive drainfield trench should be level to within three inches of the overall length. HCEH commented that the current standard allows a single trench drainfield to be 12 inches off of level if the trench is 300 feet long and the manifold enters the center. HCEH concluded that "the overall depth is what matters."

The commission agrees that the language is not clear. To avoid ponding in the excavation, it should be level over the entire excavation. Therefore, language has been added that the bottom of the excavation shall be level to within one inch over 25 feet of the excavation or within three inches over the entire excavation, whichever is less.

UGRA, Austin, and one individual commented that the intent of the requirements in §285.33(b)(1)(A)(vi) that the absorptive drainfield excavation penetrate a restrictive horizon needs to be clarified. The individual stated the wording in this provision is confusing and should be reworded. UGRA proposed the following language: "If the excavation penetrates a Restrictive Horizon, the Restrictive Horizon in the sidewall area shall be greater than 4" above gravel in trench. The sidewall area will not be used for calculating the required absorptive area." Austin suggested that if an excavation penetrates a restrictive horizon, and secondary treatment is used, there should be at least three feet of suitable soil between the bottom of the excavation and the restrictive horizon. If secondary treatment is not used, there should be four feet of suitable soil between the bottom of the excavation and the restrictive horizon. WCCHDES suggested that this section should be rewritten to read: "If the excavation penetrates a restrictive horizon and there are both two feet of suitable soil below the bottom of the excavation and no groundwater in the excavation or in the two feet below the bottom of the excavation, a standard subsurface disposal system may be used...."

The commission agrees that §285.33(b)(1)(A)(vi) is unclear. The commission changed "restrictive horizon" to "rock horizon" because absorptive drain fields may only be installed if the restrictive horizon is a rock horizon and not any other type of restrictive horizon. Rock horizons overlay suitable soils in numerous areas of the state, and the criteria that must be met in order to install a standard subsurface disposal system in those areas needs to be clarified. The decision regarding the appropriate system for a particular site is important and must be made following a site evaluation. The commission declined to include UGRA's recommended language that the restrictive horizon be greater than four inches above the gravel in the excavation because the commission has adequately addressed this issue in §285.33(b)(1)(A)(vi). Additionally, the commission has determined that UGRA's suggestion would not be any more protective of human health or the environment than what is in the rule. The commission adds that the vertical separation distances in the proposed rule are the same separation distances that are in the current rule, which have been in place since 1997. While Austin provided information regarding vertical separation distances as an attachment to their comment letter, the information was not sufficient to convince the commission that the vertical separation distances in the current rules are not adequate. Several papers presented at the American Society of Agricultural Engineers Conference in March 2001 stated that, based upon research conducted both in the laboratory and in the field, two feet of vertical separation distances is adequate. Furthermore, based on the experience gained administering the OSSF program, the commission has determined that the vertical separation distances in the rules are protective of human health and the environment. Therefore, no changes have been made in response to Austin's comment. The commission modified §285.33(b)(1)(A)(vi) to include more detail and to clarify the requirements for standard subsurface disposal systems that are installed in areas where a rock horizon overlays suitable soil.

The commission has revised §285.33(b)(1)(A)(vii). The commission added the language to this clause to clearly define the basis for calculating the soil application rate for an absorptive drainfield. The data is provided in §285.91(1) and (5); however, it has not been clearly stated in the body of the rule. Therefore, the commission has added the language to §285.33(b)(1)(A)(vii) for clarity.

The commission has revised §285.33(b)(1)(A)(vii)(I) - (III). The commission has changed the word "drainfield" to "excavation" in the formulas to be consistent with the language in the text before each formula.

LCST and IS-D suggested adding a new sentence to the beginning of §285.33(b)(1)(B) stating: "All media proposed for use for disposal systems shall be pre-approved by the permitting authority prior to use."

The commission responds that the media allowable for use is described in §285.33(b)(1)(B). All permitting authorities can only approve the media described in the rule. Therefore, the commenters' concerns are addressed, and no changes have been made in response to this comment.

The commission has revised §285.33(b)(1)(B). The commission has deleted the word "porous" from §285.33(b)(1)(B) since porous media cannot be used in a drainfield.

One individual suggested using mandatory language in §285.33(b)(1)(B)(ii) prohibiting the use of oyster shells and soft limestone. HCPID commented that "soft" limestone should be defined as limestone which leaves a mark when scratched on pavement.

The commission agrees that soft media is not appropriate for fill since soft media is likely to compact or compress during use, thus "may not" has been changed to "shall not." The commission declined to include the suggested definition of "soft limestone," since the definition suggested could also apply to other types of rock or other approved media.

The commission has revised §285.33(b)(1)(C)(i) as a result of a comment regarding §285.33(b)(1)(G). The commission agrees that the word "less" could be misinterpreted and has replaced it with the word "stronger." The pipe should have an SDR of 35 or stronger.

LCST and IS-D commented that in §285.33(b)(1)(C)(iv) when ASTM D2729 pipe is used, the lines are easily damaged or collapse. Both LCST and IS-D suggested that ASTM D2729 be deleted from the proposed rule.

The commission responds that ASTM D2729 pipe is as stiff as other pipe on the approved list. ASTM D2729, along with all other piping listed in §285.33(b)(1)(C), can only be used in drainfields where it is embedded in media. To ensure pipes are not crushed, OSSFs are not to be installed where vehicles will drive over the pipe; therefore, the commission has determined that the pipes specified in §285.33(b)(1)(C) are adequate. Additionally, the commission has not been provided with any information indicating ASTM D2729 pipe collapses as a result of use or is easily damaged. No changes have been made in response to this comment.

One individual suggested that in §285.33(b)(1)(D) the maximum separation distance between parallel drainlines should be five feet, center to center. The individual commented that this would reduce waste when a ten foot section of pipe is cut, and that it would also allow a backhoe to straddle installation lines during construction. According to the individual, the normal tractor width is too wide to straddle one trench and too narrow to straddle two trenches.

The commission responds that the four foot requirement in §285.33(b)(1)(D) is necessary to ensure adequate and even distribution of wastewater, and provides consistency between individual OSSF systems regarding the distance from the center of the pipe to the wall of the excavation. The maximum distance between parallel drainlines has been four feet since 1997. The applicable formulas in the rules have all been calculated using a maximum separation distance of four feet; a five foot separation distance in §285.33(b)(1)(D) would result in uneven distribution of wastewater because all other calculations have been based on four feet. This could result in inadequate treatment of wastewater; therefore, no changes have been made in response to this comment.

LCST and IS-D commented that the way §285.33(b)(1)(D) is written, when multiple drainlines are used, they *must* be looped with a solid or perforated pipe (emphasis added). Both LCST and IS-D suggested that this should be an option rather than a requirement.

The commission agrees with the comment. There are three options available when using multiple drainlines. Therefore, the language has been changed to require the ends of the multiple drainlines opposite the manifolded end to either be manifolded together with a solid line, looped together using a perforated pipe and media, or capped. To avoid confusion over using multiple drain lines or using multiple excavations, language has also been added to §285.33(b)(1)(A)(iii) that states that when there are multiple excavations, it is recommended that the ends be looped together. Additionally, the last two sentences were combined since the requirements in both sentences involve multiple drainfields.

The commission has revised §285.33(b)(1)(D). The commission has deleted the sentence, "Single excavations shall not exceed 150 feet," and moved it to §285.33(b)(1)(A)(i) for better organization.

EZflow supported using Class III soil as backfill material in §285.33(b)(1)(F). According to EZflow, Class III soil should provide for acceptable functioning, while hopefully reducing the cost of the system.

The commission appreciates the positive comment in support of the rule.

LCST and IS-D suggested that §285.33(b)(1)(F) require the diversion of surface runoff from the disposal area to ensure the integrity of the disposal area is maintained and to prevent surface water intrusion. Additionally, LCST and IS-D recommended changing the word "may" to "shall" in the last sentence of this subparagraph.

The commission agrees that surface runoff which impacts the disposal area needs to be addressed. Runoff can cause erosion of the disposal area, which can damage the system, or can result in ponding over the disposal system, which could cause a failure. Therefore, language has been modified to reflect that surface runoff impacting the disposal area is not permitted and the diversion method shall be addressed during development of the planning materials. Additionally, "from the site may be diverted from the disposal area using either berms or drainage swales" has been deleted from §285.33(b)(1)(F) to allow the person preparing the planning materials to determine the appropriate option for addressing surface runoff. The commission deleted the specific references to berms and drainage swales to allow for other methods which may be more appropriate to divert surface runoff.

LCST and IS-D suggested that the strength of the drainfield pipe should be "a minimum of SDR 35" in §285.33(b)(1)(G).

The commission agrees that the word "less" could be misinterpreted and has replaced it with the word "stronger." The pipe should have an SDR of 35 or stronger, therefore, the language has been changed to "SDR of 35 or stronger."

The commission has revised §285.33(b)(1)(G). The words "Class Ib, II or III soils" have been changed to "soil." The excavation for the overflow pipe can be backfilled with any soil because there is no treatment associated with the overflow pipe. Therefore, any soil can be used.

The commission has revised §285.33(b)(2)(A). The commission has added "and where a minimum of two feet of suitable soil does not exist between the excavated surface and either a restrictive horizon or groundwater" to the list of areas where a liner must be used. A liner must be used in an ET system when these conditions exist, because there is not enough soil to a restrictive horizon or to groundwater to provide adequate treatment of the wastewater or to avoid groundwater intrusion. Therefore, the language has been added to clarify the requirements. Additionally, the last sentence in §285.33(b)(1)(A) has been moved up within the subparagraph for better organization of the rule.

LCST and IS-D suggested that language in §285.33(b)(2)(B) should reflect that a person who will be the owner of an evapotranspiration system be furnished with written documentation of the limits placed on the system by the gallon per day usage selected. LCST and IS-D commented that a simple verbal notice is not sufficient and will leave the door open to potential legal liability.

The commission disagrees with this comment. There is no reason for additional written documentation for an ET system, or any other system, because the flow rates are included as a permit condition. The only time additional written documentation, in the form of an affidavit, would be necessary is when it is necessary to document that the actual daily flow will be less than anticipated in §285.91(3) based upon the type or size of the structure being served by the system. No changes have been made in response to this comment.

The commission has revised §285.33(b)(2)(B). The commission has changed the word "excavation" to "excavations" to correct a typographical error.

The commission has revised §285.33(b)(2)(C). The commission changed the words "If the ET system contains two or more drain lines, each drain line" to "all drain lines" for clarity. Since all drain lines have to be surrounded by a minimum of one foot of media, it is clearer to simply state it. Additionally, the word "may" has been changed to "shall" in the last sentence to make the use of backfill a requirement. Appropriate backfill must be used for proper treatment.

The commission has revised §285.33(b)(2)(E). The commission has deleted the word "multiple" from the subparagraph title and from the first sentence due to redundancy. The words "ET systems" implies multiple systems. The commission has changed the words "separate units" to "equal excavations" to be consistent with the language in other portions of this paragraph. Additionally, the commission has changed the words "unit," "drainfield," and "units" to "excavation" or "excavations" to be consistent with other parts of this paragraph.

UGRA suggested that §285.33(b)(3) be deleted. UGRA stated the requirements for this section are inconsistent with the loading rate(s) listed in §285.91(1), are unnecessary when compared to §285.33(d)(1), and require a greater degree of technical training to design than provided for an installer.

The commission responds that the requirements in §285.33(b)(3) are not inconsistent with the loading rates in §285.91(1) and disagrees that these requirements are unnecessary when compared to §285.33(d)(1). Section 285.33(b)(3) refers to the requirements in §285.33(d)(1) which in turn refers to §285.91(1) and then lists *exceptions* to the requirements in §285.33(d)(1). The commission does not agree that additional technical training is necessary. The installer basic training classes provide installers with sufficient knowledge to be able to design systems using the referenced loading rates. Therefore, no changes have been made in response to this comment.

Concerning §285.33(B)(3)(C), SOS commented that a disposal trench six inches wide by six inches deep, filled with gravel, will hold about 0.56 gallons of effluent per foot of trench. SOS therefore recommends that criteria be added requiring the volume of void space in the gravel of the disposal trenches to be greater than the system dosing volume. According to SOS, this will prevent the surfacing of effluent which could be a significant health hazard.

The commission disagrees with the comment. SOS did not provide specifics on how 0.56 gallons of effluent per foot of trench was calculated, but the commission calculates that the pumped effluent drainfield, using the sizing formulas in §285.33(d)(1)(C) and application rates in §285.91(1), has a storage volume which exceeds the daily flow in §285.91(3), Table III. The volumes in Table III have not changed from the current rules to the proposed rules and are adequate to properly treat the wastewater. The storage volume in the trench is sufficient to prevent surfacing of the effluent. The commission declines to accept the commenter's suggestion that pumped effluent drainfields should be sized according to the volume of void space in the gravel because there is adequate void space when the sizing requirements specified in the rules are followed. No changes have been made in response to this comment.

Concerning §285.33(b)(3)(D), R&R commented that the reduction in the vertical separation to a restrictive horizon for a pumped effluent drainfield should work very well, especially in West Texas.

The commission appreciates the positive comment in support of the rule.

Austin suggested the vertical separation distance for pumped effluent drainfields in §285.33(b)(3)(D) should be increased to four feet. According to Austin, this will allow for additional removal of phosphate and nitrate-nitrogen. Austin commented that the proposed separation distance is inadequate to allow for the removal of phosphate and nitrate-nitrogen before residual effluent reaches groundwater.

The vertical separation distances in the proposed rule are the same separation distances that are in the current rule, which have been in place since 1997. While Austin provided information regarding vertical separation distances as an attachment to their comment letter, the information was not sufficient to convince the commission that the vertical separation distances in the current rules are not adequate. There are no recognized treatment standards for phosphate or nitrate-nitrogen removal for OSSFs. The EPA may, in the future, develop standards for phosphate or nitrate-nitrogen removal. Requirements to implement these standards will be considered at that time as necessary. In addition, there has been no evidence presented that there is a degradation of the environment due to phosphates or nitrate-nitrogen from pumped effluent drainfields. Therefore, the commission has made no changes to the rule in response to this comment.

Sylva, S&S, Whitestone, and LOCHD suggested that the definition of "media" in §285.33(b)(3)(E) should also include other "approved media." Additionally, according to the commenters, the media should be covered with a permeable geotextile fabric and the remainder of the excavation should be backfilled with previously removed soil. The commenters suggested the following language: "Porous media. Each dosing pipe shall be placed with the drain holes facing down and placed on at least six inches of porous media (pea gravel or larger or other approved media) *between the bottom of the excavation and pipe. The media shall be covered with a permeable geotextile fabric and the remainder of the excavation backfilled with previously removed soil*" (emphasis added).

The commission agrees that pea gravel is not the only media that can be used in conjunction with a dosing pipe. Other media identified in §285.33(b)(1)(B) will work as well as pea gravel. The commission has added language that authorizes the use of other media up to two inches measured along its greatest dimension. The commission also agrees that backfill needs to be addressed. The use of clay as backfill should not be allowed since clay will not allow the system to operate correctly. Therefore, language has been added to §285.33(b)(3)(H) that only Class Ib, II, or III soils can be used as backfill, even if they are the soils previously removed from the excavation. If the previously removed soil is a Class Ia or Class IV soil, it may not be used for backfill. Additionally, pumped effluent drainfields must use the same specifications as low pressure dosed drainfields. Low pressure dosed drainfields are described in §285.33(d)(1). Specifically, §285.33(d)(1)(C)(iii) states that the fabric has to meet the requirements in §285.33(b)(1)(E). No other changes have been made in response to this comment.

Concerning §285.33(b)(3)(G), SOS commented that there are 1/2 hp pumps with maximum head pressures that range from 20 to 300 ft, and maximum flows that range from 14 to 180 gpm.

SOS recommended more specific criteria be developed to ensure proper pump selection to avoid either effluent surfacing in the drainfield or overflowing of the pump tank, either of which could be a significant health hazard.

The rules have required a 1/2 hp pump since 1997. The commission recognizes that different models of 1/2 horsepower pumps can have various head pressure and flows, however, the commission is not aware of effluent surfacing or pump tanks overflowing as a result of the use of 1/2 hp pumps for pumped effluent drainfields. The purpose of the pump is to ensure that the effluent reaches the ends of the distribution pipes. Both flow and head pressure are important, but the commission has not dictated the head pressure and flow because the rating curve on each type of pump is different. Therefore, no changes have made in response to this comment.

The commission has added §285.33(b)(3)(H). There had been considerable confusion about the backfill requirements for pumped effluent drainfields. The reference in §285.33(b)(3) is to the requirements in §285.33(d)(1) for low pressure dosed drainfields, which includes backfill requirements. However, since there are no backfill specifications as there are for other systems, the commission has added the language to clarify that the backfill must be either Class Ib, II, or III soils. The use of clay as backfill is not allowed, since clay will not allow the system to operate correctly.

LCST, IS-D, and IS-R suggested that credit for water saving devices relating to proprietary disposal systems should be addressed in §285.33(c). According to the commenters, the "sizing of proprietary systems as currently approved by the executive director should not be allowed any additional credit when utilizing water saving devices within the design beyond that previously granted by the executive director."

The commission responds that the process for obtaining credit for water saving devices is already covered under the testing requirements in §285.32(c)(4)(B). The ED approves a proprietary system based on the way the system was tested. For instance, if the system was tested and subsequently approved using a water saving device, or using a reduced drainfield, the ED will only approve use of the system under the same conditions. No change has been made in response to this comment.

The commission has revised §285.33(c)(1)(C). The commission has changed the word "drainfield" to "excavation" in the first sentence and in the formula to be consistent with the language in other portions of the rules. The commission has added language to the formula that indicates that the absorptive area is calculated using the formulas in §285.33(b)(1)(A)(vi). The absorptive area must be calculated using the indicated formulas to obtain the correct size of the system.

TSPE and CES recommended that in §285.33(c)(2), leaching chambers have the same loading rate as gravel trenches and beds. TSPE and CES commented that there is no technical basis for reducing the size of leaching chambers. Another individual commented that the change in the leaching chamber disposal sizing holds no technical merit. CES asserts that a leaching chamber system will have less evapotranspiration than a low-pressure dosed or conventional gravity flow system.

To determine the appropriate size for a leaching chamber, the commission relied on third party tests performed for the manufacturers. These sizing requirements were approved in 1991 and incorporated into Chapter 285 in 1997. The commission is unaware of any human health and safety problems caused by properly installed leaching chambers. Additionally, the commission responds that it has no evidence supporting CES's assertion that a leaching system will have less evapotranspiration than a low-pressure dosed or conventional gravity flow system. Therefore, no change has been made in response to this comment.

The commission has revised §285.33(c)(2). The commission has added language to this paragraph for clarity. The proposed language did not clearly indicate whether the chambers are to be linked together end-to-end or side-to-side. Since these are two situations that need to be addressed, the commission has added language to the second sentence and has added a third sentence. Since the chambers can only be linked together end-to-end, the commission added language to the second sentence that "the ends of the chamber rows" must be linked together. Additionally, there are situations when the chambers are placed edge-to-edge. Therefore, the last sentence has been added.

TOWA and one individual commented that the sizing formula(s) proposed in §285.33(c)(2)(A) for leaching chambers should not be based on the use of water saving devices. According to TOWA and the first individual, the ability of an OSSF system to work is limited to how much water the soil can absorb, and the design of an OSSF should be based on actual flow and soil conditions. TOWA and the first individual provided an example of a three bedroom residence that did not have water saving devices compared to a four bedroom residence that had water saving devices. According to both commenters, even though both residences have the same estimated design wastewater flow rate, the three bedroom home would have a smaller disposal area by 45 square feet. The second individual noted that the basis of the state's sizing reduction is flawed and that the sizing of leaching chamber systems should be adjusted accordingly, with additional reduction for low flow fixtures.

The commission responds that the sizing for leaching chambers in the current rule was based on actual testing of the systems. The systems were not tested using water saving devices. The manufacturers of leaching chambers reported failures when the sizing reduction formula in the current rules was used in conjunction with water saving devices. As a result, the manufacturers have requested that a second formula, which includes water saving devices, be included in §285.33(c)(2)(A). The commission included this formula in the proposed rule. No change has been made in response to TOWA's comment.

R&R disagreed with not allowing a reduction in the sizing of the disposal area in §285.33(c)(2)(B) when leaching chambers are installed in soil substitution drainfields. R&R asked what would be the difference if a leaching chamber works in a particular type of soil and the same soil is used for soil substitution. R&R commented that soil substitution drainfields are being installed with the allowed reduction in sizing for leaching chambers in West Texas and none of these systems have failed to the best of his knowledge. R&R added that if the leaching chamber reduction from soil substitution drainfields is removed, the cost of a system will increase considerably. R&R suggested that leaching chamber systems in soil substitution drain fields should be allowed a 40% reduction in Class Ia soils with the proper class of soil substituted in areas of the state which receive less than 26 inches of annual rainfall.

The commission responds that the sizing for leaching chambers in the current rule was based on actual testing of the systems. The systems were not tested in a soil substitution drainfield with a reduced drainfield size. The commission cannot approve the use

of leaching chambers in soil substitution drainfields with reduced drainfield size until they are tested under these conditions. The commission further responds that the current rules do not allow for the installation of soil substitution drainfields with a reduction in sizing for leaching chambers. The cost of the installation of such systems should not be affected, since the current rules do not allow for the installation of such systems. Texas Tech University is currently undertaking a study of evapotranspiration. The outcome of this study could affect sizing of systems in some areas of the state. No change has been made in response to this comment.

UGRA suggested the language used in §285.33(c)(2)(B) for leaching chambers used in soil substitution be clarified to read, "Leaching chambers may be used instead of media in ET systems, low- pressure dosed drainfields, and soil substitution drainfields; *but without any reductions in drainfield size*" (emphasis added).

The commission responds that the language used in §285.33(c)(2)(B) conveys the same requirement as suggested by the commenter. Therefore, no change has been made in response to this comment.

One individual commented that the term "drip emitter" in §285.33(c)(3) should be used instead of "pressure reducing emitter" since people may confuse the term with pressure compensating emitters.

The commission responds that the term "pressure reducing emitters" has been used in the rules since 1997. There have been no complaints registered by manufacturers of drip irrigation equipment or installers that the terminology is incorrect. Therefore, no change has been made in response to this comment.

One individual commented that the drip supply lines should be color-coded similar to the supply lines for a surface application system in §285.33(c)(3).

The commission appreciates the comment. The commission has opted to not require purple drip supply lines at this time because water supply lines cannot be attached to drip lines, thus, there is little chance of cross contamination. The commission will not make any changes at this time. This suggestion may be considered during future rulemaking.

TSPE suggested that in §285.33(c)(3) secondary treatment should be required to be provided before drip irrigation, if the same soil loading rates in Table I are to be used; and if drip irrigation does not have secondary treatment, soil loading rates ranging from 0.06 to 0.25 are recommended (with the lower end of the range applying to clay soils). TSPE commented that the loading rates for drip irrigation systems without secondary treatment are too high due to tendencies for clogging in and around drip emitters.

Currently, the commission will only allow the installation of a drip irrigation system with secondary treatment as indicated in §285.33(c)(3)(B). Additionally, §285.33(c)(3)(D) requires the use of the soil loading rates in Table I, §285.91(1). The commission will not allow the installation of a drip irrigation system without secondary treatment until such a system is tested and approved for use. There is currently only one drip irrigation system that has been approved for use without secondary treatment based upon tests. The commission has not received any indication that the loading rates are too high and are causing clogging in the one system that has been approved for use. No change has been made in response to this comment.

The commission has revised §285.33(c)(3). The commission has added the phrase "using secondary treatment" to agree with the language in §285.33(c)(3)(B). Additionally, the commission has deleted the words "for on-site disposal in" since all of these systems in this section are disposal systems; therefore, the phrase is redundant. Finally, the commission has added the phrase "in all soil classes including" to clarify that a drip irrigation system can be used in all classes of soil, not just Class IV soils, because all soil types will provide adequate treatment of wastewater when used in conjunction with a drip irrigation system.

Clearstream, TOWA, MCGC, and one individual suggested that §285.33(c)(3)(C) should not limit flushing the lines of a drip system to the treatment tank. Clearstream suggested that the language should be changed to "Systems must be equipped to flush the contents of the lines back to the *treatment system or other acceptable flushing method approved by the ED. No flushing to the ground surface may be allowed*" (emphasis added). TOWA and MCGC commented that a pump tank can be used if the system is on a regular, automatic field flush since the lines should have very little settlement, and if the system requires disinfection (over fractured rock, for example) flushing into a pump tank would prevent biological disruption to the system from the disinfection agents. The individual commented that the contents in the lines have already been treated and filtered and should not have to undergo additional treatment. The individual concluded that by flushing the contents back to the treatment tank, there is a risk of hydraulically overloading the treatment tank and causing the system to malfunction.

The commission agrees that the proposed language is not clear. Since there could either be intermittent or continuous flushing, the language needs to clearly indicate the process to be used and which tank is to receive the back flush. Therefore, the language has been changed to indicate that the contents of the lines will be flushed back to the pretreatment unit when intermittent flushing is used, and back to the pump tank when continuous flushing is used during the pumping cycle. There is no danger of the holding tanks being hydraulically overloaded because properly designed treatment tanks will have capacity sufficient to contain the contents of the lines.

The commission has revised §285.33(c)(3)(D). The commission has added language to this subparagraph to clearly define the basis for calculating the loading rate for a drip irrigation system. The data is provided in §285.91(13); however, it is not stated in the text. Therefore, the commission has added the language to §285.33(c)(3)(D) for clarity.

Austin suggested that in §285.33(c)(3)(E) the minimum vertical separation distances for a "drip disposal system" be four feet to groundwater or two feet to a restrictive horizon. Austin commented that the proposed minimum vertical separation distances are insufficient to allow for the removal of nutrients before movement into either fractures and fissures typically found in rock, or to groundwater.

The vertical separation distances in the proposed rule are the same separation distances that are in the current rule, which have been in place since 1997. While Austin provided information regarding vertical separation distances as an attachment to their comment letter, the information was not sufficient to convince the commission that the vertical separation distances in the current rules are not adequate. There are no recognized treatment standards for nutrient removal for OSSFs. The EPA

may, in the future, develop standards for nutrient removal. Requirements to implement these standards will be considered at that time as necessary. In addition, there has been no evidence presented that there is a degradation of the environment due to nutrients drip irrigation systems. Therefore, the commission has made no changes to the rule in response to this comment.

The commission has revised §285.33(c)(3)(E). The commission changed the word "separation" to "soil" to clarify that the separation is by means of soil between the pressure reducing emitter and groundwater or solid rock or fractured rock in order for proper treatment of the effluent to occur.

The commission has revised §285.33(c)(4). The commission has added the word "disposal" in the second sentence between "proprietary" and "systems" since the paragraph only applies to "proprietary disposal systems." Additionally, the citation has been revised to correctly identify the citation for the procedures for approval of proprietary disposal systems.

One individual commented that §285.33(d) implies that drip systems do not have to be professionally designed.

The commission disagrees with this comment. Section 285.33(d) refers to nonstandard systems and specifically excludes those systems described or defined in §285.33(b) and (c). A drip irrigation system is a proprietary system, and is therefore addressed under §285.33(c). As indicated in §285.91(9), the planning materials for a drip irrigation system must be submitted by either a PS or a PE.

SOS commented that allowing nonstandard disposal systems in §285.33(d) to be designed by a PS using basic engineering principles is a violation of the Texas Engineering Practice Act.

The commission responds that the definition of "sanitarian" in §285.2(57) is the statutory definition in Texas Civil Statutes, Title 71, Art. 4477-3, §2(b), Vernon's Texas Civil Statutes, 1999. The statute is implemented by Title 25, Texas Administrative Code, Chapter 265. Section 265.142(23) states "Scope of professional practice - Includes, but not limited to, evaluating, planning, designing, managing, organizing, enforcing, or implementing programs, facilities, or services that protect public health and the environment. The scope of practice also includes educating, communicating, and warning communities of factors that may adversely affect the general health and welfare. The scope of practice may be in the areas of food quality and safety, on-site wastewater treatment and disposal, solid and hazardous waste management, ambient and indoor air quality, drinking and bathing water quality, insect and animal vector control, recreational and institutional facility inspections, consumer health and occupational health and safety." The requirements for sanitarians as specified in Chapter 285 are within the scope of professional practice for PSs; therefore, no changes have been made in response to the comment.

The commission has revised §285.33(d). The commission added the word "disposal" in the first sentence to avoid any confusion that this subsection might refer to all systems. The commission has changed the words "Design of" to "Planning materials for" to be consistent with the language in other portions of these rules. Finally, the commission added the words "for paragraphs (1) - (5) of this subsection" to clarify which planning materials can be reviewed by the permitting authority because there was confusion expressed by a commenter regarding §285.5(b)(2).

One individual commented that §285.33(d)(1) is a general description of the disposal method and therefore, the use of the word "shall" in this provision is not appropriate.

The commission responds that the use of the word "shall" is appropriate since it is mandatory that, when such a system is used, the system operate as described in §285.33(d)(1). No changes have been made in response to this comment.

HCPID commented that in §285.33(d)(1) pressure dosed systems should be required to operate on timers only and should not be activated by pump float levels. HCPID stated that when massive volumes of water are discharged into the pump tank, float activated pumps can cause the disposal field to be flooded.

The commission responds that a properly designed and installed pump float will not allow massive volumes of water to be discharged into the pump tank, and will provide small doses of effluent without flooding the disposal field. Additionally, pump floats allow additional options for designers and installers. Therefore, no changes have been made in response to this comment.

UGRA asked if siphon units are included in the "pump" category in §285.33(d)(1).

The commission responds that a "siphon" is included in the pump category and therefore is addressed under §285.33(d)(1). No change to the rule has been made.

One individual commented that the term "blowouts" in §285.33(d)(1)(A) should be enclosed in quotes since this is industry jargon and is not intended to mean that effluent is actually blown out of the soil.

The commission responds that the term blowout is appropriate as written without quotations. Adding quotations does not change the meaning and this is a commonly understood term in the industry; therefore, no change has been made in response to this comment.

WCCHDES suggested that §285.33(d)(1)(C)(i) should be made clearer by changing the language from "... If the media in the excavation is less than one foot deep, use the formula..." to "...If the media in the excavation is less than one foot wide and is less than one foot deep, use the formula..."

The commission agrees with the commenter, therefore, the language has been modified, using language similar to that recommended by the commenter, for better organization and clarity, and to clearly describe the formulas to be used in determining the drainfield excavation size.

UGRA suggested that in §285.33(d)(1)(C)(i) low pressure dosed (LPD) drainfield should be sized according to surface application rates, if the soil is solid rock or impervious soil.

The commission responds that a LPD drainfield cannot be used in rock, except as allowed under §285.33(d)(5), which addresses a LPD in rock or impervious soil. To clarify, language has been added to §285.33(d)(1)(C)(i) that the effluent loading rate is based on the most restrictive soil classification one foot below the bottom of the excavation.

Concerning §285.33(d)(1)(C)(i) and (ii), SOS commented that a disposal trench six inches wide by six inches deep filled with gravel, will hold about 0.56 gallons of effluent per foot of trench. SOS therefore recommends that criteria be added to §285.33(d)(1)(C)(i) and (ii) requiring the volume of void space in the gravel of the disposal trenches to be greater than the

system dosing volume. According to SOS, this will prevent the surfacing of effluent which could be a significant health hazard.

The commission disagrees with the comment. SOS did not provide specifics on how 0.56 gallons of effluent per foot of trench was calculated, but the commission calculates that the low pressure dosed drainfield, using the sizing formulas in §285.33(d)(1)(C) and application rates in §285.91(1), has a storage volume which exceeds the daily flow in §285.91(3), Table III. The volumes in Table III have not changed from the current rules to the proposed rules and are adequate to properly treat the wastewater. The storage volume in the trench is sufficient to prevent surfacing of the effluent. The commission declines to accept the commenter's suggestion that low pressure dosed drainfields should be sized according to the volume of void space in the gravel because there is adequate void space when the sizing requirements specified in the rules are followed. No changes have been made in response to this comment.

One individual commented that the installers and designers should be given flexibility in §285.33(d)(1)(C)(iii) to install the holes in an LPD system face up. The individual elaborated that the holes in a LPD are too small to be clogged by debris from above and that the flow in the lateral will remove any debris clogging the holes from the outside.

The commission responds that the positioning of the holes in an LPD system could be different than required in the rules based on the design of the system. A variance should only be granted if it can be technically justified to the permitting authority. To be technically justified, it must be demonstrated that the alternate means will provide equivalent or greater protection of the public health and the environment. Since the greater protection may be accomplished through a wide variety of techniques, it is not possible to list all conceivable variance requests in a rule. Since the commission cannot predict the technical issues which may arise in the future, the commission cannot delineate all possibilities; therefore, these types of changes are best addressed on a case-by-case basis through the variance process. Therefore, no change has been made in response to the comment.

The commission has revised §285.33(d)(1)(C)(ii), proposed as §285.33(d)(1)(c)(iii). The commission has changed the words "larger in size" to "media up to two inches measured along the greatest dimension" for consistency with other parts of these rules. This change will allow other media to be used that is a specific size.

Concerning §285.33(d)(2), LCST, IS-D, and IS-R stated that permitting the use of surface application systems where standard OSSFs are suitable unnecessarily exposes the public to untreated wastewater. The commenters suggested adding the following language in §285.33(d)(2): "(d)(2) When using a surface application system in Class Ib, II, and III soils, a subsurface wastewater disposal system should be used in conjunction with the aerobic system, if pretreatment is preferential. Since standard and proprietary systems can not be used in Class Ia and Class IV soils because of very obvious reasons, then the same reasoning should apply for placing an Aerobic system without subsurface disposal in Class Ib, II, and III soils, which subjects the public to unnecessary risk."

The commission responds that the selection of the type of system to be used is the choice of the owner, as long as the system chosen protects human health and the environment and meets the requirements of these rules. If the system is properly installed and maintained, the public will not be exposed to untreated wastewater, since the rules require that spray application systems meet secondary treatment effluent standards. Pretreatment tanks in conjunction with aerobic treatment tanks are not necessary in Class Ib, Class II, or Class III soils because these soils adequately treat the wastewater. Although the owner has the option of installing a pretreatment tank in conjunction with aerobic treatment tanks in these soils, it is not necessary for the protection of human health and the environment. Therefore, no change has been made in response to the comment.

QCP requested that in §285.33(d)(2), the commission should develop standard design criteria similar to that developed for pumped effluent disposal systems to allow for an Installer II to design these systems. QCP suggested the following limits for an Installer II to be allowed to design the surface application system: 1) Lot is over two, or perhaps five, acres in size; 2) System is for residential use only; and 3) Spray would not encroach within 20 feet of the property line.

The commission responds that, while the treatment unit is pre-engineered, the disposal system is not. These systems need to have planning materials prepared by either a PE or a PS to ensure that the systems do not cause a health problem. The commission has determined that it is not possible to develop standard design criteria for pumped effluent disposal systems because each system is unique. No change has been made in response to the comment.

The commission has modified §285.33(d)(2). Specifically, language has been added to reflect that there shall be nothing in the surface application area within ten feet of the sprinkler which would interfere with the uniform application of the effluent.

One individual commented that the table listing the minimum effluent criteria in §285.33(d)(2)(A) for a spray application system was left out.

The commission responds that the figure on effluent quality was moved in the proposed rules to §285.32(e) for better organization of the chapter. No changes have been made in response to this comment.

Concerning §285.33(d)(2)(D), LCST and IS-D commented that disinfection units must be monitored to ensure the protection of public health. LCST and IS-D also recommended that if the fecal coliform count is too high or the chlorine residual test result fails, the permitting authority should notify the owner and installer that immediate corrective action is required. Finally, LCST and IS-D recommended that monitoring programs by permitting authorities should be encouraged.

The commission responds that in §285.7(d), the maintenance company is required to monitor the disinfection units at least three times a year, and further, to notify the owner and the permitting authority of all inspection findings. Additionally, the permitting authority is required to monitor whether the required maintenance is occurring and that the test results meet the requirements in Table IV, §285.91(4). If there is an indication that a nuisance situation exists, the permitting authority should notify the owner as required in Chapter 285, Subchapter G. The commission disagrees with the concept of permitting authorities conducting monitoring programs because to effectively implement such a program would require the permitting authorities to inspect the systems routinely which would require resources not currently available.

LCST and IS-D suggested that wording be added to §285.33(d)(2)(D) to make it clear that swimming pool chlorine tablets are not to be used in OSSF disinfection units.

The commission agrees that the chlorine tablets should be only those approved and labeled for wastewater disinfection. Therefore, the language has been changed from "properly encapsulated and suitable for wastewater disinfection" to "properly labeled for wastewater disinfection."

Clearstream suggested that §285.33(d)(2)(D) should be amended to include other methods of disinfection approved by the ED.

The commission agrees that there are other methods of disinfection that could be approved by the ED in the future, and has changed the language in §285.33(d)(2)(D) to allow for approval of other methods by the ED.

UGRA suggested that the last sentence of §285.33(d)(2)(G) be modified to: "The application rate must be adjusted so that there is no *ponding* and runoff" (emphasis added).

The commission responds that the main concern is that the system does not cause runoff from the property. However, the commission adds that, if the required application rates are used, the system should not cause any ponding on the property. No changes have been made in response to this comment.

LCST and IS-D commented that in §285.33(d)(2)(G) additional protection must be afforded to adjacent property owners regarding overspray carried by high winds in the western part of the state. Both commenters suggested that the separation distance for a surface application system in west Texas should be 100 feet from the property line.

The commission responds that the requirements for separation distances to property lines for surface application systems have been in the rules since 1997, and the commission has not received any complaints about overspray from properly designed systems. A study is currently being undertaken by Texas Tech University on surface application rates that may answer this question. No changes have been made in response to this comment.

The commission has revised §285.33(d)(2)(G)(i). The commission has deleted the last sentence in §285.33(d)(2)(G)(i) and moved it to new §285.33(d)(2)(G)(iii)(I) for better organization.

The commission has revised §285.33(d)(2)(G)(iii). The commission has added the words "and pumping" to the title to better describe the requirements in the clause since the language includes storage and pumping requirements. Additionally, the commission has added requirements in the clause, resulting in the separation into subclauses and numbering of the subclauses.

The commission has added new §285.33(d)(2)(G)(iii)(I) and (II). The commission added the language as a result of comments that the pump size was too large. The comments addressed concerns with §285.34(b)(2), however, the comments also apply to §285.33(d)(2)(G)(iii). Additionally, the commission has deleted the sentence, "Storage requirements shall be according to either clause (i) of this subparagraph or §285.34(b) of this title, whichever is larger." Since the size of pump tanks has been changed according to whether a commercial irrigation timer is used, the sentence is no longer applicable.

The commission has revised renumbered §285.33(d)(2)(G)(iii)(III). The commission has deleted the sentence, "An unthreaded sampling port shall be provided in the treated effluent line in the pump tank" in what is now §285.33(d)(2)(G)(iii)(III). The sentence has been moved to §285.33(d)(2)(G)(iv) for better organization since the language is more appropriate in this clause.

The commission has revised §285.33(d)(2)(G)(iv). The commission has moved the last sentence from §285.33(d)(2)(G)(iii)(III) to this clause for better organization. The sentence is more appropriate in this clause since the unthreaded sampling port is part of the distribution piping.

HCPID, TOWA, MCGC, and one individual suggested that §285.33(d)(2)(G)(v) be revised to specify that all new "valve box covers" and "sprinkler tops" must be colored purple to identify the system as a reclaimed water system. HCPID added that it should be required that all these items in this provision be permanently colored purple by the pipe manufacturer to prevent people from spray painting the items. Additionally, HCPID, TOWA, and MCGC commented that the commission should not require the actual boxes and sprinklers to be purple since the actual boxes and sprinklers are not manufactured using the purple color because there is not enough carbon black when the purple resin is used to protect the box or sprinkler against UV. The individual asked if there are fittings available for the piping system and noted that fittings are not included in the list of items required to be purple. The individual asked if there will be an exemption for fittings.

The commission agrees with these comments. Since the commission has also determined that only valve box covers and sprinkler tops are available in purple, and the entire valve box and sprinklers are not available in purple, the suggested change has been made. To protect the public and to avoid cross connections with landscape irrigation systems, the commission agrees that the purple color must be permanent. Therefore, this suggestion has also been incorporated. Further, the commission responds that there will not be an exemption for fittings. Since the distribution line must be purple, the fittings must also be purple, and language has been added accordingly.

One individual commented that a scarified interface between the native soil and the mound is standard in mound systems, and to be enforceable, should be included in §285.33(d)(3) as a requirement.

The commission agrees with the comment. The need for scarifying the soil is covered in the language since the reference to the manuals for mound systems is made in §285.33(d)(3) and the manuals require the soils be scarified. However, to clarify that it is a requirement, the word "may" has been changed to "shall" in the rule.

Concerning §285.33(d)(3), LCRA commented that there is a conflict in the rules regarding the amount of fill or disturbed earth that is necessary to provide adequate treatment. In §285.33(d)(3) (relating to mound systems) the proposed rules require two feet of fill or disturbed earth. In §285.33(d)(1) (relating to low-pressure dosing systems) the rules require only one foot of suitable soil, and §285.33(d)(4) (soil substitution drainfields) requires two feet of fill. Section 285.91(5), however, requires a two foot separation of undisturbed earth between a standard drainfield and a restrictive horizon. In the preamble of the proposed rules, the commission justified requiring two feet of fill or disturbed earth for mound systems because that was the amount needed to adequately treat the effluent. If two feet of fill is needed, then either the effluent from low pressure

dosing systems is not being adequately treated, or the two foot separation required for standard systems is excessive. WCCHDES suggested that the depth to a restrictive horizon should be reduced since a study titled "Impact of Bacterial and Dosing Frequency on the Removal of Virus within Intermittently Dosed Biological Filters" (published in *Small Flows Quarterly*, Winter 1999, Volume 1, Number 1) found virus removal was equal to reclamation systems at medium depth of as little as 150 mm (6 inches).

The commission agrees that the depth to a restrictive horizon for a mound system should be reduced to be consistent with depths to restrictive horizons required for other types of systems. The language in §285.33(d)(3)(A) has been changed from two feet to 1.5 feet to the restrictive horizon. Since fill material is being used and it's treatment ability is often not as effective as the treatment ability of native soil, the depth to a restrictive horizon cannot be reduced further. The study referenced by WCCHDES studied virus removal from intermittently dosed biological filters, which may not always be part of a mound system.

LCST, IS-D, and IS-R suggested that the commission allow the use of leaching chambers in mound systems in §285.33(d)(3) by "utilizing special mound installation procedures" and in accordance with manufacturers' sizing recommendations.

The commission responds that leaching chambers were not tested in mound systems and cannot be used if not tested. No change has been made in response to this comment.

LCRA commented that soil substitution disposal should be considered a standard disposal system instead of a nonstandard disposal system in §285.33(d)(4) since it is less complex than an evapotranspiration system. If soil substitution was considered a standard system, a property owner could often be spared the additional cost of a system designed by an engineer or sanitarian. LCRA recognized there may be situations when an engineer or sanitarian will need to equate the permeability of fractured rock to an equivalent soil class in order to ensure adequate downward effluent movement, however, the determination should not require an entire subsequent system design, but rather would serve to inform the owner and installer of the necessary drainfield size.

The commission responds that there is a need to address permeability for soil substitution systems to ensure proper effluent treatment and to avoid impacting groundwater. Since the owner is unlikely to know when such a situation exists, either a PS or a PE is needed to prepare planning materials for all of these systems to prevent insufficient treatment and possible groundwater impacts. No changes have been made in response to the comment.

HCEH commented that in §285.33(d)(4) if a soil substitution drainfield is pressure dosed, then it should be required to have the same vertical separation as a pressure dosed drainfield.

The commission disagrees with the comment. The two systems are not the same. However, a variance could be granted on the separation distance if justification is provided ensuring equivalent protection. No change has been made in response to this comment.

UGRA commented that clarification is needed regarding the required soil depths and volumes for all types of standard, proprietary, and non-standard systems that are used in a soil substitution drainfield in §285.33(d)(4).

The commission responds that §285.33(d)(4) requires a soil buffer of two feet be placed below and on all sides of the soil substitution drainfield excavation, regardless of the system used. The commission has added the sentence "there shall be two feet between the bottom of the media and groundwater" to be consistent with the language concerning soil absorptive drainfields in §285.33(b)(1). Since the soil substitution drainfield is similar to a standard absorptive drainfield, the separation distance to groundwater must be the same and is identified in this paragraph for clarity. No other change has been made in response to this comment.

LCST and IS-D commented that "there is no justification for size reductions of proprietary systems used in the construction of soil substitution drainfields" in §285.33(d)(4). Both commenters suggested that proprietary disposal systems should not be allowed when soil substitution systems are installed in Class IV soils. Additionally, according to LCST and IS-D, leaching chambers should be allowed a reduction in a soil substitution system installed in Class Ia soil.

The commission responds that §285.33(d)(4) prohibits a soil substitution drainfield from being used in Class IV soils, regardless of the type of disposal system. Since neither leaching chambers nor any other proprietary disposal systems have been tested for use in soil substitution drainfields, no size reduction will be allowed. No change has been made in response to this comment.

Austin suggested that in §285.33(d)(4) a soil substitution drainfield should have at least three feet of Class Ib, Class II, or Class III soil below and on all sides of the drainfield excavation if secondary treatment with nitrogen reduction is provided, or at least four feet of Class Ib, Class II, or Class III soil if standard treatment is provided.

The vertical separation distances in the proposed rule are the same separation distances that are in the current rule, which have been in place since 1997. While Austin provided information regarding vertical separation distances as an attachment to their comment letter, the information was not sufficient to convince the commission that the vertical separation distances in the current rules are not adequate. There are no recognized treatment standards for nitrogen reduction for OSSFs. The EPA may, in the future, develop standards for nitrogen reduction. Requirements to implement these standards will be considered at that time as necessary. In addition, there has been no evidence presented that there is a degradation of the environment due to nitrogen from soil substitution drainfields. Therefore, the commission has made no changes to the rule in response to this comment.

Concerning §285.33(d)(5), Austin suggested all references to treatment systems listed in §285.33 requiring secondary treatment should include nitrogen effluent criteria that is equal to drinking water standards, which is 10 mg/L nitrate-nitrogen or less, if minimum vertical separation from evidence of groundwater or a restrictive horizon is three feet or less. Austin commented that drainfields should not be placed in Class Ia soils, fractured or fissured rock, or other conditions where insufficient soil depth will result in contamination of nearby groundwater resources, unless there are standards for secondary treatment, nitrogen reduction, and disinfection.

The commission responds that there are no recognized treatment standards for nitrogen reduction for OSSFs. The EPA may,

in the future, develop standards for nitrogen reduction. Requirements to implement these standards will be considered at that time as necessary. In addition, there has been no evidence presented that there is a degradation of the environment due to nitrogen from systems using secondary treatment. Additionally, in §285.33(d)(5), a system installed where insufficient soil depth will result in contamination of nearby groundwater sources, is required to have secondary treatment and disinfection before the effluent is discharged into the drainfield. Therefore, no changes have been made in response to the comment.

The commission has revised §285.33(d)(5). The commission has deleted the phrase "or a restrictive horizon before undergoing adequate treatment through soil contact" and added "or" between "fractured rock" and "fissured rock." Since the only restrictive horizon that applies to these systems is fractured rock or fissured rock, no other language is appropriate. Therefore, the language has been deleted.

The commission has revised §285.33(d)(5)(A)(i). The commission has changed the word "soils" to "soil" since there is only one soil identified.

Concerning §285.33(d)(5)(A)(ii), UGRA suggested that drainfields following secondary treatment and disinfection, where the effluent is discharged into solid rock or impervious soil, should be sized in accordance with surface application rates.

The commission responds that the subsurface drainfield described in §285.33(d)(5) cannot be installed in solid rock or impervious soil; therefore the surface application rates in §285.33(d)(2)(E) do not apply. No change has been made in response to this comment.

The commission has revised §285.33(d)(5)(A)(ii). The commission has deleted the words "insufficient soil depth to" since the important feature is fractured or fissured rock, not insufficient soil depth. This change is consistent with the language in §285.33(d)(5)(A)(i). Additionally, the word "soils" has been changed to "soil" since the word should be singular.

Austin commented that §285.33(d)(5)(B) allows for the construction of drainfields in Class Ia soils, fractured rock, fissured rock, or a restrictive horizon provided the effluent is treated to secondary standards and disinfected; however, §285.32(e) does not contain a disinfection treatment standard nor a nutrient removal standard. Austin suggested that drainfields should not be constructed in these "soil conditions" without a minimum vertical separation distance of two feet and a disinfection treatment standard, due to a potential for rapid migration of effluent through fractured rock to groundwater.

The commission responds that there are no recognized treatment standards for nutrient removal for OSSFs. The EPA may, in the future, develop standards for nutrient removal. Requirements to implement these standards will be considered at that time as necessary. In addition, there has been no evidence presented that there is a degradation of the environment due to lack of nutrient removal from systems using secondary treatment. Additionally, the commission responds that in §285.33(d)(5), a system placed in Class Ia soils, fractured or fissured rock, or other conditions where insufficient soil depth will result in contamination of nearby groundwater sources is required to have secondary treatment and disinfection before being discharged into the drainfield. Therefore, no changes have been made in response to the comment a regarding disinfection treatment standard and a nutrient removal standard. Additionally, the commission responds that while Austin provided information regarding vertical separation distances as an attachment to their comment letter, the commission has determined that the vertical separation distances in the rules are protective of human health and the environment. No changes have been made in response to the comment regarding vertical separation distances.

The commission has added new §285.33(d)(6). The commission has added this paragraph due to the confusion expressed by a commenter regarding §285.5(b)(2), which indicated that planning materials for all nonstandard disposal systems would have to be reviewed by the ED. This was not correct. The commission's intent was that only planning materials for nonstandard disposal systems not described in §285.33(d)(1) - (5) would be reviewed by the ED. Therefore, the paragraph was added to clarify the commission's intent.

§285.34. Other Requirements.

M&M and WCCHDES suggested a new provision be included in §285.34(a) that, within a reasonable amount of time after adoption of ANSI/NSF Standard 46, all disinfection devices meet the procedures of currently-proposed ANSI/NSF Standard 46. M&M commented that it is important that this major review of the rules reflect imminent changes in the industry, technology, and regulatory climate, thus, the use of disinfection devices should be standardized across the state. WCCHDES commented that this should be included in the current rule package since it may be several years before the rules are revised. Additionally, M&M stated a consistent level of certification for all devices and components used in advanced on-site wastewater treatment should be maintained.

The commission agrees that it is important for the rules to reflect current industry technology and standards. However, NSF Standard 46 for disinfection devices has not yet been approved, and it is not appropriate to adopt a standard that doesn't currently exist. Additionally, §285.3(h) allows for variance requests, which may be used to address situations where the rules have not yet been updated to reflect recent changes or advancements in industry technology or standards. If Standard 46 is adopted, the commenters may petition the commission to change the rules at that time. Therefore, no changes have been made in response to the comment.

The commission changed the title of §285.34(a) for clarity. The subsection pertains to effluent filters used in septic tanks and should be clearly stated.

The commission modified the language in §285.34(b) to clarify that pump tanks may be necessary for any system that uses pressure disposal, not just the two systems that were listed.

TOWA, MCGC, and one individual recommended limiting the minimum capacity of 500 gallons to timed irrigation systems in §285.34(b)(2). H-A stated that the 500 gallon minimum tank size is too large and too costly. A second individual recommended that the rules not specify the minimum size of pump tanks. The second individual elaborated that some people use pump tanks smaller than 500 gallons to handle part of the flow from the house (e.g., to serve a toilet in an outbuilding, or a stub out on the opposite side of the house that serves only one toilet). TOWA and MCGC commented that "small flows (2 and 3 bedroom homes)" can achieve a reasonable pump volume for demand pumps and hold 1/3 storage above the alarm using a pump tank that has less than 500 gallons. TOWA and MCGC summarized that to require more results in an unnecessary expense for owners. LCST and IS-D opposed the proposed change stating there was no justification or merits for adding the additional requirement and cost to

the consumer. According to LCST and IS-D a 300 gallon tank will provide excess capacity in regards to 1/3 of a day's flow above the alarm-on level. H-A commented that the wording regarding volumetric capacity is unclear and asked if this is the total tank volume, the volume between the pump on/off and pump alarm, or the volume between the pump on/off plus the reserve volume. The rules require a 1/3 day reserve capacity, thus H-A believes that a smaller tank will often meet the required reserve capacity. Both LCST and IS-D suggested the minimum volumetric capacity of a residential pump tank should be 300 gallons. MCGC thought that this section was proposed as a result of someone who may be manufacturing pump tanks that may hold 20 or 30 gallons before the pump needs to be turned off. To address this problem, MCGC suggested adding a new section to the rules that would require the tank to have capacity for 1/3 of the daily flow above the alarm level. MCGC also noted that there is a bottom-suction pump available today that allows an additional ten or 15 inches of pumping capacity within the same volume chamber.

In response to the comments regarding the rules specifying a minimum tank capacity of 500 gallons and the related costs, the commission agrees that the 500 gallon minimum tank size is not appropriate. The goal of the proposed language was to ensure that there is sufficient volume in the pump tank to avoid frequent use of a surface application system. To better achieve this goal, the language for a minimum tank size in §285.34(b)(2) has been deleted. The commission has also revised the language in §285.33(d)(2)(G)(iii) since this is the section on pump tank sizing for surface application systems. Since there are two situations that need to be addressed for sizing, language has been added. Specifically, §285.33(d)(2)(G)(iii)(I) has been added to indicate that surface application systems that use a commercial irrigation timer and spray between midnight and 5:00 a.m. shall have a pump tank with at least one day of storage between the alarm-on level and the pump- on level, and a storage volume of 1/3 the daily flow above the alarm-on level and the inlet to the pump tank. Additionally, §285.33(d)(2)(G)(iii)(II) has been added to indicate surface application systems that do not use a commercial irrigation timer shall have a minimum dosing volume of at least 1/2 the daily flow, and a storage volume of 1/3 the daily flow above the alarm-on level and the inlet to the pump tank.

One individual suggested using the term "duplex" to describe the operation of two pumps in §285.34(b)(3).

The commission disagrees with the comment. The operation of two pumps is already addressed in §285.34(b)(3), referenced as a "dual pump system," and the word "duplex" would not add anything. Therefore, no change has been made in response to the comment.

HCPID suggested that §285.34(c) should be modified to: "...In addition, connections shall be in approved junction boxes and all external wiring shall be in approved rigid non-metallic gray code electrical conduit..." HCPID stated that this will clarify that the requirements of the rules must be followed, rather than the various requirements allowed by NEC. Additionally, requiring that all external wiring must be in approved rigid non-metallic gray code electrical conduit will prevent installers from spray painting white PVC gray. According to HCPID, white PVC, spray painted gray, loses color overtime, and can be mistaken for a water line.

The commission agrees with this comment. There have been numerous cases of installers installing external wiring incorrectly since there have not been clear requirements listed in the rules. Therefore, the suggested change has been made. Other changes were also made for better organization.

The commission changed the word "install" to "backfilled" in §285.34(d) to better indicate the intent of the subsection.

HCPID commented that §285.34(e) should distinguish between permanent, in ground holding tanks, and temporary above ground holding tanks (e.g., those used on an office trailer at a construction site). HCPID commented that the temporary tanks should not be required to be equipped with an alarm and a 15 inch port.

The commission agrees with this comment. However, it should first be noted that the commission has changed the requirement in §285.34(e) from "15 inches or greater" to "at least 12 inches" to be consistent with the requirements for septic tanks in §285.32(b)(1)(D). The commission adds that the provisions related to holding tanks were not intended to apply to portable toilets or to an office trailer at a construction site. Therefore, language has been added to exclude the office trailer at a construction site from the rules, thus excluding it from the requirement to use an alarm and have at least a 12 inch port.

The commission added parenthesis around "1999" in §285.34(f). This correction was made to reflect that 1999 is the year of publication of the standard rather than a part of the title of the standard. This modification is consistent with the formatting of other references to standards in this chapter.

Concerning §285.34(g), LCST and IS-D suggested that condensation drainlines should be prohibited from discharging into an OSSF since there is no established formula to determine the flow. According to LCST and IS-D, these lines should be allowed to discharge to the ground surface in §285.34(g).

The commission disagrees with the comment. There has been no evidence presented to the commission that allowing condensation drainlines to be tied into an OSSF are causing an environmental or health hazard. Additionally, the commission responds that the rules do not prohibit the discharge of condensation drainlines directly on to the ground surface. The rules only require that, when such lines are discharged into an OSSF, the additional discharge must be accounted for in determining flow for the OSSF. Therefore, the commission has made no change in response to the comment.

§285.35. Emergency Repairs.

Concerning §285.35, TSPE and CES recommended §285.35 be changed to allow owners to replace septic tanks to meet the current sizing requirement, if needed, without replacing the entire system, as long as the disposal field is not showing signs of problems or failure. TSPE commented that bringing an entire system up to current standard does not appear to be justified since Texas does not currently have an effluent quality "performance" standard for subsurface disposal systems. According to TSPE, the assumption that a disposal field should be replaced along with the tank, if the field is showing no visible signs of failure, is unjustified. CES commented that automatically requiring an owner to bring their system up to current standards is cost prohibitive and discourages owners from finding and correcting these problems with their systems. TSPE added that prohibiting tank replacements alone tends to discourage inspecting tanks and replacing those that are found leaking. TSPE concluded that leaking tanks pose a serious point source of pollution, whereas even an undersized field may continue to distribute effluent sufficiently well such that no serious pollution threat is posed. CES added that because precast tanks are not required to be water tight, leaking septic tanks are a very common source of problems due to water infiltration or leakage from the tank.

The commission responds that to protect human health and the environment the entire OSSF must be brought up to current standards even if only the treatment tank needs to be replaced. Additionally, THSC, Chapter 366, requires that a permit be issued if an OSSF is repaired, and the issuance of a permit is only allowed when the entire system meets the standards of this chapter. The definition of "repair" in §285.2(62) states that the replacement of tanks is considered a repair and that there needs to be a permit issued. Language has been added to the definition to clarify that the permit is for the entire OSSF system; therefore, there are no partial permits for tanks or drainfields. In many cases in the past, tanks have been replaced due to reported leakage or some structural problem and the drainfield was not replaced, even when it did not meet the requirements of the rules. This type of practice would be a violation of THSC, §366.004. The commission additionally responds that this rule does not automatically require the replacement of a drainfield when a leaking tank is replaced; rather, replacement of the drainfield is only required at the time the tank is replaced if the drainfield does not meet the applicable requirements of these rules. Therefore, this requirement does not necessarily result in additional costs when the drainfield already meets the requirements of this chapter. Additionally, unlike other wastewater treatment permits issued by the commission, OSSF permits are not regularly renewed. In programs where routine permit renewals are required, upgrades can be addressed at the time of renewal. For OSSFs, the commission has determined that upgrades to meet current standards are only necessary when some part of the system has failed. In response to TSPE's comment regarding undersized drainfields, the commission states that if the owner can establish, through the variance process in §285.3(h), that the system, which may include an undersized drainfield, is at least as protective of public health and the environment as what is required by the rules and is not otherwise malfunctioning, then the permitting authority may determine that the existing drainfield can be left in place. No changes have been made in response to this comment.

Concerning §285.35(c), HCPID, and one individual suggested that for consistency with §285.61(13), the installer should be responsible for providing the notice to the permitting authority required in §285.35(c). The individual suggested that if it is necessary for the owner to be included for enforcement purposes, make it mandatory for the owner to sign off on the report before it is sent to the permitting authority.

The commission agrees that this section is not consistent with the language in §285.61(13). Since the installer (or the owner, as allowed by §285.51(a)) is making the repairs, the installer (or owner) should be responsible for notifying the permitting authority. The commission has also determined that it should be the installer's responsibility to notify the permitting authority if he has done any repairs to a system, since the installer is the party responsible for making the repairs. Therefore, the language has been changed to require that the installer, rather than the owner, provide the notice to the permitting authority.

§285.36. Abandoned Tanks, Boreholes, Cesspools, and Seepage Pits.

LCST and IS-D supported §285.36 addressing abandoned tanks.

The commission appreciates the positive comment in support of the rule.

The commission changed the title of §285.36 to better identify what is described in the section.

The commission deleted the word "intended" from §285.36(a) for clarity.

The commission deleted the word "OSSF" from §285.36(b) since the items discussed in this section are not OSSF systems.

The commission modified the language in §285.36(b)(2) to clarify that the fill material is not limited to "clean sand or other suitable fill material." It can be any fill material as long as it is free of organic and construction debris.

§285.39. OSSF Maintenance and Management Practices.

One individual approved of §285.39 stating, "It gives some teeth to use on owners who abuse their systems."

The commission appreciates the positive comment in support of the rule.

Concerning §285.39(a), Fort Worth and SOS commented that the commission should issue a guidance document that states the specific maintenance and management practices which are included in the existing §285.39. This information helps installers comply with §285.39(a), and is used to assist OSSF owners that have no experience in operating and maintaining an OSSF and would otherwise treat their OSSF system as if it were a normal city sewer. SOS expressed concern that the proposed requirement does not add anything if the information provided to the system owner is grossly insufficient or inadequate.

The commission agrees that a guidance document should be prepared for installers to use that will list maintenance and management practices. This document will be provided after the rule is approved.

LCST and IS-D commented that there should be a recommended or maximum time frame between pumping intervals in §285.39(b). Both suggested the recommended time frame should be three to five years, based on normal household use, and further suggested that the rule should ensure that the septage waste is hauled off by someone who is authorized to transport liquid waste.

The commission responds that the pumping intervals should not be specified because tanks should be pumped as necessary. Additionally, the rule requires that "owners of treatment tanks shall engage only persons registered with the executive director to transport the treatment tank contents." Therefore, no changes have been made in response to this comment.

The commission modified the language in §285.39(b). For clarity, the commission has changed the language from "Owners shall ensure that treatment tanks are pumped..." to "Owners shall have the treatment tanks pumped..."

The commission modified the language in §285.39(c). For clarity, the commission has changed the language from "Owners shall ensure that driveways, storage buildings, or other structures are not..." to "Owners shall not allow driveways, storage buildings, or other structures to be..."

R&R noted that the backflush from reverse osmosis units is not addressed in §285.39(d). R&R suggested this item be addressed. LCST and IS-D suggested that water softeners and reverse osmosis units should be prohibited from discharging into an OSSF due to the unregulated flow and potential damage created by the salt by-products.

The commission agrees that reverse osmosis units should also be prohibited from back flushing into OSSF systems because of the potential damage created by the salt by-products. Therefore,

language has been added in §285.39(d) to include reverse osmosis. Additionally, the commission modified the language from "Owners shall ensure that water softener back flush is not allowed to enter..." to "Owners shall not allow water softener and reverse osmosis back flush to enter..."

Subchapter E (Special Requirements for OSSFs Located in the Edwards Aquifer Recharge Zone) Existing Subchapter E has been revised to: 1) improve readability; 2) provide consistency with terms used in other sections of these rules and other commission rules; 3) provide a more understandable organization of the subchapter; and 4) add requirements that are consistent with requirements in Chapter 213.

§285.40. OSSFs on the Recharge Zone of the Edwards Aquifer.

The commission modified §285.40(f). The notice should only be required of those who actually divide property, therefore, the words, "or intends to divide" have been deleted.

The commission modified §285.40(f)(4). The word "and" and a comma have been deleted for clarity and better organization of the paragraph.

§285.42. Other Requirements.

Austin suggested increased separation distances are needed in §285.42(b) for creeks and their tributaries in the Barton Springs segment of the Edwards Aquifer based upon criteria developed by the United States Fish and Wildlife Service in consultation with the Lower Colorado River Authority under §7 of the U.S. Endangered Species Act. Austin commented that there are specific separation distances indicated from the banks of the Nueces, Dry Frio, Frio, and Sabinal Rivers downstream from the northern Uvalde County line to the recharge zone presumably in recognition of the environmental sensitivity of these resources. Austin concluded that the criteria provided as an attachment to their comment should be included in Chapter 285 to maintain consistency with federal recommendations for protection of the Barton Springs Salamander under the Endangered Species Act.

The commission responds that Chapter 285 sets minimum statewide standards for OSSFs, with the exception of Subchapter E, which applies specifically to the Edwards Aquifer Program. The requirements in Subchapter E are included in Chapter 285 because they are OSSF-specific requirements already covered by the Edwards Aquifer Program in Chapter 213. The separation distances from an OSSF to the banks of the Nueces, Dry Frio, Frio, and Sabinal, as currently included in §285.42(b), have been in place since 1977, which was before the OSSF program was originally created at TDH. They were included in Chapter 285 for consistency with Chapter 213. Furthermore, because the suggested changes would make the rules more stringent and impact a different group of people who were not afforded the opportunity to comment on the proposal, the commission cannot make the requested changes at this time. This issue may be addressed through a rulemaking petition. Therefore, the commission has made no changes in response to the comment.

The commission modified §285.42(c) by adding "authority's order, ordinance, or resolution." This language has been added since the requirements need to be included in the permitting authority's order, ordinance, or resolution.

Subchapter F. Licensing and Registration Requirements for Installers, Apprentices, and Designated Representatives.

Existing Subchapter F has been repealed and replaced with adopted new Subchapter F. The language in the subchapter has been: 1) rewritten to improve and enhance readability; 2) reorganized to match the chronological steps in obtaining a license or registration; 3) separated and combined into different components of several sections; and 4) modified to clarify certain requirements, and as a result, improve the enforceability of these rules.

The commission modified the title of Subchapter F from "Registration, Certification and/or Training Requirements for Installers, Apprentices, Site Evaluators or Designated Representatives" to "Licensing and Registration Requirements for Installers, Apprentices, and Designated Representatives" to more accurately reflect the contents of the subchapter.

§285.50. General Requirements.

NEW agreed that an installer license should be required in §285.50, that installers should be accountable to someone, and they should be required to follow a general standard.

The commission appreciates the positive comment in support of the rule.

The commission modified §285.50(b) by adding, "This does not include the individuals under the direct supervision of the licensed installer or registered apprentice." The commission added this language to clarify that the installer's crew does not have to be certified as long as they are working under the direct supervision of the installer or installer's apprentice.

The commission has modified §285.50(b)(1) by changing references to "an individual" to "individuals" and "an entity" to "entities." Other corresponding grammatical changes were made.

The commission modified the language §285.50(c) to clarify that the duties described in this section are those of a DR as given in §285.62. Further, this modified language clarifies that individuals who perform those duties need the DR's license. Additionally, the reference to "an individual" was changed to "individuals," and corresponding grammatical changes were made.

The commission has modified the language in §285.50(d) by referencing §285.63, relating to Duties and Responsibilities of Registered Apprentices, to clarify that the duties in §285.50(d) are those of an apprentice given in §285.63.

LCST commented that under §285.50(f), one individual who is an employee of a permitting authority should not be allowed to work in the private sector in their area of jurisdiction. LCST added that if this is allowed, it will create a severe conflict of interest and may call into question the individual's ethics. LCST suggested that language should be added that would prohibit an individual who works in any capacity for a permitting authority from receiving any compensation for work as an OSSF apprentice, installer, designer, site evaluator, or maintenance person within the permitting authority's area of jurisdiction.

The commission agrees with these comments. Any individual who acts in any capacity for a permitting authority should not be performing any activities that would create a conflict of interest with the duties and responsibilities of working for a permitting authority. Therefore, the language in §285.50(f) has been modified to clearly reflect that such an individual shall not, within the permitting authority's area of jurisdiction, perform any other OSSF-related activities than those directly related to the individual's job duties for the permitting authority.

§285.51. Exemptions to Licensing Requirements.

Concerning §285.51(a), GCSF has requested clarification regarding §285.51 that allows an owner of a single-family dwelling to install his own OSSF. Specifically, GCSF wants to know if the provision applies to situations where there are multiple dwellings on a single piece of property.

The commission responds that THCS, §366.001(5) provides that an owner of an OSSF may install and repair the OSSF as long as it is done according to the rules. The provision is not intended to apply to developers, condominiums, rental cabins, or the like. An owner of a single piece of property that has a main dwelling and an additional structure such as a cabin or garage apartment may install or repair the OSSF without having an installer license. The commission has added language to clarify that this provision does not apply to developers or those that develop property for sale or lease.

The commission modified §285.51(a). The last sentence has been modified to clarify that all permitting, construction, and maintenance requirements of the permitting authority must be met, but the owner does not have to contact the permitting authority.

One individual suggested that §285.51(b) be reworded to prevent an unlicensed installer from avoiding enforcement by claiming that he was only on the site to set tanks, not installing an OSSF. The commenter suggested the following language: "...or a person who delivers a treatment or pump tank *on behalf of a retailer or distributor* and sets the tank or tanks..." (emphasis added).

The commission responds that an individual who only delivers and sets the tank or tanks is not required to have an installer license, regardless of who that individual works for, and thus is not subject to enforcement. However, if it can be demonstrated that an unlicensed installer performed OSSF construction activities other than setting the tank or tanks, enforcement may be pursued. The commission has determined that the additional language recommended by the commenter unnecessarily limits who can deliver and set the tanks without being licensed. No change has been made in response to the comment.

§285.53. Qualifications.

Concerning §285.53, one individual expressed support regarding the changes to Installer II licensing requirements.

The commission appreciates the positive comment in support of the rule.

Concerning §285.53, SOS, FGS, On-Site, and two individuals stated that the experience and training requirements for installers in the proposed rule should be made more stringent. LCST and IS- D commented with regard to §285.53(a) and (b) that there must be protection for the consumers of this state from substandard workmanship caused by inexperienced OSSF installers or contractors and the only way to afford some form of protection to the consumers is through a minimum experience requirement for each class of OSSF professional. LCST and IS-D quoted a legislative house member as follows: "Education and professional experience are one of the few avenues that extend protection of our consumers." Both LCST and IS-D suggested that an applicant for installer I should have at least one year of verifiable experience as a registered apprentice under a licensed installer. One individual commented that without field training, good installers may not have the ability to diagnose problems. Both LCST and IS-D suggested that an applicant for an Installer II license should have at least two years of verifiable experience as an Installer I, or one year verified experience as a registered apprentice and at least one year of verified experience as an Installer I for individuals who possess an apprentice registration on the effective date of these rules.

The commission disagrees with these comments. Consumers are protected because the training requirements for installers in the proposed rule are the same as the training requirements in the current rule. The only change in the proposed rule is that an individual does not have to work as an apprentice to obtain either an Installer I or Installer II license. The ED has received numerous complaints from individuals that licensed installers will not hire them to be apprentices, so that they can get the necessary experience, because the licensed installers consider them to be competition for work in the future. These same complainants have indicated that the regulations are restricting them from entering the industry. Furthermore, the commission has determined that deleting some of the experience requirements will not pose a hazard to human health and safety or the environment because the installer classes will provide individuals with the same knowledge as they would get through field experience. Additionally, the ED approves all basic training and continuing education courses, and thus, has control over the techniques presented and can ensure that the techniques presented follow the rules. The commission responds that in addition to the reasons given for the changes in the Installer I experience requirements, there are areas of the state where an individual cannot obtain two years experience working as an Installer I, since no standard systems are installed in those areas. The individuals either had to move or continue to work as an apprentice under an Installer II for two years, after they obtained an Installer I, in order to become eligible to become an Installer II. No changes have been made in response to these comments.

Concerning §285.53, one individual stated, "The removal of the site evaluator license will make it more necessary for an installer to look at planning materials and the location and know if the designed system will do the proper job of treating effluent as well as disposing of it."

The commission responds that installers have always been required to evaluate planning materials and the conditions at the site to determine whether the designed system will properly treat and dispose of the effluent; thus, the deletion of the site evaluator license has no bearing on an installer's duty or ability to evaluate planning materials and site conditions.

SOS expressed concern that, in proposed §285.53, the ED lowered the standards for installers. According to SOS, the ED has stated that an individual who is a PE is not necessarily qualified to work in this industry.

The commission responds that PEs are not excluded from installing systems as long as they obtain an installer license through the process in Subchapter F.

Concerning §285.53(a) and (b), LCST and IS-D commented that all other service related professions (i.e., plumbing, electrical, well drillers, etc) have a minimum verifiable experience requirement of four years before even being allowed to take a journeyman's test.

The commission disagrees with this comment. The commission recognizes that some professions require minimum verifiable experience requirements; however, not all service-related professions have these requirements. Some professions only require training and testing. The commission has determined that the training classes and testing requirements for OSSF installers are

adequate for the protection of human health and the environment, because the ED approves all basic training and continuing education courses, thus, the ED has control over the techniques presented and can ensure that the techniques presented follow the rules. Thus, the qualification requirements for installers may be different from other professions, but they are not inferior to other service-related industries.

Concerning §285.53(a), one individual raises concerns that lack of field training results in improper wiring and trenching in installed systems.

The commission responds that because the ED approves all basic training and continuing education courses, the ED has control over the techniques presented and can ensure proper wiring and trenching techniques are taught. No changes have been made in response to this comment.

Concerning §285.53(a) and (b), FGS and one individual commented that there are some individuals in the OSSF industry who have no intention of following the rules or getting licensed. FGS added that there are failed systems occurring because there are installers with poor design ethics and DRs who allow the classification of a soil to drop a category so that someone could "save a few bucks."

The commission responds that there are ethical concerns in any profession, regardless of the education and experience requirements, which is why the commission has established complaint and enforcement procedures. The commission recognizes that enforcement of these rules has been problematic in the past, often because the rules were unclear. Many of the changes incorporated into Chapter 285 focus on improving readability, clarifying language or meanings, and expanding definitions. The commission has determined these changes will make the provisions of this chapter easier to enforce. Additionally, the roles and responsibilities of owners, installers, DRs, and AAs have been better delineated, as have the possible enforcement actions which may be taken by the commission against violators of these rules. These changes in the rules will make it easier to enforce against those in the OSSF industry who do not comply with the rules.

Concerning §285.53(a) and (b), On-Site commented that removing the apprentice requirement for installers is unjust and unfair to those who have operated by the rules in the past. One individual stated that decreasing the proposed experience requirements for the Installer I and Installer II license in §285.53(a) and (b) would be "a slap in the face to all who have gone through the program obeying all the rules." FGS concluded that the standards in §285.53(a) and (b) should not be lowered, since "by your own admission" these are already "minimum standards."

The commission acknowledges that individuals currently licensed as an Installer I or Installer II were required to meet more stringent qualifications that the qualifications in the proposed rule. However, the ED has received numerous complaints from individuals that licensed installers will not hire them to be apprentices, so that they can get the necessary experience, because the licensed installers consider them to be competition for work in the future. These same complainants have indicated that the regulations are restricting them from entering the industry. Some county regulators have indicated that there is shortage of installers, which has resulted in higher costs to the owners. In addition, the commission modified the qualifications for an Installer II because there are areas of the state where an individual cannot obtain two years experience working as an Installer I, since no standard systems are installed in those areas. The individuals either had to move or continue to work as an apprentice under an Installer II for two years, after they obtained an Installer I, in order to become eligible to become an Installer II. The language provided in this subsection allows an individual to gain experience in other ways. The commission acknowledges that the qualifications in this rule are the minimum qualifications currently required; however, this does not preclude the commission from reevaluating and changing the minimum requirements when appropriate. Therefore, no changes have been made in response to the comments.

Concerning §285.53(a) and (b), one individual was concerned about the consequences to the state's water resources if inadequately trained people are allowed to install OSSFs.

The commission responds that Installers I and II are required to take and pass training which includes information on protecting the state's water resources when installing an OSSF. Additionally, Installer Is are limited to the types of OSSFs that they can install. Thus, the commission has determined that both Installer Is and Installer IIs have adequate knowledge to protect the waters in the state.

Cass County and four individuals supported the changes to the experience requirements in §285.53(a) and (b) for obtaining installer licenses. According to Cass County, in small counties with few active installers, there is no competition, and further, the installers will not allow an apprentice to become licensed because it creates competition. Cass County concluded that the basic training course will educate the Installer I on the basics of properly installing a septic system, and will allow for more competition. According to two individuals, three years to get certified is entirely too long. Most people cannot afford to work that long at the wages paid to an apprentice and support a family. Two individuals requested the commission to consider the plight of a prospective OSSF installer and adopt the rules as they are proposed. One individual stated that a change in the rule is needed to allow more people the chance to be part of the system. One individual commented that while the intent of the current rules may have been good, the current rules effectively eliminate individuals who own their own business from becoming installers, because they would have to put their other business activities on hold for a year in order to serve an apprenticeship under a licensed installer. This individual believes that the current rules create a monopoly for those who are licensed.

The commission appreciates the positive comments in support of the rule.

Brown agreed with the proposed changes in §285.53(b) for individuals to obtain an Installer II license. An individual supported the proposed changes in experience to become an Installer II. The individual suggested that the training and testing for the installer is adequate to qualify for a license. The current licensing requirements hinder the growth of Texas, limits the job market, keep the product price up, and increase the possibility of people using inferior products.

The commission appreciates the positive comment in support of the rule.

ECS suggested that regional employees should be required to meet all the DR qualifications in §285.53(c).

The commission responds that, since the effective date of the current rules in 1997, employees of the commission performing the duties and responsibilities of a DR have been required to take the DR course and pass the examination. However, a license is

not issued to employees in order to avoid any conflict of interest. No changes have been made in response to this comment.

FGS and one individual suggested that elected officials should be prohibited in §285.53(c) from being a DR in any capacity. FGS recommended that elected county officials hire or contract with someone to perform the DR duties and then stand up for the enforcement of OSSF rules. One individual suggested that elected officials who are DRs will permit substandard OSSFs and allow the rules to be violated because they are worried about getting votes for the next election. FGS commented that elected officials who seek to be DRs want the position in order to smooth over the issue locally because they know that commission enforcement of the rules upsets key supporters when they are forced to comply, so that the elected official will "catch flack."

The commission has opted to not prohibit an elected official from becoming a DR if he meets the qualifications because in some areas of the state, the only individual willing to accept the duties and responsibilities of a DR is an elected official. To prohibit an elected official from acting as a DR could prohibit that local governmental entity from being able to become an AA. However, §285.62 provides the duties and responsibilities of a DR, which includes following the rules. Any DR, whether an elected official or an employed, appointed, or contracted individual is required to follow the rules or be subject to enforcement. No changes have been made in response to the comment.

Concerning §285.53(c), SOS commented that a DR that judges the design, installation, or maintenance of an OSSF should have equivalent training and experience as the professionals who perform the design, installation, or maintenance. According to SOS, DRs should have equivalent liability as the other professionals in the industry, otherwise the public health is at risk.

The commission responds that any individual who becomes a DR has completed 27 hours of DR training. This training includes information on site evaluation, installation, maintenance, and preparation of planning materials for all systems. This training is equivalent to the training received by other individuals who are licensed under this chapter and includes all the topics covered in the other classes. The duties and responsibilities specified in §285.62 make the DR responsible for ensuring that public health and the environment are protected and DRs are subject to enforcement for noncompliance with these requirements, as are other professionals in the industry. No changes have been made in response to this comment.

§285.54. Basic Training and Continuing Education.

Austin County commented that the training courses in §285.54 should only be taught by the commission or Texas Engineering Extension Service (TEEX). The courses should not be taught by a company that sells products.

The commission responds that other training providers beside TEEX and the commission can provide continuing education. However, approval for a training course will be granted only to a provider that does not endorse a product. Manufacturers may not provide continuing education. The commission has a regulatory guidance document available that address these issues. No changes have been made in response to the comment.

One individual commented that he supports the requirements for continuing education in §285.54.

The commission appreciates the positive comment in support of the rule.

NEW suggested that Installer Is should not be required to take continuing education specified in 285.54.NEW commented that the training either rehashes basic fundamentals or involves subject matter for a higher license level. NEW suggested that if there are dramatic changes in the way standard systems are installed, the changes could be provided by newsletter and that the county could monitor the education and performance of the installers with a Class I license.

The commission disagrees with the comment. All certified individuals should have continuing education to keep up with any changes in technology or rules. However, the commission recognizes that there have been a limited number of training providers for installers, especially Installer Is. The commission only approves courses that provide meaningful training. Because of the number of individuals in the industry, as well as the time and money involved, it is not practical for the commission to provide a regular newsletter in lieu of continuing education. No changes have been made in response to the comment.

LCST, IS-D, and IS-R suggested that in §285.54(b), training on the proprietary product should be provided by all proprietary system manufacturers, if it is the intent of the ED to protect the public health and environment of this state. Additionally, the commenters suggested that this training should count as continuing education for an individual.

All manufacturers must provide training for the individuals installing or maintaining their product. However, the commission has determined that only courses that are not product oriented will be approved for continuing education, because the commission cannot endorse a particular product. No changes have been made in response to the comment.

§285.55. Examinations.

The commission has modified §285.55(b), by changing the time frame from ten months to 12 months because the application review process is being changed. Additionally, the commission has changed the number of times the examination may be taken from three to four. The process will require that the application for a license be pre-approved and the fee paid before the training course and examination are taken. This process will require less time for processing, and therefore, the individual can have up to 12 months for retesting. The additional time for retesting provides time for an additional examination.

§285.56. Applications for License.

LCST and IS-D commented that in §285.56(b) the experience level should not be changed from current requirements if the intent of the ED is to protect the public health, the environment, and consumers of this state. Both commenters suggested language that would require supplemental information with an Installer I application.

The commission has declined to make the suggested changes. Public health, the environment, and consumers are protected because the installer classes will provide individuals with the same knowledge as they would get through field experience. Additionally, the ED approves all basic training and continuing education courses, thus, has control over the techniques presented and can ensure that the techniques presented follow the rules. Furthermore, in addition to the reasons given for the changes in the Installer I experience requirements, there are areas of the state where an individual cannot obtain two years experience working as an Installer I, since no standard systems are installed in those areas. The individuals either had to move or continue to work as

an apprentice under an Installer II for two years, after they obtained an Installer I, in order to become eligible to become an Installer II. No changes have been made in response to these comments.

LCST and IS-D commented that in §285.56(b)(1)(B) six installations do not constitute credible experience while 20 installations are only considered a bare minimum. Both LCST and IS-D suggested an applicant should have a sworn statement from a DR attesting to 20 installations performed by the individual.

The commission disagrees with the comment. In some parts of the state, an individual may not be able to perform more than a few installations because of the lack of work available or due to site conditions which limit the types of systems which can be installed. The commission determined that three installations is sufficient experience after reviewing the numbers of installations throughout the state because it is achievable within a reasonable time in most areas of the state. In some counties, as few as two OSSFs have been installed in a given year. In such a county, it would take ten years for someone, assuming that person was the only installer in the area, to install 20 OSSFs as suggested by the commenter. Therefore, no changes have been made in response to the comment.

LCST and IS-D commented that in §285.56(b)(2)(B), six construction sites does not constitute credible experience while 20 construction sites are only considered a bare minimum. Both suggested an applicant should have a sworn statement from a DR attesting to having witnessed the applicant work on 20 OSSF construction sites.

The commission disagrees with the comment. In some parts of the state, an individual may not be able to perform more than a few installations because of the lack of work available or due to site conditions which limit the types of systems which can be installed. The commission determined that six installations over a two-year period (three installations per year) is sufficient experience after reviewing the numbers of installations throughout the state because it is achievable within a reasonable time in most areas of the state. In some counties, as few as two OSSFs have been installed in a given year. In such a county, it would take ten years for someone, assuming that person was the only installer in the area, to install 20 OSSFs as suggested by the commenter. Therefore, no changes have been made in response to the comment. Additionally, the commission has modified §285.56(b)(2)(B) by changing "construction sites" to "installations" to make the language consistent with the language in §285.56(b)(1)(B).

The commission has modified §285.56(c). These changes were made because the commission has changed how applications are processed. The new process requires the applicant be preapproved and the fee paid before an individual can take the training course and examination. These changes were made to streamline the processing of applications.

The commission added the words "and fee" to §285.56(d) to clarify that the fee must be paid again if the applicant reapplies for a license. The fee must be paid again because a new application has been submitted and the process has begun over again. This requires the same administrative review as the first submittal.

The commission has modified §285.56(e)(2) by adding the words "that has not been denied" to clarify that if the license application has not been denied, the applicant may still be eligible to obtain the desired license upon the effective date of this rule revision or once the applicant meets all requirements, whichever is later.

§285.57. Registration of Apprentices.

ECS and one individual commented that in §285.57 some sort of field training is needed to raise the standards in the OSSF industry. The individual suggested that the commission work with installers and regulators to develop formal training guidelines with a curriculum for apprentices. The individual added that an apprentice should demonstrate competency in one level before moving on to the next level. ECS suggested that the TOWA installer-in-training idea would be a good start for the field training. Additionally, ECS suggested that a similar program should be developed for DRs.

The commission responds that an apprentice program, by its very definition, is field training. The apprentice works for the installer, who has more practical knowledge of the soil conditions and OSSF installations in the area of the state in which he works. The commission declines to promulgate formal training guidelines or create a curriculum for apprentices because the supervising installer is in a better position to determine the skills required by an installer in his area of the state. Additionally, the apprentices are required to pass the licensing exam before they can obtain their Installer II license. Passing this exam will ensure that the apprentice has learned the skills necessary to perform the duties of an Installer II. Concerning DRs, the commission responds that any individual who becomes a DR has completed 27 hours of DR training. This training includes information on site evaluation, installation, maintenance, and preparation of planning materials for all systems. This training is equivalent to the training received by other individuals who are licensed under this chapter and includes all the topics covered in the other classes. No changes have been made in response to these comments.

TOWA disagreed with eliminating the apprentice program in §285.57 and suggested that the apprentice registration be replaced by "Installer in Training" certification which would allow anyone, upon meeting certain qualifications, to enter into the on-site industry without delay. TOWA states that instead of serving one or two years as an apprentice, the individual would need to obtain 1,000 "On Job Training" hours which can be earned at the individual's own pace. TOWA proposed that the "On Job Training" hours require work in specific categories, such as piping, tank installation, job safety, construction of disposal field, etc. According to TOWA, under this system an individual could receive his Installer I license in approximately six months. Additionally, TOWA provided language for implementing their suggestions.

The commission responds that the ED has received numerous complaints from individuals that licensed installers will not hire them to be apprentices so that they can get the necessary experience because the licensed installers consider them to be competition for work in the future. These same complainants have indicated that the regulations are restricting them from entering the industry. Some county regulators have indicated that there is a shortage of installers, which has resulted in higher costs to the owners. The commission contends that TOWA's suggestion of on-the-job training would be met with the same resistance from licensed installers. In addition, the suggestion presented by TOWA for an "Installer-in-Training" would require significant additional resources for the ED in order to verify experience. Therefore, no changes have been made in response to the comments.

TOWA, MCGC, and one individual suggested that the proposed requirement in §285.57(c)(1) for an apprentice to be registered under only one installer at a time be deleted. TOWA and MCGC commented that apprentices may find it difficult or impossible

to be employed by one installer and be able to find sufficient work to earn a living. TOWA and MCGC commented that several installers "share" apprentices in order to give the apprentice full-time employment. The individual commented that it could benefit an apprentice to learn from more than one installer by giving him the opportunity to learn different construction methods. TOWA and MCGC added that the responsible party will still be the installer of record for the particular job.

The commission agrees with this comment. In some areas of the state, work for some apprentices would be limited since there is not sufficient construction work. Since the installer of record would be the responsible party, sharing of apprentices would not present a problem. Therefore, the proposed requirement for an apprentice to be registered under only one installer has been deleted. This deletion resulted in the renumbering of proposed §285.57(d) - (f) to §285.57(c) - (e), respectively.

The commission has modified §285.57(d), now at §285.57(c), by changing the word "apprentice" to the word "individual" in two places within the subsection to reflect that the individual is not an apprentice until he has been registered.

§285.58. Applications for Renewal.

With regard to §285.58(d) which sets up new staggered license terms, one individual commented that he was not unhappy with the non-staggered license renewal process in the current rules.

The commission has implemented a staggered renewal process because the ED currently processes approximately 3,500 renewal applications a year for licenses in the OSSF program. Under the existing rules, all of these licenses expire on August 31 of each year. As the number of licenses have increased, the ED's resources have been overly burdened. These proposed changes will develop a more fiscally sound method of managing the OSSF licensing requirements. This proposed change allows the ED to process renewals over two years instead of over three or four months each year. By spreading out the renewal applications over the entire two-year period, the ED will be better able to manage resources. This should provide the licensees with a shorter processing time. This language provides requirements that are consistent with licensing requirements in other commission programs. This will make it easier for applicants to follow one process through various licensing programs. No changes have been made in response to the comment.

LCST and IS-D commented that in §285.58(c)(2)(B)(i) and (ii) the "weekend warriors and fly-by-nighters" should be assessed a higher fee because they go in and out of the profession due to poor workmanship or reputation. Both LCST and IS-D suggested an installer whose license has been expired for less than one year should pay a $200 fee, while an individual whose license has been expired for more than one year, but less than two years should pay $400.

The commission appreciates the concerns of the commenters. The commission has modified the rule so that all installers and DRs with expired licenses must renew these licenses within 120 days after the effective date of these rules; otherwise, they will not be eligible to renew their licenses. Instead, if they wish to obtain another license after that time, they will have to apply for a new license according to the requirements in §285.56. The commission has made this modification for consistency with other licensing programs administered by the commission. The commission further responds that it is not feasible to charge a different fee for the same license based on the character of the licensee or the reason for the delinquency. Therefore, no changes have been made in response to the comment.

The commission has modified the language in §285.58(d)(1) to clarify that the license expires on the last day of the month the license was first issued.

The commission moved §285.58(d)(1)(B) from §285.58(d)(1)(C) in the proposed rules for better organization and clarity.

The commission modified the language in §285.58(d)(1)(C) and reformatted it to clarify the requirements for renewal for odd-numbered licenses.

The commission has modified the language in §285.58(e) by adding "within 45 days after the date the executive director receives the renewal application" to specify the length of time the ED has to notify an applicant if the application is denied. Additionally, a comma has been added in the third sentence to correct a grammatical error.

§285.59. Conditions for Denial of License, Registration, or Renewal.

LCST and IS-D supported proposed §285.59 addressing denial of a license, registration, and renewal.

The commission appreciates the positive comment in support of the rule.

The commission modified §285.59 to clarify the denial process. As written, the language was unclear.

The commission deleted §285.59(b) and moved the cross-reference to new §285.59(5).

§285.60. Terms and Fees.

One individual disagreed with the increase in the license fee in §285.60. The individual states the increase is another example of how greedy the commission has become.

The commission disagrees with the comment. Although it may appear that the renewal fees for installers and DRs have increased, the amount due each year actually remains the same. Under the existing rules, an installer would have to pay $75.00 a year for renewal. Under this language, the installer would pay $150.00 for two years. No changes have been made in response to the comment.

TOWA and one individual suggested that in §285.60(a) installers and DRs pay the same renewal fee. TOWA commented that the fee difference is a "discriminatory practice that benefits the DR, causing strain between the installer and regulatory community." The individual commented that a license has the same "weight" for both individuals and that by having an unequal fee, there is an implied message that one is more "privileged" than the other. The individual concluded that the Installer's renewal fee should be lowered, or the Designated Representative's fee should be raised, or split the difference, to make them the same. TOWA added that their organization unanimously decided that the rates should be the same for all the members.

The commission responds that the fees for both the installer and the DR have not changed since 1997. The commission has received a number comments from counties that it is hard to recover the cost of regulating the OSSF program through permit fees. The counties have emphasized that the certification costs,

including the renewal fees, and the training costs are a strain on county resources. The commission determined that keeping the renewal fee at the $50 per year is one way of helping with costs. The commission has declined to lower the installer renewal fees because of the costs associated with processing renewal applications. Therefore, no changes have been made in response to the comment.

§285.61. Duties and Responsibilities of Installers.

An individual supported the proposed language for §285.61.

The commission appreciates the positive comment in support of the rule.

CES and TSPE recommended that in §285.61, upon completion of the installation of an OSSF and before the issuance of the license to operate by the permitting authority, the installer should be required to certify, in writing, that the system has been constructed in accordance with the permitted plans and specifications. CES commented that this would offer property owners easier access to legal remedies by having this assurance in writing. TSPE commented that would help greatly in assuring that the system was installed according with the permitted plans when coupled with the inspections made by the designer and the permitting authority. CES and TSPE added it would be cost prohibitive for property owners to pay engineers or designers to observe all stages of construction.

The commission responds that it is the DR's responsibility, during the required construction inspection, to ensure that the OSSF system has been installed according to the approved planning materials and this chapter. If the system fails the inspection, the DR should not issue the notice of approval, and the system should not be used. A signed statement by an installer is not necessary, since it is the DR's responsibility to approve the system. Additionally, all OSSFs must be installed according to the rules. Even without a written assurance that the system was properly installed, the installer may be subject to both enforcement by the commission or AA and to a civil action brought by the owner, if the system is not installed according to the rules. Therefore, no change has been made in response to this comment.

WCCHDES commented that existing §285.58(a)(10), which has been moved to proposed §285.61, should not be deleted. Section 285.58(a)(10) currently states: "An installer shall not abandon, without just cause, an OSSF during installation, construction, alteration, extension or repair before ... the final inspection." WCCHDES explained that although it did not file charges under this section, WCCHDES found the section useful to encourage the completion of some jobs that might otherwise have been abandoned.

The commission responds that it has been almost impossible to enforce this provision in the past. Investigations into allegations of abandonment have historically lead to finger-pointing between the OSSF owner and the installer. It is difficult at best for permitting authorities to obtain evidence proving that an installer has not performed any work on an OSSF for at least 30 consecutive days. To prove that an OSSF installer has done so "without just cause" is more difficult because installers will claim things such as the owner not paying for services rendered, weather conditions, or the onset of health or medical conditions as "just cause." In the alternative, they will claim that they have been to the site within the 30-day window and performed some sort of work, perhaps while the owner was not present. The permitting authorities have the burden of proof for all allegations of violations of the rules. The permitting authorities do not have the resources to send investigators out to a single location for 30 days in a row to verify and document that no work has been performed by the installer during that time. In fact, the permitting authorities often are not made aware of the situation until after the 30- day period has elapsed and therefore may not be able to obtain the necessary verification. Additionally, in many of these situations there is no written contract between the owner and the installer, and so it becomes virtually impossible for the permitting authorities to determine exactly what the agreement is between the parties. This, however, brings to light the more important and relevant issue with regard to the 30-day abandonment issue.

Requiring that an OSSF installer not abandon construction for more than 30 days without just cause is a contractual issue that is best, and most appropriately, handled between the OSSF owner and the installer. The effect of this rule has been to force the permitting authorities to police a contractual dispute between two other parties. This is more appropriately handled between the parties. Therefore, no change has been made in response to this comment.

LCST and IS-D suggested that in §285.61(4) the term "owner" be changed to "applicant" to be consistent with suggested language in §285.5.

The commission agrees with both of these comments. The application for a permit may be submitted by the owner or the owner's agent. The commission has determined that the term "owner's agent" is more accurate than "applicant." The owner's agent can be an installer, a PS, or a PE. Therefore, the term "owner's agent" has been added to reflect that an individual representing the owner may submit the application, and therefore, should be notified, along with the owner, of any deficiencies in the application. A definition has been added to §285.2(50) defining "owner's agent" to include installer, PS, or PE.

LCST and IS-D suggested §285.61(5) be deleted since there is no justifiable reason for notifying the permitting authority of the construction start date if the installer has to obtain an authorization to construct from the permitting authority. Both LCST and IS-D added that notification should only be required when the OSSF is ready for inspection.

The commission responds that the notice for the beginning of construction given in §285.61(5) is required in THSC, §366.054. Therefore, no changes have been made in response to the comment.

The commission added the language "this chapter or the more stringent requirements of" to §285.61(6) to clarify that the provisions of this chapter as well as the more stringent requirements of the permitting authority must be met.

One individual requested that "specific location" be defined in §285.61(7). The individual asked if this applies to the tract of land described by the legal description of the property or the actual spot on the tract of land designated in the planning materials for the OSSF. The individual commented that some PEs and PSs allow an installer to move components of the OSSF within a tract of land as long as separation requirements are met. Such a change may be a few feet or a few hundred feet depending on the circumstances. The individual asked if this practice will be prohibited and if any such changes must be handled according to §285.61(8).

The commission agrees that "specific location" in §285.61(7) is not clear. Since "specific location" means the area identified in

the site evaluation as the exact location for the OSSF, the language has been changed to "construct the OSSF that has been authorized by the permitting authority for the specific location identified in the site evaluation."

LCST and IS-D suggested that in §285.61(11) the phrase "any and all" be used between request and inspection to coincide with industry terminology.

The commission responds that all inspections are clearly covered by the language in §285.61(11). The suggested changes would not add anything more to the requirement. Therefore, no changes have been made in response to the comment.

The commission has modified §285.61(12) by moving a comma to correct a grammatical error.

LCST and IS-D suggested that "emergency repair" be used earlier in §285.61(13) to distinguish this from an ordinary repair.

The commission agrees with this comment. The use of the term "emergency repair" is consistent with §285.35(c) and TWC, §7.175. Therefore, the suggested change has been made.

The commission has modified §285.61(14) by adding the words "and the owner" to make this section consistent with §285.7(d)(1).

§285.62. Duties and Responsibilities of Designated Representatives.

TAC commented that the proposed rule changes in §285.62 requiring DRs to enforce rules, participate in amending AA orders, review plans, issue authorizations to construct, verify installer licenses and classifications, perform construction inspections, issue notices of approval, collect fees, keep records of maintenance reports, verify the existence of maintenance contracts, and respond to complaints in a timely manner serve as a burden to current county staff or contract DRs and make adequate enforcement difficult.

The commission responds that the items listed were not specifically delineated in the rules in the past. However, these duties and responsibilities have always been necessary to implement the OSSF program. Therefore, the commission has added these duties and responsibilities to the rules for clarification and to enhance enforceability. No changes have been made in response to the comment.

The commission has modified §285.62(3) by citing to the TWC. This was added because the DR's enforcement authority is found in the TWC.

The commission added language to §285.62(7). The commission added, "this chapter and the requirements of" to clarify that the DR is required to approve planning materials to conform with both the provisions of this chapter and the requirements of the permitting authority.

The commission modified §285.62(11) by adding "approved" in front of "order, ordinance, or resolution," to clarify that the order, ordinance or resolution must be approved by the ED. Additionally, the commission has added "and the notice of approval;" to clarify that the DR must additionally only approve construction that conforms with the notice of approval for the OSSF.

The commission modified language in §285.62(13) and (14). The language was changed since the DR does not always personally collect the fees and maintain the records. Often, this is done by the clerk, who does not need a certificate.

TOWA and MCGC suggested that "system planner" be added to the list of activities that a DR may not participate in under §285.62(19). According to both TOWA and MCGC, allowing a DR to review what they have designed is a "clear conflict of interest." LCST commented that any individual who is an employee of a permitting authority should not be allowed to work in the private sector within their area of jurisdiction. LCST added that if this is allowed, in any capacity, this would create a severe conflict of interest and may call into question that individual's ethics. LCST suggested language that would prohibit a DR who works for a permitting authority from receiving any compensation for work as an OSSF apprentice, installer, designer, site evaluator, or maintenance person within the permitting authority's area of jurisdiction.

The commission agrees with these comments. The DR should not be performing any activities that could create a conflict of interest with his duties and responsibilities as a DR. Therefore, the language in §285.62(19) has been modified to clearly reflect that a DR shall not, within the permitting authority's jurisdiction, perform any other OSSF-related activities than those directly related to the individual's duties as a DR for the permitting authority.

LCST suggested adding a new §285.62(22) requiring that the DR ensure that the manufacturer's name is on the permit and all related planning materials when proprietary products are installed.

The commission responds that the review of the planning materials should ensure that the name of the manufacturer and the proprietary system being used is included in the planning materials. The review process is covered under §285.62(7). It is not necessary to require the DR to ensure the manufacturer's name is on the permit because the permit is issued to the owner for a specific system. The permit specifies the size of the system, the flow rate, and similar information, none of which is limited by whether the manufacturer's name is included on the permit. Therefore, no changes have been made in response to the comment.

§285.64. Denial, Reprimand, Suspension, or Revocation of License or Registration.

One individual supported the proposed language in §285.64.

The commission appreciates the positive comment in support of the rule.

The commission modified §285.64(b) to clarify the denial process. Specifically, the language has been separated into two paragraphs, one to address denial of a new license, and one to address denial of a renewal. Additionally, the language specifies the actions the ED shall take to ensure that the applicant is properly noticed of the ED's intent to deny the license or renewal, and further, specifies that the ED shall notify the applicant of the actions the applicant may take in response to the denial.

The commission modified §285.64(c) to clarify that enforcement could include more than one action.

One individual suggested language for §285.64(d)(1)(A)(i) that would clarify when the commission may suspend an installer license for failure to maintain a system. The commenter suggested adding the word required as follows: "failing to perform required maintenance."

The commission agrees with the comment. The installer should be performing maintenance as required by this chapter. Therefore, the suggested change has been made.

SOS commented that in §285.64(d)(1)(A)(i) - (iii), placing an installer "at risk" for "failure to submit reports" places a tremendous burden on the maintenance provider. According to SOS, permitting authorities have "failed to receive maintenance reports" for a variety of reasons. SOS added that in order to maintain a record, maintenance providers will send the maintenance reports by return receipt requested.

The commission acknowledges the concerns raised by the commenter. In §285.7(d)(2), the maintenance company is required to provide the permitting authority and the owner a copy of the maintenance report. This process will provide a record that the reports have been submitted. The maintenance company should also use good business practices, such as keeping copies of records, sending reports by certified mail, or submitting the reports in person and requesting that the permitting authority date and sign the maintenance company's copy. No change has been made in response to the comment.

LCST and IS-D commented that §285.64(d)(1)(A)(iii) could be interpreted as allowing an installer to fail to submit five or more maintenance reports per OSSF before a license would be suspended. Both LCST and IS-D suggested language that would clarify that the installer would have his license suspended if the installer failed to submit five or more reports over any two-year period.

The commission agrees that the language in §285.64(d)(1)(A)(iii) is not clear. To clearly indicate that failing to submit five or more maintenance reports over a two-year period would be grounds for suspension, the language has been changed from "failing to properly submit five or more maintenance reports in two years " to "failing to properly submit five or more required OSSF maintenance reports over any two-year period."

SOS suggested the following additional language be added in §285.64(d)(1)(B): "(vi) enforcing, or attempting to enforce rules and/or policies not expressly described in this rule, or an approved local order. (vii) practicing any policy or procedure that is discriminatory in any way regarding the types of systems, the submitting designer, the installer, the service provider, the equipment provided, or the equipment provider."

The commission responds that the commenter's suggestion of adding language regarding enforcing the rules or policies not included in these rules or an approved local order is already covered in §285.64(d)(1)(B) or in (2)(B). The commission has determined that a claim of discrimination is for the courts to decide and is not appropriate in this rule. Therefore, no changes have been made in response to the comment.

The commission modified §285.64(d)(1)(B)(ii) by deleting the word "timely" and adding "within 30 days of receipt of the complaint." The language was changed to provide a specific time frame in which the DR must investigate and to provide assurance to the complainant that appropriate action will be taken within that time frame.

The commission added "requirements of the" to §285.64(d)(1)(B)(iii). The language was added to clarify that it is the requirements that need to be enforced.

The commission modified §285.64(d)(2)(B)(ii) by adding "the authorized agent's approved order, ordinance, or resolution, and the notice of approval" for clarity.

The commission modified §285.64(d)(2)(B)(iv) and (v) by changing "employed or compensated by" to "employed, appointed or contracted by." The language better defines the ways a DR can work for an AA.

Subchapter G. Duties of Owner and Authorized Agents

Existing Subchapter G has been repealed and replaced with adopted Subchapter G. This subchapter: 1) enhances the clarity of these rules; 2) delineates duties of owners with malfunctioning OSSFs; 3) delineates the authority of the AA to enforce the standards of the THSC, and Chapter 285; and 4) incorporates the provisions of House Bill 1654 and Senate Bill 1307 of the 76th Legislature, 1999 and the statutory language from THSC, §366.017. This subchapter provides expanded language for enforcement by an AA.

The commission modified the title of Subchapter G from "OSSF Enforcement" to "Duties of Owners and Authorized Agents" to more accurately reflect the contents of the subchapter.

§285.70. Duties of Owners of Malfunctioning OSSFs.

The commission modified the title of §285.70 to "Duties of Owners of Malfunctioning OSSFs" to accurately reflect the content of the section.

LCST and IS-D commented that there appears to be a failure in §285.70 to address violations of the rules by registered PEs and PSs. According to LCST and IS-D, the PEs and PSs should bear the weight of enforcement.

The commission agrees that enforcement of PSs and PEs should be addressed. However, the commission does not have jurisdiction over these licenses. Enforcement of these licenses is governed by the Texas Department of Health (PSs) and the Texas Board of Professional Engineers (PEs). The commission may enforce against both PEs and PSs for violations of the rules. No changes have been made in response to the comment.

QCP commented that the commission requires five business days notice to investigate reports of illegal installations in proposed §285.70(a). QCP stated that there does not seem to be any stated procedure for reporting illegal systems, and no due process for handling such reports or complaints. According to QCP, illegal systems hurt everyone. QCP also commented that individuals who install illegally are often on a jobsite for no more than two days. QCP suggested that for faster response to catch these criminals, the commission should use local law enforcement to investigate such complaints and detain any guilty parties.

The commission appreciates the comment. The comment is related to a commission procedure for investigating complaints of any kind, including illegal OSSF installations. The procedure is not a requirement of these rules, but rather is an internal procedure. Commission complaint procedures may be continually reevaluated, and thus, should not be specified in any rule. If anyone is aware of an illegal system, they should report it to the appropriate regional office, the commission's central office toll free at 1-888-777-3186, or the AA. Typically, complaints regarding an OSSF are best handled by either the AA or the commission because they have the specialized training and knowledge to know what to look for during an investigation. No change to the rule has been made in response to the comment.

The commission has deleted proposed §285.70(a) because the authority for the executive director to pursue enforcement of OSSF-related matters is expressly stated in the applicable

statutes. Proposed §285.70(b) has been changed to (implied) §285.70(a) as a result of this deletion.

The commission modified proposed §285.70(b) by changing "the executive director" to "the executive director or the authorized agent" to reflect that either may document the existence of a malfunctioning OSSF.

§285.71. Authorized Agent Enforcement of OSSFs.

LCST and IS-D commented that in §285.71 there appeared to be a failure to address violations of the rules by registered PEs and PSs and added that they should bear the weight of enforcement.

The commission agrees that enforcement of PSs and PEs should be addressed. However, the commission does not have jurisdiction over these licenses. Enforcement of these licenses is governed by the Texas Department of Health (PSs) and the Texas Board of Professional Engineers (PEs). The commission may enforce against both PEs and PSs for violations of the rules. No changes have been made in response to the comment.

The commission changed "shall investigate and take appropriate and timely action on all complaints involving OSSFs" to "shall investigate a complaint regarding an OSSF within 30 days after receipt of the complaint, notify the complainant of the findings, and take appropriate and timely action on all documented violations" in §285.71(a). The language was changed to provide a specific time frame in which the DR must investigate and to provide assurance to the complainant that appropriate action will be taken within that time frame. Additionally, the word "local" has been deleted for clarity.

The commission modified §285.71(a)(3) by changing "for violations" to "in violation" for clarity.

The commission modified §285.71(a)(4) by changing the word "for" to "of" to correct a typographical error. Additionally, the discussion pertaining to an AA's determination of the existence of a malfunctioning OSSF and the owner's subsequent responsibilities in §285.71(a)(4) and §285.71(a)(4)(A) - (C) have been deleted, as this is now addressed in §285.70.

The commission added a new §285.71(b) to include the process of the AA taking enforcement action through the local courts and sending a copy of the court judgment to the ED. This addition resulted in the change of proposed §285.71(b) to (c).

The commission modified §285.71(c). Specifically, the language "If there are unusual circumstances involved, or if the AA is unable to take enforcement action," was added to further delineate when an AA may refer a complaint to the ED. The unusual circumstances referenced could include the case being too complicated, an extreme resource limitation on the part of the AA, or the AA's inability to timely enforce the violations. Additionally, the second sentence of this subsection, which referred to the ED's authority to initiate enforcement, was deleted because it does not belong in a section of the rules dealing with an AA's duties and enforcement authority.

Subchapter H. Treatment and Disposal of Greywater.

Existing Subchapter H has been revised for readability and to incorporate new language from an existing guidance document.

§285.81. Criteria for Discharge of Laundry Greywater.

Austin County expressed concern regarding the enforceability of §285.81. Austin County commented that most counties do not have the staff to go out and verify that laundry greywater is being discharged according to the requirements of this section.

The commission responds that the use of laundry greywater should be addressed in the planning materials. The DR should be reviewing all planning materials and addressing any laundry greywater issues at that time. Additionally, any violation noted during an inspection should be addressed through the permitting authority's enforcement process. No change has been made in response to the comment.

The commission has modified §285.81. Specifically, "Greywater from residential laundry washing machines" was changed to "Wastewater from residential clothes washing machines, otherwise known as laundry greywater," to better define what is covered by this section of the rules.

The commission created new §285.81(2) by separating out the reference to surface ponding from §285.81(1). The commission changed the language to "Surface ponding shall not occur in the disposal area." As a result of this change, the remaining items in §285.81 have been renumbered.

The commission changed the language in new §285.81(6), previously §285.81(5), to read "Laundry greywater shall not be discharged to the area if the soil is wet." The change was made to clarify that this requirement pertains to laundry greywater.

Subchapter I. Appendices.

Existing Subchapter I has been revised for consistency with the text of the rules and for clarification.

§285.90. Figures.

One individual suggested that the commission provide a sample maintenance (or service) contract in the rules in §285.90. The individual commented that the rules already provide a sample Affidavit to the Public and sample Testing and Reporting Record.

The commission responds that this is a contractual issue between the maintenance company and the owner, and the commission does not have jurisdiction to dictate contractual requirements between third parties that do not impact the commission. Sample contracts may be developed by the manufacturer and provided to the individuals they certify. The commission provides Model Deed and Affidavit Language (formerly Affidavit to the Public) and a sample Testing and Reporting Record because §285.3(b)(3) and §285.7(d) outline the specifics which must be included in these documents, and therefore the commission was able to produce templates for the regulated community. However, the commission rules only specify that there must be a contract between a maintenance company and an owner, and a minimum number of provisions to be included in the contract. Because the specifics of a contract are unique to each contract, the commission has not added a sample maintenance contract to the rules. No changes have been made in response to this comment.

LCST and IS-D recommended the addition of four figures in §285.90, detailing typical installation profiles of: leaching chambers in a trench; wide excavations; mound systems; and soil substitution systems.

The commission responds that this suggestion is the responsibility of the manufacturers. There are a wide variety of systems with different installation requirements. The manufacturers of leaching chambers should provide the figures to the individuals that distribute their products. The manufacturers should ensure that the figures agree with this chapter. No change has been made in response to the comment.

The commission changed the title in §285.90(1) from "Surface Irrigation" to "Surface Application." The commission made this change so that the title would agree with the language in the text.

NETMWD recommended that §285.90(2) require the affidavit to include a description of the system installed, the system's components, and a copy of the system design drawn to scale.

The commission disagrees with these suggestions. This information is included in the permit file and is not necessary to include with the deed recording on file in the county clerk's office. However, language will be added to the Model Deed and Affidavit Language in the figure contained in §285.90(2) that a copy of the planning material can be obtained from the permitting authority.

The commission modified the figure contained in §285.90(2) so that this figure agrees with the language in §285.3(b)(3).

The commission modified §285.90(3) by changing the term "visits" to the words "maintenance checks and tests." The commission made this change so that this figure agrees with the language in §285.7(d).

One individual commented that the portion of the figure in §285.90(4) showing a typical drainfield sectional view indicates an optional layback. The individual suggested the layback have a maximum value of 3 to 1 to "ensure that 20 to 30 square feet of surface area is given credit for a single pipe and gravel line."

The commission responds that there is no need to specify a slope for a layback. The layback is dependent on the slope necessary for the installer to get equipment into the excavation. Since this comment appears to be related to drainfield sizing, language has been added to §285.90(4) that credit for top surface area for calculating evapotranspiration drainfield size shall be limited to two feet past the outside drain line. The commission has limited the surface area for calculating evapotranspiration drainfields to two feet past the outside drainline because two feet is what is calculated from the center of the pipe to the edge of the excavation, whether it is laid back or not.

The commission modified the figure contained in §285.90(4). The commission changed the figure to correct a dimension for a soil substitution drainfield to agree with language in §285.33(d)(4).

LCRA commented that the figure contained in §285.90(5), which shows a multi-line drainfield layout and specifies that any additional lines will have a minimum spacing of four feet, is not clear. LCRA suggested that if the figure applies to a single drainfield, the note in the figure should be changed to indicate the pipe spacing will be a maximum of four feet as specified in §285.33(b)(1)(D).

The commission agrees that the information on the figure is not clear. The figure has been changed to indicate that the edges of the excavations shall be separated by three feet of undisturbed soil. All references to pipes have been deleted to avoid any confusion.

The commission modified the figure contained in §285.90(5). The commission changed the title to more accurately reflect what is included in the figure; changed "multi-line drainfield" to "multi excavation drainfield" to agree with §285.33(b)(1); and, changed "single-line drainfield" to "single excavation drainfield" to agree with §285.33(b)(1)(A).

One individual asked what the purpose of the three inch drop (from the inlet tee to the outlet tee) is in §285.90(7). The individual elaborated that if it is to provide extra capacity to attenuate surges, then the three inch drop in a series tank alignment should be between the inlet of the first tank and the outlet of the second tank; otherwise, if it is to keep the inlet above the water, then it should be across the first tank as shown.

The commission responds that the three inch drop from the inlet "T" to the outlet "T" in the first tank, in a series of tanks, increases the hydraulic head, and thus increases the rate of flow to subsequent tanks. No changes have been made to the figure in response to this comment. However, the commission modified the rule language in §285.32(b)(1)(B) to clarify the location of the three-inch drop.

The commission modified the figure contained in §285.90(7) by changing the language in the note over the second tank to agree with language in §285.32(b)(1)(D).

§285.91. Tables.

The commission deleted a note in Table 2 in §285.91(2) because it was not consistent with the material on the table and is already included in the figures contained in §285.90(5) and (6).

Austin County commented that in §285.91(3) the flow from a residence should be based on the number of bedrooms, not the square footage of the residence. Austin County compared a three bedroom residence that has 5,000 square feet and only two people living in it against a two bedroom manufactured home with ten people living in it. The three bedroom home would have a disposal field much larger than the two bedroom home when, according to Austin County, it should be reversed.

The commission does not disagree with the example given in the comment. However, the flows given in Table III for single family dwellings are by the number of bedrooms because typically the number of bedrooms is indicative of the number of residents of a single family dwelling. Therefore, no changes have been made in response to this comment.

WCCHDES commented that in §285.91(4) the effluent from residential aerobic treatment units should be analyzed for BOD and TSS on a yearly basis, any time the OSSF is sold, and any time the license is transferred. WCCHDES stated that studies have indicated aerobic treatment units fail, and that the only way to identify and correct the failing treatment units is to analyze for BOD and TSS annually. WCCHDES noted that the BOD and TSS analysis should not replace routine maintenance.

The commission does not agree with this comment. The commission responds that a yearly test for BOD and TSS for a residence provides limited information and will not be a true indication of the operation of the aerobic treatment system. Additionally, the commission disagrees with the concept of sampling for TSS and BOD each time the OSSF is sold and the license is transferred because the effectiveness of an aerobic treatment unit is adequately determined using residual chlorine. BOD and TSS would not identify failing treatment units more accurately than residual chlorine. Additionally, although WCCHDES referenced studies regarding the failure of aerobic treatment units, the names of the studies were not included with the comment, nor were the studies attached. Therefore, the commission could not evaluate the referenced studies. No change has been made in response to this comment.

SOS commented that in §285.91(4) the test used to determine the effectiveness of disinfection should be equal for all technologies. According to SOS, the test for chlorine residual does not assure that the effluent is sufficiently disinfected. Additionally, according to SOS, the owner of a system that uses a disinfection process other than chlorine is penalized because the effectiveness of the disinfection process is tested by analyzing the effluent for fecal coliform. SOS suggested that the effluent from all OSSFs should be analyzed for fecal coliform to determine if the system (disinfection process) is functioning properly.

The commission appreciates the comment. The test for fecal coliform is already included in §285.90(4) as a test that may be used to determine that the effluent is sufficiently disinfected. The commission declines to require fecal coliform instead of residual chlorine because the commission has determined that residual chlorine and fecal coliform provide similar information regarding the disinfection process. No changes have been made in response to this comment.

The commission changed the heading in the second column of Table IV in §285.91(4) from "Frequency of Site Visits" to "Testing Frequency" so that the heading agrees with the language in §285.7(d). Additionally, under the "Required Tests" column, the commission changed "Chlorine Residual" to "Total Chlorine Residual" to agree with the requirements in §285.33(c)(2)(D).

Amstar commented that in §285.91(5) the reference to "Gravel Analysis" should be deleted because the gravel analysis is not based on sound engineering principles.

The commission disagrees with this comment. Gravel analysis was added to be consistent with USDA recommendations. According to the *National Soil Survey Handbook* (Soil Survey Staff, 1993b) soils with 50% stones larger than three inches have severe limitations for standard drainfields. Based on comments addressed in the December 8, 2000 issue of the *Texas Register* (25 TexReg 12250) and the *National Soil Survey Handbook*, the commission determined that Class II and Class III soils with gravel may be suitable for standard subsurface absorption systems as indicated in Table V in §285.91(5). No changes have been made in response to the comment.

The commission modified Table V in §285.91(5) by modifying the language in the "Unsuitable/ Gravel Analysis" cell of the table to clarify what is considered unsuitable. In addition, the commission also added the words "floodplain and" under the "Unsuitable/Flood Hazard" cell of the table to agree with the language in §285.31(c)(2).

EZflow appreciated the change from the existing textural triangle to the proposed equilateral triangle in §285.91(6).

The commission appreciates the positive comment in support of the rule.

The commission modified Table VIII in §285.91(8) by shortening the citation in Note 1 to clarify that other formulas are included.

Concerning §285.91(9), R&R disagreed that a professional design should be required for a soil substitution system. R&R commented that there are only three classes of soil to consider and it does not require any special knowledge to size the drainfield. R&R commented that because soil substitution drain fields call for either a Class I or Class II installer and that this system is primarily used for residential uses and small commercial uses, the planning materials for this system should not be required to be prepared by a registered PE or registered PS. R&R added that since there are only three classes of soil that can be used in these systems and all installers are taught how to figure the rate of application and disposal area, this should not need the extra service and expense that goes with using a PE or PS.

The commission responds that there is a need to address permeability for soil substitution systems to ensure proper effluent treatment and to avoid impacting groundwater. Since the owner is unlikely to know when such a situation exists, either a PS or a PE is needed to prepare planning materials for all of these systems to prevent insufficient treatment and possible groundwater impacts. No changes have been made in response to the comment.

One individual suggested using the term "surface irrigation" rather than "secondary treatment" or using the phrase "Non-standard treatment with secondary treatment required" in the next to the last row of the table in §285.91(9).

The commission agrees with this comment. Since there are more systems than surface application systems that use secondary treatment, the table should clearly indicate that. Therefore, the language has been changed to "Non-Standard Treatment when Secondary Treatment Required."

CES recommended that the table in §285.91(9) be updated to reflect any change that may be made to §285.5.

The commission responds that no changes have been made in §285.5 that would affect §285.91(9). Therefore, no changes have been made in response to this comment.

TSPE suggested a new Table IX in §285.91(9) to divide the system description into three major categories: "Treatment Methods," "Disposal Methods," and "Other" that indicate when planning materials would be required to be prepared by an engineer.

The commission disagrees with the comment. The table has been in the rules since 1997. It provides the information requested in the comment in a modified form. Therefore, no changes have been made in response to the comment.

SM commented that the table in §285.91(9) requires all planning materials to be prepared by an PS or PE for certain types of systems. SM pointed out that a site evaluation is a part of those planning materials, so that would mean that the site evaluation would have to be performed by an PS or PE. SM suggested that a footnote be added to the table to read: "The site evaluation portion is not required to be performed by RSs or PEs."

The commission agrees with the comment. Due to the Attorney General opinion (No. JC-0020) in 1999, the commission cannot license a person to perform site evaluations. Therefore, these rules do not specify who can perform site evaluations. To avoid any perceptions that only PSs or PEs can perform site evaluations, the commission has added a note to clarify that the site evaluation is not required to be performed by a PS or a PE.

The commission has modified Table IX in §285.91(9) by adding the word "director" to the note at the bottom of the table to clearly indicate the ED.

FCWD suggested that setback requirements on creeks and natural run-off areas reference in §285.91(10) be enforced the same as on lakes, rivers, and streams to protect other water bodies from contamination.

The commission responds that there are a variety of names commonly used to identify streams or conveyances of water, including the term "creeks." "Creeks" has been added to §285.91(10) because it is commonly used to identify streams or conveyances

of water. Other terms for streams and separation distances from those streams are best determined at a local level because of various colloquialisms. No other changes have been made in response to the comment.

R&R suggested that minimum separation distances between drainfields (e.g., absorption type drainfield to absorption type drainfield) be added to Table X in §285.91(10).

The commission responds that the distances between drainfields are already addressed in §285.33(b)(1)(A)(iii). Additionally, §285.91(10) addresses separation distance between drainfields and property lines. No changes have been made in response to this comment.

One individual commented that the third row of the table in §285.91(10) should specifically refer to *private water* wells and underground cisterns (emphasis added). The individual further suggested that the rule should state whether spraying over private water lines is allowed.

The commission disagrees with the first comment. The word "well" as defined in §285.2(75) is used to apply to all wells, not just private water wells. The commission agrees with the second comment. It has been understood that no separation distance from the spray area is required; however, this has not been stated. A note has been added to the "Private Water Line/Surface Application" cell of the table to indicate that there is no separation distance from the spray area required.

TOWA suggested Table X in §285.91(10) be revised to indicate that separation distances should be measured from the top of a sharp slope or break and suggested adding the language "excluding Roadside Ditches."

The commission responds that the term "sharp slopes, breaks" has been changed to "slopes where seeps may occur" to better identify the areas of concern. Seeps can occur in roadside ditches and they should not be excluded. No other changes have been made in response to this comment.

UNRMWA commented that in §285.91(10) the proposed increase in separation between surface application systems and property boundary lines will be an additional hurdle a designer will have to clear to provide a regulation system on small lots that were developed before 1986. UNRMWA contends that the current regulations have worked well in its jurisdiction and, in many cases, has made the difference in whether or not it was possible to design an adequate replacement system to service the property. UNRMWA suggested that the separation distance be optional, allowing the DR to determine the appropriate separation distance based on soil types, fences, hedgerows, adjacent land use, and other contributing factors.

The commission responds that there have been no changes from the existing rules made to the separation distances between surface application systems and property lines. The only changes made in the table were made to clarify notes that were given in the previous version of the table, which stated that the separation distance was 20 feet unless a commercial irrigation timer was used. No changes have been made in response to the comment.

FCWD does not see the need in §285.91(12) for affidavits, maintenance contracts, or testing and reporting for standard subsurface discharge systems utilizing an aerobic treatment unit. In the event that an aerobic treatment unit fails, the OSSF would function the same as a standard OSSF, which under the proposed rules would require no affidavit, maintenance contract or testing and reporting.

The commission disagrees with this comment. Aerobic treatment systems have mechanical parts thus, they will not function as a standard OSSF in the event the aerobic treatment system fails. Because of the potential for mechanical failure, an aerobic treatment system needs to be maintained regardless of the disposal system used. No changes have been made in response to this comment.

R&R suggested the rules need to distinguish in §285.91(12) between an installed holding tank and the holding tank that is associated with the portable toilet industry. R&R commented that there should be no affidavit required for the holding tanks associated with the portable toilet industry (e.g., construction sites, drilling rigs, etc.). R&R added that most of the time, these units are only on site for a few days or weeks.

The commission agrees with this comment. The provisions related to holding tanks were not intended to apply to portable toilets or to an office trailer at a construction site. Therefore, language has been added in §285.34(e) to exclude the office trailer at a construction site from the rules. No change has been made to the table in response to this comment.

The commission modified Table XII in §285.91(12) by changing the word "aerobic" to "secondary" in the "System Description" column to describe all systems, not just aerobic treatment systems; and by adding Note No. 3 to identify when an affidavit is required for evapotranspiration drainfields.

Austin suggested adding a new table to §285.91 to address the minimum soil depth requirement for each disposal system listed in §285.33. One individual commented on the table suggested by the City of Austin which was distributed as guidance when the 1997 rules took effect. The individual stated that the table was very handy.

The commission agrees that a new table addressing separation depths to restrictive horizons and groundwater for various systems would be beneficial to the installer and DRs. Therefore, §285.91(13) has been added.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §§285.1, 285.3, 285.6 - 285.8

STATUTORY AUTHORITY

These repeals are adopted under the authority granted to the commission by the Texas Legislature in the Texas Health and Safety Code (THSC), §366.011. The revisions will be implemented pursuant to THSC, §366.012(a)(1), which requires the commission to adopt rules consistent with the policy defined in THSC, §366.001. The commission has authority to adopt rules to implement the requirements of THSC, §366.053(b), which requires the adoption of rules for permitting; THSC, §366.058, which requires adoption of rules addressing permit fees; and THSC, §366.072, which provides for the adoption of rules for registration.

These repeals are also adopted under the general authority granted in the Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under

the TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of the TWC and the THSC.

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

Filed with the Office of the Secretary of State on May 24, 2001.

TRD-200102942
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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Proposal publication date: December 8, 2000
For further information, please call: (512) 239-4712

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30 TAC §§285.1 - 285.7

STATUTORY AUTHORITY

These new sections and amendments are adopted under the authority granted to the commission by the Texas Legislature in the Texas Health and Safety Code (THSC), §366.011. The revisions will be implemented pursuant to THSC, §366.012(a)(1), which requires the commission to adopt rules consistent with the policy defined in THSC, §366.001. The commission has authority to adopt rules to implement the requirements of THSC, §366.053(b), which requires the adoption of rules for permitting; THSC, §366.058, which requires adoption of rules addressing permit fees; and THSC, §366.072, which provides for the adoption of rules for registration.

These new sections and amendments are also adopted under the general authority granted in the Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of the TWC and the THSC.

§285.1. Purpose and Applicability.

(a) Purpose. The purpose of this chapter is to provide a comprehensive regulatory program for the management of on-site sewage facilities (OSSFs), as prescribed by the Texas Health and Safety Code, Chapter 366. This chapter establishes minimum standards for planning materials, construction, installation, alteration, repair, extension, operation, maintenance, permitting, and inspection of OSSFs. This chapter also provides the procedures for licensing of installers and designated representatives, registration of apprentices, and the designation of local governmental entities as authorized agents. Unauthorized discharge of effluent into or adjacent to the waters in the state is prohibited.

(b) Applicability. This chapter applies to:

(1) any person who has an ownership interest in an OSSF; or

(2) any person who participates in any activity relating to the development of planning materials, construction, installation, alteration, repair, extension, operation, maintenance, permitting, inspection, or investigation of an OSSF; or

(3) any governmental entity that is, desires to be, or was, designated as an authorized agent.

§285.2. Definitions.

The following words and terms in this section are in addition to the definitions in Chapter 3 of this title (relating to Definitions). The words and terms in this section, when used in this chapter, shall have the following meanings:

(1) Aerobic digestion - The bacterial decomposition and stabilization of sewage in the presence of free oxygen.

(2) Alter - To change an OSSF resulting in:

(A) an increase in the volume of permitted flow;

(B) a change in the nature of permitted influent;

(C) a change from the planning materials approved by the permitting authority;

(D) a change in construction; or

(E) an increase, lengthening, or expansion of the treatment or disposal system.

(3) Anaerobic digestion - The bacterial decomposition and stabilization of sewage in the absence of free oxygen.

(4) Apprentice - An individual who has been properly registered with the executive director, and is undertaking a training program under the direct supervision of a licensed installer.

(5) Authorization to Construct - Written permission from the permitting authority to construct an OSSF showing the date the permission was granted. The authorization to construct is the first part of the permit.

(6) Authorized agent - A local governmental entity that has been delegated the authority by the executive director to implement and enforce the rules adopted under Texas Health and Safety Code, Chapter 366.

(7) Borehole - A drilled hole four feet or greater in depth and one to three feet in diameter.

(8) Certificate of registration - The license held by an individual that allows an individual to perform specific tasks under these rules, and that is issued by the executive director.

(9) Certified professional soil scientist - An individual who has met the certification requirements of the American Society of Agronomy to engage in the practice of soil science.

(10) Cesspool - A non-watertight, covered receptacle intended for the receipt and partial treatment of sewage. This device is constructed such that its sidewalls and bottom are open-jointed to allow the gradual discharge of liquids while retaining the solids for anaerobic decomposition.

(11) Cluster system - A sewage collection, treatment, and disposal system designed to serve two or more sewage-generating units on separate legal tracts where the total combined flow from all units does not exceed 5,000 gallons per day.

(12) Commercial or institutional facility - Any building that is not used as a single-family dwelling or duplex.

(13) Compensation - A payment to construct, alter, repair, extend, maintain, or install an OSSF. Payment may be in the form of cash, check, charge, or other form of monetary exchange or exchange of property or services for service rendered.

(14) Composting toilet - A self-contained treatment and disposal facility constructed to decompose non-waterborne human wastes through bacterial action.

(15) Condensate drain - A pipe that is used for the disposal of water generated by air conditioners, refrigeration equipment, or other equipment.

(16) Construct - To engage in any activity related to the installation, alteration, extension, or repair of an OSSF, including all activities from disturbing the soils through connecting the system to the building or property served by the OSSF. Activities relating to a site evaluation are not considered construction.

(17) Delegate - The executive director's act of assigning authority to implement the OSSF program under this chapter.

(18) Designated representative - An individual who holds a valid license issued by the executive director, and who is designated by the authorized agent to conduct site evaluations, percolation tests, system designs, and inspections.

(19) Direct communication - The demonstrated ability of an installer and the apprentice to communicate immediately with each other in person, by telephone, or by radio.

(20) Direct supervision - The responsibility of an installer to oversee, direct, and approve all actions of an apprentice relating to the construction of an OSSF.

(21) Discharge - To deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of, or to allow, permit, or suffer any of these acts or omissions.

(22) Edwards Aquifer - That portion of an arcuate belt of porous, waterbearing predominantly carbonate rocks (limestones) known as the Edwards (Balcones Fault Zone) Aquifer trending from west to east to northeast in Kinney, Uvalde, Medina, Bexar, Comal, Hays, Travis, and Williamson Counties; and composed of the Salmon Peak Limestone, McKnight Formation, West Nueces Formation, Devil's River Limestone, Person Formation, Kainer Formation, Edwards Group, and Georgetown Formation, or as amended under Chapter 213 of this title (relating to Edwards Aquifer). The permeable aquifer units generally overlie the less-permeable Glen Rose Formation to the south, overlie the less-permeable Comanche Peak and Walnut formations north of the Colorado River, and underlie the less-permeable Del Rio Clay regionally.

(23) Edwards Aquifer Recharge zone - That area where the stratigraphic units constituting the Edwards Aquifer crop out, including the outcrops of other geologic formations in proximity to the Edwards Aquifer, where caves, sinkholes, faults, fractures, or other permeable features would create a potential for recharge of surface waters into the Edwards Aquifer. The recharge zone is identified as a geographic area delineated on official maps located in the appropriate regional office and groundwater conservation district, or as amended by Chapter 213 of this title.

(24) Extend - To alter an OSSF resulting in an increase in capacity, lengthening, or expansion of the existing treatment or disposal system.

(25) Floodplain (100-year) - Any area susceptible to inundation by flood waters from any source and subject to the statistical 100-year flood (has a 1% chance of flooding each year).

(26) Floodway - The channel of a watercourse and the adjacent land areas (within a portion of the 100- year floodplain) that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation more than one foot above the 100-year flood elevation before encroachment into the 100-year floodplain.

(27) Geotextile filter fabric - A non-woven fabric suitable for wastewater applications.

(28) Gravel-less drainfield pipe - An eight-inch or ten-inch diameter geotextile fabric-wrapped piping product without gravel or media.

(29) Grease interceptor - Floatation chambers where grease floats to the water surface and is retained while the clearer water underneath is discharged.

(30) Groundwater - Subsurface water occurring in soils and geologic formations that are fully saturated either year-round or on a seasonal or intermittent basis.

(31) Holding tank - A watertight container equipped with a high-level alarm used to receive and store sewage pending its delivery to an approved treatment process.

(32) Individual - A single living human being.

(33) Install - To put in place or construct any portion of an OSSF.

(34) Installer - An individual who is compensated by another to construct an OSSF.

(35) License - The document issued by the executive director approving an individual to perform duties authorized under this chapter.

(36) Local governmental entity - A municipality, county, river authority, or special district, including groundwater conservation districts, soil and water conservation districts, and public health districts.

(37) Maintenance - Required or routine performance checks, examinations, upkeep, cleaning, or mechanical adjustments to an OSSF, including replacement of pumps, filters, aerator lines, valves, or electrical components. Maintenance does not include alterations.

(38) Maintenance company - A person or business that maintains OSSFs.

(39) Maintenance findings - The results of a required performance check or component examination on a specific OSSF.

(40) Malfunctioning OSSF - An OSSF that is causing a nuisance or is not operating in compliance with this chapter.

(41) Manufactured housing community - Any area developed or used for lease or rental of space for two or more manufactured homes.

(42) Multi-unit residential development - Any area developed or used for a structure or combination of structures designed to lease or rent space to house two or more families.

(43) Notice of approval - Written permission from the permitting authority to operate an OSSF. The notice of approval is the final part of the permit.

(44) Nuisance -

(A) sewage, human excreta, or other organic waste discharged or exposed in a manner that makes it a potential instrument or medium in the transmission of disease to or between persons;

(B) an overflow from a septic tank or similar device, including surface discharge from or groundwater contamination by a component of an OSSF; or

(C) a blatant discharge from an OSSF.

(45) On-site sewage disposal system - One or more systems that:

(A) do not treat or dispose of more than 5,000 gallons of sewage each day; and

(B) are used only for disposal of sewage produced on a site where any part of the system is located.

(46) On-site sewage facility (OSSF) - An on-site sewage disposal system.

(47) On-site waste disposal order - An order, ordinance, or resolution adopted by a local governmental entity and approved by the executive director.

(48) Operate - To use an OSSF.

(49) Owner - A person who owns property served by an OSSF, or a person who owns an OSSF. This includes any person who holds legal possession or ownership of a total or partial interest in the structure or property served by an OSSF.

(50) Owner's agent - An installer, professional sanitarian, or professional engineer who is authorized to submit the permit application and the planning materials to the permitting authority on behalf of the owner.

(51) Permit - An authorization, issued by the permitting authority, to construct or operate an OSSF. The permit consists of the authorization to construct (including the approved planning materials) and the notice of approval.

(52) Permitting authority - The executive director or an authorized agent.

(53) Planning material - Plans, applications, site evaluations, and other supporting materials submitted to the permitting authority for the purpose of obtaining a permit.

(54) Platted - The subdivision of property which has been recorded with a county or municipality in an official plat record.

(55) Pretreatment tank - A tank placed ahead of a treatment unit that functions as an interceptor for materials such as plastics, clothing, hair, and grease that are potentially harmful to treatment unit components.

(56) Professional engineer - An individual licensed by the Texas Board of Professional Engineers to engage in the practice of engineering in the State of Texas.

(57) Professional sanitarian - An individual registered by the Texas Department of Health to carry out educational and inspection duties in the field of sanitation in the State of Texas.

(58) Proprietary system - An OSSF treatment or disposal system that is produced or marketed under exclusive legal right of the manufacturer or designer or for which a patent, trade name, trademark, or copyright is used by a person or company.

(59) Recharge feature - Permeable geologic or manmade feature located on the Edwards Aquifer recharge zone where:

(A) a potential for hydraulic interconnectedness between the surface and the aquifer exists; and

(B) rapid infiltration from the OSSF to the subsurface may occur.

(60) Recreational vehicle park - A single tract of land that has rental spaces for two or more vehicles that are intended for recreational use only and has a combined wastewater flow of less than 5,000 gallons per day.

(61) Regional office - A regional office of the agency.

(62) Repair - To replace any components of an OSSF in situations not included under emergency repairs according to §285.35 of this title (relating to Emergency Repairs), excluding maintenance. The replacement of tanks or drainfields is considered a repair and requires a permit for the entire OSSF system.

(63) Revocation - A formal procedure, initiated by the executive director, in which an apprentice's, installer's, or designated representative's license or registration is rescinded by the commission.

(64) Scum - A mass of organic or inorganic matter which floats on the surface of sewage.

(65) Secondary treatment - The process of reducing pollutants to the levels specified in Chapter 309 of this title (relating to Domestic Wastewater Effluent Limitation and Plant Siting).

(66) Seepage pit - An unlined covered excavation in the ground which operates in essentially the same manner as a cesspool.

(67) Septic tank - A watertight covered receptacle constructed to receive, store, and treat sewage by: separating solids from the liquid; digesting organic matter under anaerobic conditions; storing the digested solids through a period of detention; and allowing the clarified liquid to be disposed of by a method approved under this chapter.

(68) Sewage - Waste that:

(A) is primarily organic and biodegradable or decomposable; and

(B) originates as human, animal, or plant waste from certain activities, including the use of toilet facilities, washing, bathing, and preparing food.

(69) Single family dwelling - A structure that is either built on or brought to a site, for use as a residence for one family. A single family dwelling includes all detached buildings located on the residential property and routinely used only by members of the household of the single family dwelling.

(70) Sludge - A semi-liquid mass of partially decomposed organic and inorganic matter which settles at or near the bottom of a receptacle containing sewage.

(71) Soil - The upper layer of the surface of the earth that serves as a natural medium for the growth of plants.

(72) Soil absorption system - A subsurface method for the treatment and disposal of sewage which relies on the soil's ability to treat and absorb moisture and allow its dispersal by lateral and vertical movement through and between individual soil particles.

(73) Subdivision - A tract of property divided into two or more parts either by platting or field notes with metes and bounds, and transferred by deed or contract for deed.

(74) Well - A water well, injection well, dewatering well, monitoring well, piezometer well, observation well, or recovery well as defined under the Texas Water Code, Chapters 32 and 33, and 16 TAC Chapter 76 (relating to Water Well Drillers and Water Well Pump Installers).

§285.3. General Requirements.

(a) Permit required. A person shall hold a permit for an OSSF unless the OSSF meets one of the exceptions in subsection (f) of this section.

(1) All aspects of the permitting, planning, construction, operation, and maintenance of OSSFs shall be conducted according to

this chapter, or according to an order, ordinance, or resolution of an authorized agent.

(2) The executive director is the permitting authority unless a local governmental entity has an OSSF order, ordinance, or resolution approved by the executive director. In areas where the executive director is the permitting authority, the staff from the appropriate regional office shall be responsible for the proper implementation of this chapter.

(3) Permits shall be transferred to a new owner automatically upon sale or other legal transfer of an OSSF.

(b) General Application Requirements.

(1) The owner or owner's agent must obtain an authorization to construct from the permitting authority before construction may begin on an OSSF. Before an authorization to construct can be issued, the permitting authority shall require submittal of the following from the owner or owner's agent:

(A) an application, on the form provided by the permitting authority;

(B) all planning materials, according to §285.5 of this title (relating to Submittal Requirements for Planning Materials);

(C) the results of a site evaluation, conducted according to §285.30 of this title (relating to Site Evaluation); and

(D) the appropriate fee.

(2) Variance requests shall be submitted with the application and shall be reviewed by the permitting authority according to subsection (h) of this section.

(3) Before the permitting authority issues an authorization to construct, the owner of OSSFs identified in §285.91(12) of this title (relating to Tables) or the owner's agent, must record in the county deed records of the county or counties where the OSSF is located. Additionally, the owner or the owner's agent must submit, to the permitting authority, an affidavit affirming the recording. An example of the deed language and affidavit is in §285.90(2) of this title (relating to Figures). The deed recording must include:

(A) the owner's full name;

(B) the legal description of the property;

(C) that an OSSF requiring a continuous maintenance contract is located on the property;

(D) that the permit for the OSSF must be transferred to the new owner upon transfer of the property;

(E) that maintenance must be performed by an approved maintenance company; and

(F) that a signed maintenance contract must be submitted to the appropriate permitting authority within 30 days after the property has been transferred.

(c) Action on Applications. The permitting authority shall either approve or deny an application within 30 days of receiving an application. If the application and planning materials are approved, the permitting authority shall issue an authorization to construct. If the application and planning materials are denied, the permitting authority shall explain the reasons for the denial in writing to the owner, and the owner's agent.

(d) Construction and Inspection.

(1) An authorization to construct is valid for one calendar year from the date of its issuance. If the installer does not request a construction inspection by the permitting authority within one year of the issuance of the authorization to construct, the authorization to construct expires, and the owner will be required to submit a new application and application fee before an OSSF can be installed. A new application and application fee are not required if the owner decides not to install an OSSF.

(2) The installer shall notify the permitting authority at least five working days (Monday through Friday, excluding holidays) before the date the OSSF will be ready for inspection.

(3) The permitting authority shall conduct a construction inspection.

(4) If the OSSF does not pass the construction inspection, the permitting authority shall:

(A) at the close of the inspection, advise the owner and the owner's agent, if present, of the deficiencies identified and that the OSSF cannot be used until it passes inspection; and

(B) within seven calendar days after the inspection, issue a letter to the owner and the owner's agent listing the deficiencies identified and stating that the OSSF cannot be used until it passes inspection.

(5) If a reinspection is necessary, a reinspection fee may be assessed by the permitting authority.

(6) The reinspection fee must be paid before the reinspection is conducted.

(e) Notice of Approval.

(1) Within seven calendar days after the OSSF has passed the construction inspection, the permitting authority shall issue, to the owner or owner's agent, a written notice of approval for the OSSF.

(2) The notice of approval shall have a unique identification number, and shall be issued in the name of the owner.

(f) Exceptions.

(1) An owner of an OSSF will not be required to comply with the permitting, operation, and installation requirements of this chapter if the OSSF is not creating a nuisance and:

(A) the OSSF was installed before September 1, 1989, provided the system has not been altered, and is not in need of repair;

(B) the OSSF was installed before the effective date of the order, ordinance, or resolution in areas where the local governmental entity had an approved order, ordinance, or resolution dated before September 1, 1989, provided the system has not been altered and is not in need of repair; or

(C) the owner received authorization to construct from a permitting authority before the effective date of this chapter.

(2) No planning materials, permit, or inspection are required for an OSSF for a single family dwelling located on a tract of land that is ten acres or larger and:

(A) the OSSF is not causing a nuisance or polluting groundwater;

(B) all parts of the OSSF are at least 100 feet from the property line;

(C) the effluent is disposed of on the property; and

(D) the single family dwelling is the only dwelling located on that tract of land.

(3) Connecting recreational vehicles or manufactured homes to rental spaces is not considered construction if the existing OSSF system is not altered.

(g) Exclusions. The following systems are not authorized by this subchapter and may require a permit under Chapter 205 or Chapter 305 of this title (relating to General Permits for Waste Discharges or Consolidated Permits, respectively) or an authorization under Chapter 331 of this title (relating to Undergound Injection Control):

(1) one or more systems that cumulatively treat and dispose of more than 5,000 gallons of sewage per day on one piece of property;

(2) any system that accepts waste that is either municipal, agricultural, industrial, or other waste as defined in Texas Water Code, Chapter 26;

(3) any system that will discharge into or adjacent to waters in the state; or

(4) any new cluster systems.

(h) Variances. Requests for variances from provisions of this chapter may be considered by the appropriate permitting authority on a case-by-case basis.

(1) A variance may be granted if the owner, or a professional sanitarian or professional engineer representing the owner, demonstrates to the satisfaction of the permitting authority that conditions are such that equivalent or greater protection of the public health and the environment can be provided by alternate means. Variances for separation distances shall not be granted unless the provisions of this chapter cannot be met.

(2) Any request for a variance under this subsection must contain planning materials prepared by either a professional sanitarian or a professional engineer (with appropriate seal, date, and signature).

(i) Unauthorized systems. Boreholes, cesspools, and seepage pits are prohibited for installation or use. Boreholes, cesspools, and seepage pits that treat or dispose of less than 5,000 gallons of sewage per day shall be closed according to §285.36 of this title (relating to Abandoned Tanks, Boreholes, Cesspools, and Seepage Pits). Boreholes, cesspools, and seepage pits that exceed 5,000 gallons of sewage per day must be closed as a Class V injection well under Chapter 331 of this title (relating to Underground Injection Control).

§285.4. Facility Planning.

(a) Land planning and site evaluation. Property that will use an OSSF for sewage disposal shall be evaluated for overall site suitability. For property located on the Edwards Aquifer recharge zone, see §285.40 of this title (relating to OSSFs on the Recharge Zone of the Edwards Aquifer) for additional requirements. The following requirements apply to all sites where an OSSF may be located.

(1) Residential lot sizing.

(A) Platted or unplatted subdivisions served by a public water supply. Subdivisions of single family dwellings platted or created after the effective date of this section, served by a public water supply and using individual OSSFs for sewage disposal, shall have lots of at least 1/2 acre.

(B) Platted or unplatted subdivisions not served by a public water supply. Subdivisions of single family dwellings platted or created after the effective date of this section, not served by a public water supply and using individual OSSFs, shall have lots of at least one acre.

(2) Manufactured housing communities or multi-unit residential developments. The owners of manufactured housing communities or multi-unit residential developments that are served by an OSSF and rent or lease space shall submit a sewage disposal plan to the permitting authority for approval. The total anticipated sewage flow for the individual tract of land shall not exceed 5,000 gallons per day. The plan shall be prepared by a professional engineer or professional sanitarian. This plan is in addition to the requirements of subsection (c) of this section.

(b) Approval of OSSF systems on existing small lots or tracts.

(1) Existing small lots or tracts, that do not meet the minimum lot size requirements under subsection (a) (1) (A) or (B) of this section and were either subdivided before January 1, 1988, or had a site-specific sewage disposal plan approved between January 1, 1988, and the effective date of this section, may be approved for an OSSF provided:

(A) minimum separation distances in §285.31(d) of this title (relating to General Criteria for Treatment and Disposal Systems) are maintained;

(B) the site has been evaluated according to §285.30 of this title (relating to Site Evaluation); and

(C) all other requirements of this chapter regarding treatment and disposal are met.

(2) The owner of a single family dwelling on an existing small lot or tract (property 1) may transport the wastewater from the dwelling to an OSSF at another location (property 2) provided that:

(A) both properties (properties 1 and 2) are owned by the same person;

(B) the owner or owner's agent demonstrates that no OSSF authorized under these rules can be installed on the property which contains the single-family dwelling (property 1);

(C) if property not owned by the owner of properties 1 and 2 must be crossed in transporting the sewage, the application includes all right-of-ways and permanent easements needed for the sewage conveyance lines; and

(D) the application includes an affidavit indicating that the owner or the owner's agent recorded the information required by §285.3(b)(3) on the real property deeds of both properties (properties 1 and 2). The deed recording shall state that the properties cannot be sold separately.

(c) Review of subdivision or development plans. Before the permit process for individual OSSFs can begin, persons proposing residential subdivisions, manufactured housing communities, multi-unit residential developments, business parks, or other similar uses and using OSSFs for sewage disposal shall submit planning materials for these developments to the permitting authority. The planning materials shall be prepared by a professional engineer or professional sanitarian and shall include an overall site plan, topographic map, 100-year floodplain map, soil survey, location of water wells, locations of easements as identified in §285.91(10) of this title (relating to Tables), and a complete report detailing the types of OSSFs to be considered and their compatibility with area-wide drainage and groundwater. A comprehensive drainage plan shall also be included in these planning materials. The permitting authority will either approve or deny the planning materials, in writing, within 45 days of receipt.

§285.5. Submittal Requirements for Planning Materials.

(a) Submittal of planning material. Planning materials required under this chapter shall be submitted by the owner, or owner's

agent, to the permitting authority for review and approval according to this section. All planning materials shall comply with this chapter and shall be submitted according to §285.91(9) of this title (relating to Tables). A legal description of the property where an OSSF is to be installed must be included with the permit application. Additionally, a scale drawing of the OSSF, all structures served by the OSSF, and all items specified in §285.30(b) of this title (relating to Site Evaluation) and §285.91(10) (relating to Tables) must be included with the permit application.

(1) Planning materials prepared by an owner or installer. Either the owner or installer may prepare the planning materials for any proposed OSSF not requiring the preparation of plans according to paragraphs (2) or (3) of this subsection.

(2) Planning materials prepared by a professional engineer or professional sanitarian. OSSF planning materials shall be prepared by a professional engineer or professional sanitarian (with appropriate seal, date, and signature) as follows, unless otherwise specified in this chapter:

(A) any proposals for treatment or disposal that are not standard as described in Subchapter D of this chapter (relating to Planning, Construction, and Installation Standards for OSSFs) unless otherwise specified under §285.91(9) of this title;

(B) any proposal for an OSSF to serve manufactured housing communities, recreational vehicle parks, or multi-unit residential developments where spaces are rented or leased; or

(C) all subdivision and development plans as required in §285.4(c) of this title (relating to Facility Planning).

(3) Planning materials prepared by a professional engineer. OSSF planning materials shall be prepared by a professional engineer (with appropriate seal, date, and signature) as follows, unless otherwise specified in this chapter:

(A) any proposals for an OSSF for a structure not exempted by Texas Civil Statutes, Article 3271a, §20; or

(B) all proposals for non-standard treatment systems that require secondary treatment as detailed in Subchapter D of this chapter.

(b) Review of planning materials.

(1) Standard planning materials. All planning materials for standard treatment or disposal systems shall be reviewed by the permitting authority.

(2) Non-standard planning materials. The executive director shall review and respond to initial plans for all non-standard planning material for any system described in §285.32(d) and §285.33(d)(6) of this title (relating to Criteria for Sewage Treatment Systems and Criteria for Effluent Disposal Systems, respectively) within ten calendar days of receipt of the planning materials. After favorable review by the executive director, the same non-standard system planning materials may be reviewed and approved by the authorized agent for different locations, provided the same site conditions exist for which the planning materials were developed.

(3) Proprietary planning materials. Planning materials for proprietary treatment or disposal systems, as described in §285.32(c) or §285.33(c) of this title, shall be submitted to the executive director for review. The systems and the testing protocol shall be approved by the executive director before the systems can be installed in the state.

§285.7. Maintenance Requirements.

(a) Maintenance requirements. Maintenance requirements for all OSSFs are identified in §285.91(12) of this title (relating to Tables).

(b) Maintenance company.

(1) At least one individual in the company shall hold either an Installer II license or a Class D or higher wastewater operator license.

(A) That individual shall also be certified by the manufacturer for the system being maintained. Effective 180 days after the effective date of these rules, the manufacturer shall certify the individual only after the individual has attended a training class approved by the executive director and conducted by the manufacturer.

(B) That individual shall also be trained by the professional engineer or professional sanitarian responsible for preparing the planning materials, if performing required maintenance on an OSSF that is professionally designed as a non-standard system.

(2) The maintenance company and the individual certified by the manufacturer will be responsible for fulfilling the requirements of the maintenance contract.

(c) Maintenance contracts. OSSFs required to have maintenance contracts are identified in §285.91(12) of this title. The OSSF shall be maintained and tested by the maintenance company holding a maintenance contract.

(1) Contract provisions. The OSSF maintenance contract shall, at a minimum:

(A) list items that are covered by the contract;

(B) specify a time frame in which the maintenance company will visit the property in response to a complaint by the property owner regarding the operation of the system;

(C) specify the name of the individual employed by the maintenance company who is certified by the manufacturer of the system;

(D) identify the frequency of routine maintenance and the frequency of the required testing and reporting; and

(E) identify who is responsible for maintaining the disinfection unit.

(2) Contract submittals. Unless excepted by paragraph (4) of this subsection, a copy of the signed maintenance contract shall be provided by the owner to the permitting authority before the authorization to construct is issued. Before the current contract expires, the owner of an OSSF is required to have a new maintenance contract signed. A copy of a new contract shall be submitted to the permitting authority at least 30 days before the contract expires.

(A) Initial maintenance contract. The initial written maintenance contract shall be effective for at least two years from the date the OSSF is first used. For a new single family dwelling, this date is the date of sale by the builder. For an existing single family dwelling this date is the date the notice of approval is issued by the permitting authority.

(B) On-going maintenance contract. After the expiration of the two-year initial maintenance contract, the owner shall have on-going maintenance performed by either the original maintenance company or another maintenance company qualified under subsection (b)(1) of this section, unless the exceptions in paragraph (4) of this subsection apply.

(3) Amendments or terminations.

(A) If the maintenance company changes the individual certified by the manufacturer under subsection (b) (1) (A) of this section, the maintenance company shall initiate an amendment of the contract. The contract shall be amended within 30 days after the change in personnel. The permitting authority shall be provided with a copy of the amended contract within 30 days after the amended contract is signed.

(B) If the maintenance company discontinues the maintenance contract, the maintenance company shall notify, in writing, the permitting authority, the manufacturer, and the owner at least 30 days before the date service will cease.

(C) If the owner discontinues the maintenance contract, the owner shall notify, in writing, the permitting authority, the manufacturer, and the maintenance company at least 30 days before the date service will cease.

(D) If a maintenance contract is discontinued or terminated, the owner shall contract with another maintenance company and provide the permitting authority with a copy of the new signed maintenance contract no later than 30 days after termination.

(4) Exceptions to maintenance contract. At the end of the initial two-year maintenance period, the owner of an aerobic treatment system for a single family dwelling located in a county with a population of less than 40,000 shall either maintain the system personally or shall obtain a new maintenance contract. If the owner elects to maintain the system directly, the owner shall, before performing any maintenance, obtain training for the system from an installer who has been certified by the manufacturer. At least 30 days before the expiration of the maintenance contract, the owner must provide the permitting authority a written statement, signed by the installer, stating that the owner has been trained to maintain the system. In the absence of a maintenance contract, the owner is responsible for maintenance, testing, and reporting results to the permitting authority. The permitting authority cannot require a contract as a condition for approval of a permit for an OSSF in a county with a population of less than 40,000 if the owner chooses to maintain the system.

(d) Testing and reporting. OSSFs that shall be tested are identified in §285.91(12) of this title.

(1) The maintenance company or the owner, if the owner decides to maintain the OSSF personally as allowed in subsection (c)(4) of this section, shall test and report for each system as required in §285.91(4) of this title. The report shall include any responses to owner complaints, the results of the maintenance company's findings, or the owner's findings, and the test results. The report shall be submitted to the permitting authority and the owner within 14 days after the date the test is performed.

(2) To provide the owner with a record of the maintenance check, the maintenance company shall install a weather resistant tag, or some other form of weather resistant identification, on the system at the beginning of each maintenance contract. This identification shall:

(A) identify the maintenance company;

(B) list the telephone number of the maintenance company;

(C) specify the start date of the contract; and

(D) be either punched or indelibly marked with the date the system was checked at the time of each maintenance check, including any maintenance check in response to owner complaints.

(3) The number of required tests may be reduced to two per year for all systems having electronic monitoring and automatic telephone or radio access that will notify the maintenance company of system or components failure and will monitor the amount of disinfection in the system. The maintenance company shall be responsible for ensuring that the electronic monitoring and automatic telephone or radio access systems are working properly.

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

Filed with the Office of the Secretary of State on May 24, 2001.

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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Proposal publication date: December 8, 2000
For further information, please call: (512) 239-4712

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SUBCHAPTER B. LOCAL ADMINISTRATION OF THE OSSF PROGRAM

30 TAC §285.10, §285.11

STATUTORY AUTHORITY

These repeals are adopted under the authority granted to the commission by the Texas Legislature in the Texas Health and Safety Code (THSC), §366.011. The revisions will be implemented pursuant to THSC, §366.012(a)(1), which requires the commission to adopt rules consistent with the policy defined in THSC, §366.001. The commission has authority to adopt rules to implement the requirements of THSC, §366.053(b), which requires the adoption of rules for permitting; THSC, §366.058, which requires adoption of rules addressing permit fees; and THSC, §366.072, which provides for the adoption of rules for registration.

These repeals are also adopted under the general authority granted in the Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of the TWC and the THSC.

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

Filed with the Office of the Secretary of State on May 24, 2001.

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: June 13, 2001
Proposal publication date: December 8, 2000
For further information, please call: (512) 239-4712

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30 TAC §§285.10 - 285.12

STATUTORY AUTHORITY

These new sections are adopted under the authority granted to the commission by the Texas Legislature in the Texas Health and Safety Code (THSC), §366.011. The revisions will be implemented pursuant to THSC, §366.012(a)(1), which requires the commission to adopt rules consistent with the policy defined in THSC, §366.001. The commission has authority to adopt rules to implement the requirements of THSC, §366.053(b), which requires the adoption of rules for permitting; THSC, §366.058, which requires adoption of rules addressing permit fees; and THSC, §366.072, which provides for the adoption of rules for registration.

These new sections are also adopted under the general authority granted in the Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of the TWC and the THSC.

§285.10. Delegation to Authorized Agents.

(a) Responsibility of the authorized agent. An authorized agent is responsible for the proper implementation of this chapter in its area of jurisdiction.

(1) An authorized agent shall administer its OSSF program according to the OSSF order, ordinance, or resolution approved by the executive director.

(2) An authorized agent shall enforce this chapter and the Texas Health and Safety Code, Chapter 366.

(b) Requirements and Procedures.

(1) Upon request from a local governmental entity, the executive director shall forward a description of the delegation process and provide a copy of the executive director's model order, ordinance, or resolution.

(2) If the OSSF program is delegated to a municipality, the jurisdiction of the authorized agent will be limited to the municipality's incorporated area.

(3) To receive delegation as an authorized agent, a local governmental entity shall draft an order, ordinance, or resolution that meets the requirements of this chapter and the Texas Health and Safety Code, Chapter 366, §366.032. The local governmental entity shall use the model order, ordinance, or resolution as a guide for developing its order, ordinance, or resolution.

(4) If the local governmental entity proposes more stringent standards than those in this chapter, the local governmental entity shall submit the proposed order, ordinance, or resolution to the executive director for review and comment before publishing notice.

(A) Each more stringent requirement shall be justified based on greater public health and safety protection. The written justification shall be submitted to the executive director with the draft order, ordinance, or resolution.

(B) The executive director shall review the draft order, ordinance, or resolution and provide comments to the local governmental entity within 30 days of receipt.

(C) If the local governmental entity's draft order, ordinance, or resolution meets the requirements of this chapter, the executive director will notify the local governmental entity in writing to continue the process outlined in this subsection.

(D) If the local governmental entity's draft order, ordinance, or resolution does not meet the requirements of this chapter, the executive director will not continue the review process until all requirements have been met. The executive director will notify the local governmental entity in writing of all deficiencies.

(5) If the local governmental entity proposes using the model order, ordinance, or resolution without more stringent standards, or if the executive director has approved the draft order, ordinance, or resolution with more stringent standards, the local governmental entity shall hold a public meeting to discuss the proposed order, ordinance, or resolution.

(A) The local governmental entity shall publish notice of a public meeting that will be held to discuss the adoption of the proposed order, ordinance, or resolution. The notice must be published in a regularly published newspaper of general circulation in the entity's area of jurisdiction.

(B) The public notice shall include the time, date, and location of the public meeting.

(C) The public notice shall be published at least 72 hours before the public meeting, but not more than 30 days before the meeting.

(6) The local governmental entity shall provide the executive director with the following:

(A) a copy of the public notice as it appeared in the newspaper;

(B) a publisher's affidavit from the newspaper in which the public notice was published;

(C) a certified copy of the minutes of the meeting when the order, ordinance, or resolution was adopted; and

(D) a certified copy of the order, ordinance, or resolution that was passed by the entity.

(7) Upon receiving the information listed in paragraph (6) of this subsection, the executive director shall have 30 days to review the materials to ensure the local governmental entity has complied with the requirements of this chapter and the Texas Health and Safety Code, Chapter 366.

(A) After the review has been completed and all the requirements have been met, the executive director shall sign the order approving delegation and notify the local governmental entity by mail.

(B) If the executive director determines during the review that the materials do not comply with the requirements of this section, the executive director will issue a letter to the local governmental entity detailing the deficiencies.

(8) The local governmental entity's order, ordinance, or resolution shall be effective on the date the order approving delegation is signed by the executive director.

(9) Any appeal of the executive director's decision shall be done according to Chapter 50, §50.39 of this title (relating to Motion for Reconsideration).

(c) Amendments to existing orders, ordinances, or resolutions.

(1) To ensure that the authorized agent's program is consistent with current commission rules, the executive director may require periodic amendments of OSSF orders, ordinances, or resolutions.

(2) An authorized agent may initiate an amendment. The authorized agent shall use the procedures in subsection (b) of this section.

(3) The amendment shall be effective on the date the amendment is approved by the executive director.

(d) Relinquishment of delegated authority by authorized agent.

(1) When an authorized agent decides to relinquish authority to regulate OSSFs, the following shall occur:

(A) the authorized agent shall inform the executive director by certified mail at least 30 days before publishing notice of intent to relinquish authority;

(B) the authorized agent shall hold a public meeting to discuss its intent to relinquish the delegated authority;

(i) the authorized agent shall publish notice of a public meeting that will be held to discuss its intent to relinquish the delegated authority. The notice must be published in a regularly published newspaper of general circulation in the entity's area of jurisdiction;

(ii) the public notice shall include the time, date, and location of the public meeting;

(iii) the public notice shall be published at least 72 hours before the public meeting, but not more than 30 days before the meeting;

(C) the authorized agent must, either at the meeting discussed in subparagraph (B) of this paragraph, or at another meeting held within 30 days after the first meeting, formally decide whether to repeal the order, ordinance, or resolution; and

(D) the authorized agent shall forward to the executive director copies of the public notice, a publisher's affidavit of public notice, and a certified copy of the minutes of the meeting in which the authorized agent formally acted.

(2) Before the executive director will process a relinquishment order, the authorized agent and the executive director shall determine the exact date the authorized agent shall surrender its delegated authority. Until that date, the authorized agent will retain all authority and responsibility for the delegated program.

(3) The executive director shall process the request for relinquishment within 30 days of receipt of the copies of documentation required in paragraph (1)(D) of this subsection. After processing the request for relinquishment, the executive director will issue an order and shall assume responsibility for the OSSF program.

(4) On or after the date determined by the authorized agent and the executive director, the authorized agent shall repeal it's order, ordinance, or resolution. Within ten days after the authorized agent repeals it's order, ordinance, or resolution, the authorized agent shall forward a certified copy of the repeal to the executive director.

(e) Revocation of authorized agent delegation.

(1) An authorized agent's OSSF order, ordinance, or resolution may be revoked at any time by order of the commission for failure to implement, administer, or enforce this chapter.

(2) If the executive director determines that cause exists for revocation, the executive director will:

(A) file a petition with the commission according to Chapter 70 of this title (relating to Enforcement) seeking revocation;

(B) initiate the hearing process with the State Office of Administrative Hearings according to Chapter 80 of this title (relating to Contested Case Hearings); and

(i) the executive director shall publish notice of a public hearing that will be held to discuss the commission's possible revocation of the delegated authority. The notice must be published in a regularly published newspaper of general circulation in the entity's area of jurisdiction;

(ii) the public notice shall include the time, date, and location of the public hearing; and

(iii) the public notice shall be published at least 72 hours before the public hearing, but not more than 30 days before the hearing.

(C) hold a public hearing to discuss its possible revocation of the delegated authority.

(3) After an opportunity for a hearing, the commission may:

(A) issue an order revoking the authorized agent's delegation;

(B) issue an order requiring the authorized agent to take certain action or actions in order to retain delegation; or

(C) take no action.

(4) If the authorized agent's delegation is revoked, the executive director shall assume responsibility for the OSSF program in the former authorized agent's jurisdiction.

(5) An authorized agent may consent to the revocation of its OSSF delegation in writing anytime before the hearing. If the authorized agent consents to the revocation, the executive director may revoke the authorized agent's delegated authority without a hearing.

§285.11. General Requirements.

(a) General Administrative Requirements for Authorized Agents. OSSF permitting, construction, and inspection requirements are in §285.3 of this title (relating to General Requirements).

(b) Fees. The OSSF permit and inspection fees will be set by the authorized agent. Additionally, a fee of $10 shall be assessed for each OSSF permit for the On-Site Wastewater Treatment Research Council as required in the Texas Health and Safety Code, Chapter 367.

(c) Complaints. The authorized agent shall investigate all complaints within 30 days after receipt. After completing the investigation, the authorized agent shall take appropriate and timely action according to §285.71 of this title (relating to Authorized Agent Enforcement of OSSFs).

(d) Appeals. Appeals of an authorized agent's decision will be made through the appeal procedures stated in the authorized agent's order, ordinance, or resolution.

(e) Authorized Agents Reporting Requirements.

(1) The authorized agent shall notify the executive director, in writing, of any change of the designated representative within 30 days after the date of the change.

(2) Each authorized agent shall provide to the executive director an OSSF monthly activity report on the form provided by the executive director, within ten days after the end of the month.

§285.12. Review of Locally Administered Programs.

Not more than once a year, the executive director shall review an authorized agent's program for compliance with requirements established by the Texas Health and Safety Code, Chapter 366; this chapter; and the order, ordinance, or resolution adopted by the authorized agent. If the executive director's review determines that an authorized agent is not properly implementing, administering, or enforcing the requirements of this chapter, the Texas Health and Safety Code, or the requirements in the authorized agent's order, ordinance, or resolution, the commission may hold a hearing to determine whether to revoke the authorized agent's delegated authority under §285.10(e) of this title (relating to Delegation to Authorized Agents).

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

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Margaret Hoffman
Director, Environmental Law Division
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For further information, please call: (512) 239-4712

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SUBCHAPTER C. COMMISSION ADMINISTRATION OF THE OSSF PROGRAM IN AREAS WHERE NO LOCAL ADMINISTRATION EXISTS

30 TAC §285.20, §285.21

STATUTORY AUTHORITY

These repeals are adopted under the authority granted to the commission by the Texas Legislature in the Texas Health and Safety Code (THSC), §366.011. The revisions will be implemented pursuant to THSC, §366.012(a)(1), which requires the commission to adopt rules consistent with the policy defined in THSC, §366.001. The commission has authority to adopt rules to implement the requirements of THSC, §366.053(b), which requires the adoption of rules for permitting; THSC, §366.058, which requires adoption of rules addressing permit fees; and THSC, §366.072, which provides for the adoption of rules for registration.

These repeals are also adopted under the general authority granted in the Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of the TWC and the THSC.

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SUBCHAPTER C. COMMISSION ADMINISTRATION OF THE OSSF PROGRAM IN AREAS WHERE NO AUTHORIZED AGENT EXISTS

30 TAC §285.20, §285.21

STATUTORY AUTHORITY

These new sections are adopted under the authority granted to the commission by the Texas Legislature in the Texas Health and Safety Code (THSC), §366.011. The revisions will be implemented pursuant to THSC, §366.012(a)(1), which requires the commission to adopt rules consistent with the policy defined in THSC, §366.001. The commission has authority to adopt rules to implement the requirements of THSC, §366.053(b), which requires the adoption of rules for permitting; THSC, §366.058, which requires adoption of rules addressing permit fees; and THSC, §366.072, which provides for the adoption of rules for registration.

These new sections are also adopted under the general authority granted in the Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of the TWC and the THSC.

§285.20. General Requirements.

(a) General Administrative Requirements. OSSF permitting, construction, and inspection requirements are in §285.3 of this title (relating to General Requirements).

(b) Complaints. The executive director shall investigate all complaints within 30 days after receipt. After completing the investigation, the executive director shall take appropriate and timely action according to §285.70 of this title (relating to Duties of Owners With Malfunctioning OSSFs).

(c) Appeals. All appeals under this subchapter shall be sent in writing to the director of the appropriate regional office.

§285.21. Fees.

(a) The application fee for an OSSF permit is:

(1) $200 for an OSSF serving a single family dwelling; or

(2) $400 for all other types of OSSFs.

(b) A fee of $10 shall also be collected for each OSSF permit for the On-Site Wastewater Treatment Research Council as required by the Texas Health and Safety Code, Chapter 367.

(c) The fees are payable when the owner, or owner's agent, applies to the executive director for an OSSF permit. The fee shall

be submitted to the appropriate regional office and shall be paid by a money order or check. Payments shall be made payable to the Texas Natural Resource Conservation Commission.

(d) The reinspection fee shall be equal to one-half of the permit fee that was in effect at the time the original application was submitted to the regional office.

(e) Refunds of the application fee shall not be granted.

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

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SUBCHAPTER D. PLANNING, CONSTRUCTION AND INSTALLATION STANDARDS FOR OSSFS

30 TAC §§285.30, 285.31, 285.39

STATUTORY AUTHORITY

These repeals are adopted under the authority granted to the commission by the Texas Legislature in the Texas Health and Safety Code (THSC), §366.011. The revisions will be implemented pursuant to THSC, §366.012(a)(1), which requires the commission to adopt rules consistent with the policy defined in THSC, §366.001. The commission has authority to adopt rules to implement the requirements of THSC, §366.053(b), which requires the adoption of rules for permitting; THSC, §366.058, which requires adoption of rules addressing permit fees; and THSC, §366.072, which provides for the adoption of rules for registration.

These repeals are also adopted under the general authority granted in the Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of the TWC and the THSC.

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SUBCHAPTER D. PLANNING, CONSTRUCTION, AND INSTALLATION STANDARDS FOR OSSFS

30 TAC §§285.30 - 285.36, 285.39

STATUTORY AUTHORITY

These new sections and amendments are adopted under the authority granted to the commission by the Texas Legislature in the Texas Health and Safety Code (THSC), §366.011. The revisions will be implemented pursuant to THSC, §366.012(a)(1), which requires the commission to adopt rules consistent with the policy defined in THSC, §366.001. The commission has authority to adopt rules to implement the requirements of THSC, §366.053(b), which requires the adoption of rules for permitting; THSC, §366.058, which requires adoption of rules addressing permit fees; and THSC, §366.072, which provides for the adoption of rules for registration.

These new sections and amendments are also adopted under the general authority granted in the Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of the TWC and the THSC.

§285.30. Site Evaluation.

(a) General Requirement. To document the soil and site conditions, a complete site evaluation shall be performed on every tract of land where an OSSF will be installed. A report providing the site evaluation criteria in subsection (b) of this section shall be submitted with the planning materials.

(b) Site evaluation criteria. All aspects of the site evaluation shall be performed according to this section. The information obtained during the site evaluation shall be used to determine the type and size of the OSSF.

(1) Soil analysis. The individual performing the site evaluation shall either drill two soil borings or excavate two backhoe pits at opposite ends of the proposed disposal area to determine the characteristics of the soil. In areas of high soil variability, the permitting authority may require additional borings or backhoe pits. The borings or backhoe pits shall either be excavated to a depth of two feet below the proposed excavation of the disposal area, or to a restrictive horizon, whichever is less.

(A) Soil texture analysis. A general texture analysis shall be performed to identify the classification of the soil. The different soils in each class are provided in §285.91(6) of this title (relating to Tables).

(i) Soil Class Ia. This class includes sandy textured soils that contain more than 30% gravel.

(ii) Soil Class Ib. This class includes sand and loamy sand soils that contain less than or equal to 30% gravel.

(iii) Soil Class II. This class includes sandy loam and loam soils.

(iv) Soil Class III. This class includes silt, silt loam, silty clay loam, clay loam, sandy clay loam, and sandy clay soils.

(v) Soil Class IV. This class includes silty clay and clay soils.

(B) Gravel analysis. Class II or Class III soils containing gravel shall be further evaluated by using a sieve analysis to determine the percentage of gravel by volume and the size of the gravel as indicated in §285.91(5) of this title.

(C) Restrictive horizons analysis. The soils within the borings or backhoe pits shall be analyzed to determine if a restrictive horizon exists. Clay subsoils, rock, and plugged laminar soils are considered restrictive horizons. Restrictive horizons are recognized by an abrupt change in texture from a sandy or loamy surface horizon to:

(i) a clayey subsoil which an auger will not penetrate; or

(ii) rock-like material which an auger will not penetrate.

(2) Groundwater evaluation. The soil profile shall be examined to determine if there are indications of groundwater within 24 inches of the bottom of the excavation.

(A) If the designated representative and the individual performing the site evaluation disagree on the presence of groundwater, the designated representative shall verify groundwater information using the Natural Resources Conservation Service (NRCS) soil survey for that county, if it is available.

(B) If the designated representative or the individual disagree with the NRCS soil survey, or if an NRCS soil survey does not exist for that county, the owner has the option to retain a certified professional soil scientist to evaluate the presence of groundwater and present that information to the designated representative for a final decision.

(3) Surface drainage analysis.

(A) Topography. The slope of each tract of land where an OSSF will be installed, areas of poor drainage such as depressions, and areas of complex slope patterns where slopes are dissected by gullies and ravines shall be determined.

(B) Flood hazard. The 100-year floodplain for each tract of land where an OSSF will be installed shall be determined from either Federal Emergency Management Agency (FEMA) maps or from a flood study prepared by a professional engineer when FEMA maps are not available.

(4) Separation requirements. All features in the area where the OSSF is to be installed that could be contaminated by the OSSF or could prevent the proper operation of the system shall be identified during the site evaluation. The separation requirements are in §285.91(10) of this title.

§285.31. Selection Criteria for Treatment and Disposal Systems.

(a) General Requirement. The type and size of an OSSF shall be determined on the basis of the soil and site information developed according to §285.30 of this title (relating to Site Evaluation).

(b) Suitability. A standard subsurface absorption system may be used if all the soil and site criteria are determined to be suitable under §285.91(5) of this title (relating to Tables). If one or more of the soil and site criteria categories are determined to be unsuitable, a standard subsurface absorption system cannot be used except as noted in §285.91(5) of this title. If it is determined that a standard subsurface absorption system cannot be used, either a proprietary or a non-standard system may be used, provided all soil and site criteria for that system can be met as required in §285.91(13) of this title.

(c) Surface drainage criteria.

(1) Topography. Uniform slopes under 30% are suitable for standard subsurface absorption systems. If the slope is less than 2%, steps shall be taken to ensure there is adequate surface drainage over any subsurface disposal field. The excavation for a standard subsurface absorption system shall be parallel to the contour of the ground.

(2) Flood hazard. Any potential OSSF site within a 100-year floodplain is subject to special planning requirements. The OSSF shall be located so that a flood will not damage the OSSF during a flood event, resulting in contamination of the environment. Planning materials shall indicate how tank flotation is eliminated. Additionally, if the site is within the regulated floodway, a professional engineer shall demonstrate that:

(A) the system shall not increase the height of the flood;

(B) all components, with the exception of risers, chlorinators, cleanouts, sprinklers, and inspection ports, shall be completely buried without adding fill; and

(C) non-buried components (e.g. alarms, junction boxes, and compressors) shall be elevated above the 100-year flood elevation.

(d) Separation requirements. OSSFs shall be separated from features, in the area where the OSSF is to be installed, that could be contaminated by the OSSF or could prevent the proper operation of the system. The separation requirements are in §285.91(10) of this title.

§285.32. Criteria for Sewage Treatment Systems.

(a) Pipe from building to treatment system.

(1) The pipe from the sewer stub out to the treatment system shall be constructed of cast iron, ductile iron, polyvinyl chloride (PVC) Schedule 40, standard dimension ratio (SDR) 26 or other material approved by the executive director.

(2) The pipe shall be watertight.

(3) The slope of the pipe shall be no less than 1/8 inch fall per foot of pipe.

(4) The sewer stub out should be as shallow as possible to facilitate gravity flow.

(5) A two-way cleanout plug must be provided between the sewer stub out and the treatment tank. Only sanitary type fittings constructed of PVC Schedule 40 or SDR 26 shall be used on this section of the sewer. An additional cleanout plug shall be provided every 50 feet on long runs of pipe and within five feet of 90 degree bends.

(6) Additional cleanout plugs shall be of the single sanitary type.

(7) The pipe shall have a minimum inside diameter of three inches.

(b) Standard treatment systems.

(1) Septic tanks. A septic tank shall meet the following requirements.

(A) Tank volume. The liquid volume of a septic tank, measured from the bottom of the outlet, shall not be less than established in §285.91(2) of this title (relating to Tables). Additionally, the liquid depth of the tank shall not be less than 30 inches.

(B) Inlet and outlet devices. The flowline of the tank's inlet device in the first compartment of a two- compartment tank, or in the first tank in a series of tanks, shall be at least three inches higher than the flowline of the outlet device. For a configuration of the tank and inlet and outlet devices, see §285.90(6) and (7) of this title (relating to Figures). The inlet devices shall be "T" branch fittings, constructed baffles or other structures or fittings approved by the executive director. The outlet devices shall use a "T" unless an executive director approved fitting is installed on the outlet. All inlet and outlet devices shall be installed water tight to the septic tank walls and shall be a minimum of three inches in diameter.

(C) Baffles and series tanks. All septic tanks shall be divided into two or three compartments by the use of baffles or by connecting two or more tanks in a series.

(i) Baffled tanks. In a baffled tank, the baffle shall be located so that one half to two thirds of the total tank volume is located in the first compartment. Baffles shall be constructed the full width and height of the tank with a gap between the top of the baffle and the tank top. The baffle shall have an opening located below the liquid level of the tank at a depth between 25% and 50% of the liquid level. The opening may be a slot or hole. If a "T" is fitted to the slot or hole, the inlet to the fitting shall be at the depth stated in this paragraph. See §285.90(6) of this title for details. Any metal structures, fittings, or fastenings shall be stainless steel.

(ii) Series tanks. Two or more tanks shall be arranged in a series to attain the required liquid volume. The first tank in a two-tank system shall contain at least one-half the required volume. The first tank in a three-tank system shall contain at least one-third of the total required volume, but no less than 500 gallons. The first tank in a four or more tank system shall contain no less than 500 gallons, and the last tank in a four or more tank system shall contain no more than one third of the total required volume. Interconnecting inlet and outlet devices may be installed at the same elevation for multiple tank installations.

(D) Inspection and cleanout ports. All septic tanks shall have inspection or cleanout ports located on the tank top over the inlet and outlet devices. Each inspection or cleanout port shall be offset to allow for pumping of the tank. The ports may be configured in any manner as long as the smallest dimension of the opening is at least 12 inches, and is large enough to provide for maintenance and for equipment removal. Septic tanks buried more than 12 inches below the ground surface shall have risers over the port openings. The risers shall extend from the tank surface to no more than six inches below the ground, be sealed to the tank, and capped.

(E) Septic tank design and construction materials. The septic tank shall be of sturdy, water-tight construction. The tank shall be designed and constructed so that all joints, seams, component parts, and fittings prevent groundwater from entering the tank, and prevent wastewater from exiting the tank, except through designed inlet and outlet openings. Materials used shall be steel-reinforced poured-in-place concrete, steel-reinforced precast concrete, fiberglass, reinforced plastic polyethylene, or other materials approved by the executive director. Metal septic tanks are prohibited. The septic tank shall be structurally designed to resist buckling from internal hydraulic loading and exterior loading caused by earth fill and additional surface loads. Tanks exhibiting deflections, leaks, or structural defects shall not be used. Sweating at construction joints is acceptable on concrete tanks.

(i) Precast concrete tanks. In addition to the general requirements in subparagraph (E) of this paragraph, precast concrete tanks shall conform to requirements in the Materials and Manufacture Section and the Structural Design Requirements Section of American Society for Testing and Materials (ASTM) Designation: C 1227, Standard Specification for Precast Concrete Septic Tanks (2000) or under any other standards approved by the executive director.

(ii) Fiberglass and plastic polyethylene tank specifications.

(I) The tank shall be fabricated to perform its intended function when installed. The tank shall not be adversely affected by normal vibration, shock, climate conditions, nor typical household chemicals. The tank shall be free of rough or sharp edges that would interfere with installation or service of the tank.

(II) Full or empty tanks shall not collapse or rupture when subjected to earth and hydrostatic pressures.

(iii) Poured-in-place concrete tanks. Concrete tanks shall be structurally sound and water-tight. The concrete tank shall be designed by a professional engineer.

(iv) Tank manufacturer specifications. All precast or prefabricated tanks shall be clearly and permanently marked, tagged, or stamped with the manufacturer's name, address, and tank capacity. The identification shall be near the level of the outlet and be clearly visible. Additionally, the direction of flow into and out of the tank shall be indicated by arrows or other identification, and shall be clearly marked at the inlet and outlet.

(F) Installation of tanks. For gravity disposal systems, septic tanks must be installed with at least a 12 inch drop in elevation from the bottom of the outlet pipe to the bottom of the disposal area. A minimum of four inches of sand, sandy loam, clay loam, or pea gravel, free of rock larger than 1/2 inch in diameter, shall be placed under and around all tanks, except poured-in-place concrete tanks. Unless otherwise approved by the permitting authority, tank excavations shall be left open until they have been inspected by the permitting authority. Tank excavations must be backfilled with soil or pea gravel, that is free of rock larger than 1/2 inch in diameter. Class IV soils and gravel larger than one- half inch in diameter are not acceptable for use as backfill material. If the top of a septic tank extends above the ground surface, soil may be mounded over the tank to maintain slope to the drainfield.

(G) Pretreatment (Trash) tanks. If an aerobic treatment unit does not prevent plastic and other non- digestible sewage from interfering with aeration lines and diffusers, the executive director may require the use of a pretreatment tank. All pretreatment tanks shall meet all applicable structural and fitting requirements of this section.

(2) Intermittent sand filters. A typical layout and cross-section of an intermittent sand filter is presented in §285.90(8) of this title. Requirements for intermittent sand filters are as follows.

(A) Sand media specifications. Sand filter media must meet ASTM C-33 specifications as outlined in §285.91(11) of this title.

(B) Loading rate. The loading rate shall not exceed 1.2 gallons per day per square foot.

(C) Surface area. The minimum surface area shall be calculated using the formula: Q/1.2=Surface Area (Square Feet), where Q is the wastewater flow in gallons per day.

(D) Thickness of sand media. There shall be a minimum of 24 inches of sand media.

(E) Filter bed containment. The filter bed containment shall be an impervious lined pit or tank. Liners shall meet the specifications detailed in §285.33(b)(2)(A) of this title (relating to Criteria for Effluent Disposal Systems).

(F) Underdrains. For gravity discharge of effluent to a drainfield, there shall be a three inch layer of pea gravel over a six inch layer of 0.75 inch gravel, that contains the underdrain collection pipe. When pumpwells are to be used to pump the effluent from the underdrain to the drainfield, they must be constructed of concrete or plastic sewer pipe. The pumpwell must contain a sufficient number of holes so that effluent can flow from the gravel void space as rapidly as the effluent is pumped out of the pumpwell to the drainfield. Refer to §285.90(9) of this title.

(c) Proprietary treatment systems. This subsection does not apply to proprietary septic tanks described in subsection (b)(1) of this section.

(1) Installation. Proprietary treatment systems shall be installed according to this subchapter. If the manufacturer has installation specifications that are more stringent than given in this subchapter, the manufacturer shall submit these specifications to the executive director for review. If approved by the executive director, the treatment systems may be installed according to these more stringent specifications. Any subsequent changes to these manufacturer's installation specifications must be approved by the executive director before installation. Tank excavations shall be backfilled according to the backfill provisions in subsection (b)(1)(F) of this section.

(2) System maintenance. Ongoing maintenance contracts are required for all proprietary treatment systems. The maintenance contract shall satisfy §285.7(c) of this title (relating to Maintenance Requirements).

(3) Electrical wiring. Electrical wiring for proprietary systems shall be according to §285.34(c) of this title (relating to Other Requirements).

(4) Approval of proprietary treatment systems. Proprietary treatment systems must be approved by the executive director prior to their installation and use. Approval of proprietary treatment systems shall follow the procedures found in this section. After the effective date of these rules, only systems tested according to subparagraph (A) or (B) of this paragraph will be placed on the list of approved systems. The list may be obtained from the executive director. All systems on the list of approved systems on the effective date of these rules shall continue to be listed subject to the retesting requirements in paragraph (5) of this subsection. In addition, all proprietary treatment systems undergoing testing under this paragraph on the effective date of these rules shall be considered for inclusion on the list of approved systems.

(A) Treatment systems that have been tested by and are currently listed by NSF International as Class I systems under NSF Standard 40 (1999), or have been tested and certified as Class I systems according to NSF Standard 40 (1999) by an American National Standard Institute (ANSI) accredited testing institution, or under any other standards approved by the executive director, shall be considered for approval by the executive director. All systems approved by the executive director on the effective date of these rules shall continue to be listed on the list of approved systems, subject to retesting under the requirements of NSF Standard 40 (1999) and Certification Policies for Wastewater Treatment Devices (1997) or under any standards approved by the executive director. The manufacturers of proprietary treatment systems and the accredited certification institution must comply with all the provisions of NSF Standard 40 (1999) and Certification Policies for Wastewater Treatment Devices (1997) or under any standards approved by the executive director.

(B) Treatment systems that will not be accepted for testing because of system size or type by NSF International, or ANSI accredited third party testing institutions, and are not approved systems at the time of the effective date of these rules, may only be approved in the following manner.

(i) The proprietary systems shall be tested by an independent third party for two years and all the supporting data from the test shall be submitted to the executive director for review and approval, or denial before the system is marketed for sale in the state.

(ii) The independent third party shall obtain a temporary authorization from the executive director before testing. The temporary authorization shall contain the following:

(I) the number of systems to be tested (between 20 and 50);

(II) the location of the test sites (the test sites must be typical of the sites where the system will be used if final authorization is granted);

(III) provisions as to how the proprietary system will be installed and maintained;

(IV) the testing protocol for collecting and analyzing samples from the system;

(V) the equipment monitoring procedures, if applicable; and

(VI) provisions for recording data and data retention necessary to evaluate the performance as well as the effect of the proprietary system on public health, groundwater, and surface waters.

(iii) Permitting authorities may issue authorizations to construct upon receipt of the temporary authorization. The owner must be advised, in writing, that the system is temporarily approved for testing. If a system fails, regardless of the reason, it shall be replaced with a system that meets the requirements of this subchapter by the manufacturer at the manufacturer's expense. A system installed under this subparagraph is the responsibility of the manufacturer until the system has obtained final authorization by the executive director according to this subparagraph.

(iv) Upon completion of the two-year test period, the executive director shall require the independent third party to submit a detailed report on the performance of the system. After evaluating the report, the executive director may issue conditional approval of the system, or may deny use of the system.

(I) The conditional approval will authorize installations only in areas similar to the area in which the system was tested.

(II) The conditional approval shall be for a specified performance and evaluation (monitoring) period, not to exceed an additional five years. The system must be monitored according to a plan approved by the executive director. Approval or disapproval of these systems will be based on their performance during the monitoring period. Failure of one or more of the installed systems may be cause for disapproval of the proprietary system. The owner must be advised, in writing, that the system is conditionally approved.

(III) If the executive director denies use of the system after the two-year period, the executive director shall provide, in writing, the reasons for denying the use of the system. If a system fails, regardless of the reason, it shall be replaced with a system that meets the requirements of this subchapter by the manufacturer at the manufacturer's expense.

(v) Upon successful completion of the monitoring period, the monitoring requirements may be lifted by the executive director, the notice of approval may be made permanent for the test systems and the systems will be deemed suitable for use in conditions similar to areas in which the systems were tested and monitored.

(5) System reviews. The manufacturers of systems that are approved for listing under this section, or included under §285.33(c) of this title (relating to Criteria for Effluent Disposal Systems), shall ensure that their systems are reviewed every seven years, or as often as deemed necessary by the executive director, starting from the date the system was originally added to the executive director's approved list. All reviews shall be completed before the end of the seven-year period. The manufacturer of any system that was approved by the executive director more than seven years before the effective date of these rules, will be given 365 days from the effective date of these rules to complete a review.

(A) The review shall be performed by either an ANSI accredited institution according to the reevaluation requirements in NSF Standard 40 (1999) and Certification Policies for Wastewater Treatment Devices (1997), or under any standards approved by the executive director, or by an independent third party for those systems not tested under NSF Standard 40.

(B) If the system being reviewed was not approved under the requirements of NSF Standard 40, the independent third party shall evaluate between 20 and 50 systems in the state that have been in operation for at least two years and are the same design as originally approved.

(C) The review under this subsection shall include an evaluation of:

(i) the short-term and long-term effectiveness of the system;

(ii) the structural integrity of the system;

(iii) the maintenance of the system;

(iv) owner access to maintenance support;

(v) any impacts that system failures may have had on the environment; and

(vi) an evaluation of the effectiveness of the manufacturer's installer training program.

(D) Any system that is not approved by the executive director as a result of the review will be removed from the list of approved systems. The manufacturer shall ensure that maintenance support remains available for the existing systems.

(d) Non-standard treatment systems. All OSSFs not described or defined in subsections (b) and (c) of this section are non-standard treatment systems. These systems shall be designed by a professional engineer or a professional sanitarian, and the planning materials shall be submitted to the permitting authority for review according to §285.5(b)(2) of this title (relating to Submittal Requirements for Planning Materials). Upon approval of the planning materials, an authorization to construct will be issued by the permitting authority.

(1) Non-standard treatment systems include all forms of the activated sludge process, rotating biological contactors, recirculating sand filters, trickling type filters, submerged rock biological filters, and sand filters not described in subsection (b)(2) of this section.

(2) The planning materials for non-standard treatment systems submitted for review will be evaluated using the criteria established in this chapter, or basic engineering and scientific principles.

(3) Approval for a non-standard treatment system is limited to the specific system described in the planning materials. Approval is on a case-by-case basis only.

(4) The need for ongoing maintenance contracts shall be determined by the permitting authority based on the review required by §285.5(b) of this title. If the permitting authority determines that a maintenance contract is required, the contract must meet the requirements in §285.7 of this title.

(5) Electrical wiring for non-standard treatment systems shall be installed according to §285.34(c)(4) of this title.

(e) Effluent quality. The following effluent criteria shall be met by the treatment systems for those disposal systems listed in §285.33 of this title that require secondary treatment.
Figure: 30 TAC §285.32(e)

§285.33. Criteria for Effluent Disposal Systems.

(a) General requirements.

(1) All disposal systems in this section shall have an approved treatment system as specified in §285.32(b) - (d) of this title (relating to Criteria for Sewage Treatment Systems).

(2) All criteria in this section shall be met before the permitting authority issues an authorization to construct.

(3) The pipe between all treatment tanks and the pipe from the final treatment tank to a gravity disposal system shall be a minimum of three inches in diameter and be American Society for Testing and Materials (ASTM) 3034, Standard dimension ratio (SDR) 35 polyvinyl chloride (PVC) pipe or a pipe with an equivalent or stronger pipe stiffness at a 5% deflection. The pipe must maintain a continuous fall to the disposal system.

(4) The pipe from the final treatment tank to a gravity disposal system shall be a minimum of five feet in length.

(b) Standard disposal systems. Acceptable standard disposal methods shall consist of a drainfield to disperse the effluent either into adjacent soil (absorptive) or into the surrounding air through evapotranspiration (evaporation and transpiration).

(1) Absorptive drainfield. An absorptive drainfield shall only be used in suitable soil. There shall be two feet of suitable soil from the bottom of the excavation to either a restrictive horizon or to groundwater.

(A) Excavation. The excavation must be made in suitable soils as described in §285.31(b) of this title (relating to General Criteria for Treatment and Disposal Systems).

(i) The excavation shall be at least 18 inches deep but shall not exceed a depth of either three feet or six inches below the soil freeze depth, whichever is deeper. Single excavations shall not exceed 150 feet.

(ii) In areas of the state where annual precipitation is less than 26 inches per year (as identified in the *Climatic Atlas of Texas*, (1983) published by the Texas Department of Water Resources or other standards approved by the executive director), and suitable soils (Class Ib, II, or III) lie below unsuitable soil caps, the maximum permissible excavation depth shall be five feet.

(iii) Multiple excavations must be separated horizontally by at least three feet of undisturbed soil. The sidewalls and bottom of the excavation must be scarified as needed. When there are multiple excavations, it is recommended that the ends be looped together.

(iv) The bottom of the excavation shall be not less than 18 inches in width.

(v) The bottom of the excavation shall be level to within one inch over each 25 feet of excavation or within three inches over the entire excavation, whichever is less.

(vi) If the borings or backhoe pits excavated during the site evaluation encounter a rock horizon and the site evaluation shows that there is both suitable soil from the bottom of the rock horizon to two feet below the bottom of the proposed excavation and no groundwater anywhere within two feet of the bottom of the proposed excavation, a standard subsurface disposal system may be used, providing the following are met.

(I) The depth of the excavation shall comply with clause (i) of this subparagraph.

(II) The rock horizon shall be at least six inches above the bottom of the excavation.

(III) Surface runoff shall be prevented from flowing over the disposal area.

(IV) Subsurface flow along the top of the rock horizon shall be prevented from flowing into the excavation.

(V) The sidewall area will not be counted toward the required absorptive area.

(VI) The formulas in clause (vii)(I) - (III) of this subparagraph shall be adjusted so that no credit is given for sidewall area.

(VII) No single pipe drainfields on sloping ground as shown in §285.90(5) of this title or no systems using serial loading shall be used.

(vii) The size of the excavation shall be calculated using data from §285.91(1) and (3) of this title (relating to Tables). The soil application rate is based on the most restrictive horizon along the media, or within two feet below the bottom of the excavation. The formula A = Q/Ra shall be used to determine the total absorptive area where:
Figure: 30 TAC §285.33(b)(1)(A)(vii)

(I) The absorptive area shall be calculated by adding the bottom area (L x W) of the excavation to the total absorptive area along the excavated perimeter (2(L+W), in feet) multiplied by one foot.
Figure: 30 TAC §285.33(b)(1)(A)(vii)(I)

(II) The length of the excavation may be determined as follows when the area and width are known.
Figure: 30 TAC §285.33(b)(1)(A)(vii)(II)

(III) For excavations three feet wide or less, use the following formula, or §285.91(8) of this title to determine L.
Figure: 30 TAC §285.33(b)(1)(A)(vii)(III)

(B) Media. The media shall consist of clean, washed and graded gravel, broken concrete, rock, crushed stone, chipped tires, or similar aggregate that is generally one uniform size and approved by the executive director. The size of the media must range from 0.75 - 2.0 inches as measured along its greatest dimension.

(i) If chipped tires are used, a geotextile fabric heavier than specified in subparagraph (E) of this paragraph must be used.

(ii) Soft media such as oyster shell and soft limestone shall not be used.

(C) Drainline. The drainline shall be constructed of perforated distribution pipe and fittings in compliance with any one of the following specifications.

(i) three or four inch diameter PVC pipe with an SDR of 35 or stronger;

(ii) four inch diameter corrugated polyethylene, ASTM F405 in rigid ten foot joints;

(iii) three or four inch diameter polyethylene smoothwall, ASTM F810;

(iv) three or four inch diameter PVC ASTM D2729 pipe;

(v) three or four inch diameter polyethylene ASTM F892 corrugated pipe with a smoothwall interior and fittings; or

(vi) any other pipe approved by the executive director.

(D) Drainline Installation Requirements. The drainline shall be placed in the media with at least six inches of media between the bottom of the excavation and the bottom of the drainline. The drainline shall be completely covered by the media and the drainline perforations shall be below the horizontal center line of the pipe. For typical drainfield configurations, see §285.90(5) of this title (relating to Figures). For excavations greater than four feet in width, the maximum distance between parallel drainlines shall be four feet (center to center). Multiple drainlines shall be manifolded together with solid or perforated pipe. Additionally, the ends of the multiple drainlines opposite the manifolded end shall either be manifolded together with a solid line, looped together using a perforated pipe and media, or capped.

(E) Permeable soil barrier. Geotextile fabric shall be used as the permeable soil barrier and shall be placed between the top of the media and the excavation backfill. Geotextile fabric shall conform to the following specifications for unwoven, spun-bounded polypropylene, polyester or nylon filter wrap.
Figure: 30 TAC §285.33(b)(1)(E)

(F) Backfilling. Only Class Ib, II, or III soils as described in §285.30 of this title (relating to Site Evaluation) shall be used for backfill. Class Ia and IV soils are specifically prohibited for use as a backfill material. The backfill material shall be mounded over the excavated area so that the center of the backfilled area slopes down to the outer perimeter of the excavated area to allow for settling. Surface runoff impacting the disposal area is not permitted and the diversion method shall be addressed during development of the planning materials.

(G) Drainfields on irregular terrain. Where the ground slope is greater than 15% but less than 30%, a multiple line drainfield may be constructed along descending contours as shown in §285.90(5) of this title. An overflow line shall be provided from the upper excavations to the lower excavations. The overflow line shall be constructed from solid pipe with an SDR of 35 or stronger, and the excavation carrying the overflow pipe shall be backfilled with soil only.

(H) Drainfield plans. A number of sketches, specifications, and details for drainfield construction are provided in §285.90(4) and (5) of this title.

(2) Evapotranspirative (ET) system. An ET system may be used in soils which are classified as unsuitable for standard subsurface absorption systems according to §285.31(b) of this title with respect to texture, restrictive horizons or groundwater. Water saving devices must be used if an ET system is to be installed. ET systems shall only be used

in areas of the state where the annual average evaporation exceeds the annual rainfall. Evaporation data is provided in §285.91(7) of this title.

(A) Liners. An impervious liner shall be used between the excavated surface and the ET system in all Class Ia soils, where seasonal groundwater tables penetrate the excavation, and where a minimum of two feet of suitable soil does not exist between the excavated surface and either a restrictive horizon or groundwater. Liners shall be rubber, plastic, reinforced concrete, gunite, or compacted clay (one foot thick or more). If the liner is rubber or plastic, it must be impervious, and each layer must be at least 20 mils thick. Rubber or plastic liners must be protected from exposed rocks and stones by covering the excavated surface with a uniform sand cushion at least four inches thick. Clay liners shall have a permeability of 10^{-7} cm/sec or less, as tested by a certified soil laboratory.

(B) ET system sizing. The following formula shall be used to calculate the top surface area of an ET system.
Figure: 30 TAC §285.33(b)(2)(B)
The owner of the ET system shall be advised by the person preparing the planning materials of the limits placed on the system by the Q selected. If the Q is less than required by §285.91(3) of this title, the flow rate shall be included as a condition to the permit, and stated in an affidavit properly filed and recorded in the deed records of the county as specified in §285.3(b)(3) of this title (relating to General Requirements).

(C) Backfill material. Backfill material shall consist of Class II soil as described in §285.30 of this title. All drainlines must be surrounded by a minimum of one foot of media. Backfill shall be used to fill the excavation between the media to allow the backfill material to contact the bottom of the excavation.

(D) Vegetative cover for transpiration. The final grade shall be covered with vegetation fully capable of taking maximum advantage of transpiration. Evergreen bushes with shallow root systems may be planted in the disposal area to assist in water uptake. Grasses with dormant periods shall be overseeded to provide year-round transpiration.

(E) ET systems. ET systems shall be divided into two or more equal excavations connected by flow control valves. One excavation may be removed from service for an extended period of time to allow it to dry out and decompose biological material which might plug the excavation. If one of the excavations is removed from service, the daily water usage must be reduced to prevent overloading of the excavation(s) still in operation. Normally, an excavation must be removed from service for two to three dry months for biological breakdown to occur.

(F) ET system plans. A number of sketches for ET system construction are provided in §285.90(4) and (5) of this title.

(3) Pumped effluent drainfield. Pumped effluent drainfields shall use the specifications for low pressure dosed drainfields described in subsection (d)(1) of this section, with the following exceptions.

(A) Applicability. If the slope of the site is greater than 2.0%, pumped effluent drainfields shall not be used. Pumped effluent drainfields may only be used by single family dwellings.

(B) Length of distribution pipe. There shall be at least 1,000 linear feet of perforated pipe for a two bedroom single family dwelling. For each additional bedroom, there shall be an additional 400 linear feet of perforated pipe. No individual distribution line shall exceed 70 feet in length from the header.

(C) Excavation width and horizontal separation. The excavated area shall be at least six inches wide. There shall be at least three feet of separation between trenches.

(D) Lateral depth and vertical separation. All drainfield laterals shall be between 18 inches and 3 feet deep. There shall be a minimum vertical separation distance of one foot from the bottom of the excavation to a restrictive horizon, and a minimum vertical separation of two feet from the bottom of the excavation to groundwater.

(E) Media. Each dosing pipe shall be placed with the drain holes facing down and placed on top of at least 6 inches of media (pea gravel or media up to two inches measured along its greatest dimension).

(F) Pipe and hole size. The distribution (dosing) and manifold (header) pipe shall be 1.25 - 1.5 inches in diameter. The manifold may have a diameter larger than the distribution pipe, but shall not exceed 1.5 inches in diameter. Distribution (dosing) pipe holes shall be 3/16 - 1/4 inch in diameter and shall be spaced five feet apart.

(G) Pump size. Pumped effluent drainfields shall use at least a 1/2 horsepower pump.

(H) Backfilling. Only Class Ib, II, or III soils as described in §285.30(b)(1)(A) of this title shall be used for backfill.

(c) Proprietary disposal systems.

(1) Gravel-less drainfield piping. Gravel-less pipe may be used only on sites suitable for standard subsurface sewage disposal methods. Gravel-less pipe shall be eight-inch or ten-inch diameter corrugated perforated polyethylene pipe. The pipe shall be enclosed in a layer of unwoven spun-bonded polypropylene, polyester or nylon filter wrap. Gravel-less pipe shall meet ASTM F-667 Standard Specifications for large diameter corrugated high density polyethylene (ASTM D 1248) tubing. The filter cloth must meet the same material specifications as described under subsection (b) (1) (E) of this section.

(A) Planning parameters. Gravel-less drainfield pipe may be substituted for drainline pipe in both absorptive and ET systems. When gravel-less pipe is substituted, media will not be required. ET systems shall be backfilled with Class II soils only. All other planning parameters for absorptive or ET systems apply to drainfields using gravel-less pipe.

(B) Installation. The connection from the solid line leaving the treatment tank to the gravel-less line shall be made by using an eight or ten-inch offset connector. The gravel-less line shall be laid level, the continuous stripe shall be up, and the lines shall be joined together with couplings. A filter cloth must be pulled over the joint to eliminate soil infiltration. The gravel-less pipe must be held in place during initial backfilling to prevent movement of the pipe. The end of each gravel-less line shall have an end cap and an inspection port. The inspection port shall allow for easy monitoring of the amount of sludge or suspended solids in the line, and allow the distribution lines to be back-flushed.

(C) Drainfield sizing. To determine appropriate drainfield sizing, use a drainfield width of W = 2.0 feet for an eight-inch diameter gravel-less pipe, and an excavation width of W = 2.5 for a 10-inch gravel-less pipe.
Figure: 30 TAC §285.33(c)(1)(C)

(2) Leaching chambers. Leaching chambers are bottomless chambers that are installed in a drainfield excavation with the open bottom of the chamber in direct contact with the excavation. The ends of the chamber rows shall be linked together with non-perforated sewer pipe. The chambers shall completely cover the excavation, and adjacent chambers must be in contact with each other in such a manner that

the chambers will not separate. To obtain the reduction in drainfield size allowed in subparagraph (A) (i) - (ii) of this paragraph for excavations wider than the chambers, the chambers shall be placed edge to edge.

(A) The following formulas shall be used to determine the length of an excavation using leaching chambers.

(i) The following formula is used for leaching chambers without water saving devices.
Figure: 30 TAC §285.33(c)(2)(A)(i)

(ii) The following formula is used for leaching chambers with water saving devices.
Figure: 30 TAC §285.33(c)(2)(A)(ii)

(B) Leaching chambers shall not be used for absorptive drainfields in Class Ia or IV soils. Leaching chambers may be used instead of media in ET systems, low-pressure dosed drainfields, and soil substitution drainfields; however, the size of the drainfield shall not be reduced from the required area.

(C) Backfill covering leaching chambers shall be Class Ib, II, or III soil.

(3) Drip Irrigation. Drip irrigation systems using secondary treatment may be used in all soil classes including Class IV soils. The system must be equipped with a filtering device capable of filtering particles larger than 100 microns and that meets the manufacturer's requirements.

(A) Drainfield layout. The drainfield shall consist of a matrix of small-diameter pressurized lines, buried at least six inches deep, and pressure reducing emitters spaced at a maximum of 30-inch intervals. The pressure reducing emitter shall restrict the flow of effluent to a flow rate low enough to ensure equal distribution of effluent throughout the drainfield.

(B) Effluent quality. The treatment preceding a drip irrigation system shall treat the wastewater to secondary treatment as described in §285.32(e) of this title unless the drip irrigation system has been approved by the executive director as a proprietary disposal system without the use of secondary treatment.

(C) System flushing. Systems must be equipped to flush the contents of the lines back to the pretreatment unit when intermittent flushing is used. If continuous flushing is used during the pumping cycle, the contents of the lines must be returned to the pump tank.

(D) Loading rates. Pressure reducing emitters can be used in all classes of soils using loading rates specified in §285.91(1) of this title. Pressure reducing emitters are assumed to wet four square feet of absorptive area per emitter, however, overlapping areas shall only be counted once toward absorptive area requirements. The loading rate shall be based on the most restrictive soil horizon within one foot of the pressure reducing emitter. When solid rock is less than 12 inches below the pressure reducing emitter, the loading rate shall be based on Class IV soils.

(E) Vertical separation distance. There shall be a minimum of one foot of soil between the pressure reducing emitter and groundwater and six inches between the pressure reducing emitter and solid rock, or fractured rock. For proprietary disposal systems that do not pretreat to secondary treatment, there shall be two feet of soil between the groundwater and pressure reducing emitter and one foot of soil between solid rock or fractured rock and the pressure reducing emitter.

(F) Labeling or listing. All drip irrigation system devices shall either be labeled by the manufacturer as suitable for use with domestic sewage, or be on the list of approved devices maintained by the executive director according to §285.32(c)(4) of this title.

(4) Approval of proprietary disposal systems. All proprietary disposal systems, other than those described in this section, shall be approved by the executive director before they may be used. Proprietary disposal systems shall be approved by the executive director using the procedures established in §285.32(c)(4)(B) of this title.

(d) Non-standard disposal systems. All disposal systems not described or defined in subsections (b) and (c) of this section are non-standard disposal systems. Planning materials for non-standard disposal systems must be developed by a professional engineer or professional sanitarian using basic engineering and scientific principles. The planning materials for paragraphs (1) - (5) of this subsection shall be submitted to the permitting authority and the permitting authority shall review and either approve or disapprove them on a case-by-case basis according to §285.5 of this title (relating to Submittal Requirements for Planning Materials). Electrical wiring for non-standard disposal systems shall be installed according to §285.34(c) of this title. Upon approval of the planning materials, an authorization to construct will be issued by the permitting authority. Approval for a non-standard disposal system is limited to the specific system described in the planning materials for the specific location. The systems identified in paragraphs (1) - (5) of this subsection must meet these requirements, in addition to the requirements identified for each specific system in this section.

(1) Low pressure dosed drainfield. Effluent from this type of system shall be pumped, under low pressure, into a solid wall force main and then into a perforated distribution pipe installed within the drainfield area.

(A) The effluent pump in the pump tank must be capable of an operating range that will assure that effluent is delivered to the most distant point of the perforated piping network, yet not be excessive to the point that blowouts occur.

(B) A start/stop switch or timer must be included in the system to control the dosing pump. An audible and visible high water alarm, on an electric circuit separate from the pump, must be provided.

(C) Pressure dosing systems shall be installed according to either design criteria in the *North Carolina State University Sea Grant College Publication UNC-S82-03* (1982) or other publications containing criteria or data on pressure dosed systems which are acceptable to the permitting authority. Additionally, the following sizing parameters are required for all low pressure dosed drainfields and shall be used in place of the sizing parameters in the *North Carolina State University Sea Grant College Publication* or other acceptable publications.

(i) The low pressure dosed drainfield area shall be sized according to the effluent loading rates in §285.91(1) of this title and the wastewater usage rates in §285.91(3) of this title. The effluent loading rate (R_a) in the formula in §285.91(1) of this title shall be based on the most restrictive horizon one foot below the bottom of the excavation. Excavated areas can be as close as three feet apart, measured center to center. All excavations shall be at least six inches wide. To determine the length of the excavation, use the following formulas, where L = excavation length, and A = absorptive area:

(I) If the media in the excavation is at least one foot deep, the length of the excavation is L = A/(w+2) where:

(-a-) w = the width of the excavation for excavations one foot wide or greater; or

(-b-) w = 1 for all excavations less than one foot wide.

(II) If the media in the excavation is less than one foot deep, the length of the excavation is L = A/(w + 2H), where H = the depth of the media in feet and:

(-a-) w = the width of the excavation for excavations one foot wide or greater; or

(-b-) w = 1 for all excavations less than one foot wide.

(ii) Each dosing pipe shall be placed with the drain holes facing down and placed on top of at least six inches of media (pea gravel or media up to two inches measured along the greatest dimension).

(iii) Geotextile fabric meeting the criteria in subsection (b)(1)(E) of this section shall be placed over the media. The excavation shall be backfilled with Class Ib, II, or III soil.

(iv) There shall be a minimum of one foot of soil between the bottom of the excavation and solid or fractured rock. There shall be a minimum of two feet of soil between the bottom of the excavation and groundwater.

(2) Surface application systems. Surface application systems include those systems that spray treated effluent onto the ground.

(A) Acceptable surface application areas. Land acceptable for surface application shall have a flat terrain (with less than or equal to 15% slope) and shall be covered with grasses, evergreen shrubs, bushes, trees, or landscaped beds containing mixed vegetation. There shall be nothing in the surface application area within ten feet of the sprinkler which would interfere with the uniform application of the effluent. Sloped land (with greater than 15%) may be acceptable if it is properly landscaped and terraced to minimize runoff.

(B) Unacceptable surface application areas. Land that is used for growing food, gardens, orchards, or crops that may be used for human consumption, as well as unseeded bare ground, shall not be used for surface application.

(C) Technical report. A technical report shall be prepared for any system using surface application and shall be submitted with the planning materials required in §285.5(a) of this title. The technical report shall describe the operation of the entire OSSF system, and shall include construction drawings, calculations, and the system flow diagram. Proprietary aerobic systems may reference the executive director's approval list instead of furnishing construction drawings for the system.

(D) Effluent disinfection. Treated effluent must be disinfected before surface application. Approved disinfection methods shall include chlorination, ozonation, ultraviolet radiation, or other method approved by the executive director. Tablet or other dry chlorinators shall use calcium hypochlorite properly labeled for wastewater disinfection. The effectiveness of the disinfection procedure will be established by monitoring either the fecal coliform count or total chlorine residual from representative effluent grab samples as directed in the testing and reporting schedule. The frequency of testing, the type of tests, and the required results are shown in §285.91(4) of this title.

(E) Minimum required application area. The minimum surface application area required shall be determined by dividing the daily usage rate (Q), established in §285.91(3) of this title, by the allowable surface application rate (Ri = effective loading rate in gallons per square foot per day) found in §285.90(1) of this title or as approved by the permitting authority.

(F) Landscaping plan. Applications for surface application disposal systems shall include a landscape plan. The landscape plan shall describe, in detail, the type of vegetation to be maintained in the disposal area. Surface application systems may apply treated and disinfected effluent upon areas with existing vegetation. If any ground within the proposed surface application area does not have vegetation, that bare area shall be seeded or covered with sod before system start-up. The vegetation shall be capable of growth, before system start-up.

(G) Uniform application of effluent. Distribution pipes, sprinklers, and other application methods or devices must provide uniform distribution of treated effluent. The application rate must be adjusted so that there is no runoff.

(i) Sprinkler criteria. The maximum inlet pressure for sprinklers shall be 40 pounds per square inch. Low angle nozzles (15 degrees or less in trajectory) shall be used in the sprinklers to keep the spray stream low and reduce aerosols. If the separation distance between the property line and the edge of the surface application area is less than 20 feet, sprinkler operation shall be controlled by commercial irrigation timers set to spray between midnight and 5:00 a.m.

(ii) Planning Criteria. Circular spray patterns may overlap to cover all irrigated area including rectangular shapes. The overlapped area will be counted only once toward the total application area. For large systems, multiple sprinkler heads are preferred to single gun delivery systems.

(iii) Effluent storage and pumping requirements.

(I) For systems controlled by a commercial irrigation timer and required to spray between midnight and 5:00 a.m., there shall be at least one day of storage between the alarm-on level and the pump-on level, and a storage volume of one-third the daily flow between the alarm-on level and the inlet to the pump tank.

(II) For systems not controlled by a commercial irrigation timer, the minimum dosing volume shall be at least one-half the daily flow, and a storage volume of one-third the daily flow between the alarm-on level and the inlet to the pump tank.

(III) Pump tank construction and installation shall be according to §285.34(b) of this title.

(iv) Distribution piping. Distribution piping shall be installed below the ground surface and hose bibs shall not be connected to the distribution piping outside the pump tank. An unthreaded sampling port shall be provided in the treated effluent line in the pump tank.

(v) Color coding of distribution system. Effective 365 days after the effective date of these rules, all new distribution piping, fittings, valve box covers, and sprinkler tops shall be permanently colored purple to identify the system as a reclaimed water system according to Chapter 210 of this title (relating to Use of Reclaimed Water).

(3) Mound drainfields. A mound drainfield, an absorptive drainfield constructed above the native soil surface, shall only be installed on sites with less than 10% slope. A mound drainfield shall only be installed at a site where there is at least one foot of native soil; however, approval for installation on sites with less than one foot of native soil may be granted by the permitting authority on a case-by-case basis. Planning criteria for mound construction shall either use the design criteria in the North Carolina State University Sea Grant College Publication UNC-SG-82-04 (1982), the EPA's *On-site Wastewater Treatment and Disposal Systems Design Manual* (1980) or any technical publication containing mound system criteria acceptable to the executive director.

(A) The depth of the suitable soil material between the bottom of the media shall be 1.5 feet to the restrictive horizon or two feet to groundwater.

(B) Effluent shall be pressure dosed into the distribution piping to ensure equal distribution and to control application rates. Shallow placement of the pressure distribution pipe is recommended to reduce mound height. The toe of the mound is considered the edge of the disposal area in determining the appropriate separation distances as listed in §285.91(10) of this title.

(4) Soil substitution drainfields. Soil substitution drainfields may be constructed in Class Ia soils, fractured rock, fissured rock, or other areas of high permeability where septic tank effluent could rapidly reach groundwater without undergoing adequate treatment through soil contact. A soil substitution drainfield is constructed similar to a standard absorptive drainfield except that a two foot thick Class Ib, Class II or Class III soil buffer shall be placed below and on all sides of the drainfield excavation. The soil buffer shall extend at least to the top of the media. There shall be two feet of soil between the bottom of the media and groundwater. A soil substitution drainfield shall not be used in Class IV soils, and Class IV soils shall not be used in a soil substitution drainfield. Disposal areas shall be sized based on the textural class of the substituted soil. Soil substitution drainfields shall be designed to address soil compaction to prevent unlevel systems. It is recommended that low pressure dosing be used for effluent distribution.

(5) Drainfields following secondary treatment and disinfection. Subsurface drainfields following secondary treatment and disinfection may be constructed in Class Ia soils, fractured rock, fissured rock, or other conditions where insufficient soil depth will allow septic tank effluent to reach fractured rock or fissured rock, as long as the following conditions are met.

(A) Drainfield sizing.

(i) If the unsuitable feature is Class Ia soil, the disposal area sizing shall be based on the application rate for Class Ib soil. Some form of pressure distribution shall be used for effluent disposal.

(ii) If the unsuitable feature is fractured or fissured rock, the system sizing should be based on the application rate for Class III soil. Some form of pressure distribution system shall be used for effluent disposal.

(B) Effluent disinfection. Treated effluent must be disinfected as indicated in §285.32(e) of this title before discharging into the drainfield.

(C) Other requirements. The affidavit, maintenance, and testing and reporting requirements of §285.3(b)(3) and §285.7(a) and (d) of this title apply to these systems.

(6) All other non-standard disposal systems. The planning materials for all non-standard disposal systems not described in paragraphs (1) - (5) of this subsection shall be submitted to the executive director for review according to §285.5(b)(2) of this title before the systems can be installed.

§285.34. Other Requirements.

(a) Septic tank effluent filters. Effective 180 days after the effective date of these rules, all effluent filters that are installed in septic tanks shall be listed and approved under the NSF Standard 46 (2000) or under any standard approved by the executive director.

(b) Pump tanks. Pump tanks may be necessary when the septic tank outlet is at a lower elevation than the disposal field or for systems that require pressure disposal. All requirements in §285.32(b)(1)(D) - (F) of this title (relating to Criteria for Sewage Treatment Systems) also apply to pump tanks. The pump tank shall be constructed according to the following specifications.

(1) Pump tank criteria. When effluent must be pumped to a disposal area, an appropriate pump shall be placed in a separate water-tight tank or chamber. A check valve may be required if the disposal area is above the pump tank. The pump tank shall be equipped to prevent siphoning. The tank shall be provided with an audible and visible high water alarm. If an electrical alarm is used, the power circuit for the alarm shall be separate from the power circuit for the pump. Batteries may be used for back-up power supply only. All electrical components shall be listed and labeled by Underwriters Laboratories (UL).

(2) Pump tank sizing. Pump tanks shall be sized to contain one-third of a day's flow between the alarm-on level and the inlet to the pump tank. The capacity above the alarm-on level may be reduced to four hours average daily flow if the pump tank is equipped with multiple pumps. See §285.33(d)(2)(G)(iii) of this title (relating to Criteria for Effluent Disposal Systems) for sizing of pump tanks for surface application systems.

(3) Pump specifications. A single pump may be used for flows equal to or less than 1,000 gallons per day. Dual pumps are required for flows greater than 1,000 gallons per day. A dual pump system shall have the "alarm on" level below the "second pump on" level, and shall have a lock-on feature in the alarm circuit so that once it is activated it will not go off when the second pump draws the liquid level below the "alarm on" level. All audible and visible alarms shall have a manual "silence" switch. The pump switch-gear shall be set such that each pump operates as the first pump on an alternating basis. All pumps shall be rated by the manufacturer for pumping sewage or sewage effluent.

(c) Electrical wiring. All electrical wiring shall conform to the requirements the National Electric Code (1999) or under any other standards approved by the executive director. Additionally, all external wiring shall be installed in approved, rigid, non-metallic gray code electrical conduit. The conduit shall be buried according to the requirements in the National Electrical Code and terminated at a main circuit breaker panel or sub-panel. Connections shall be in approved junction boxes. All electrical components shall have an electrical disconnect within direct vision from the place where the electrical device is being serviced. Electrical disconnects must be weatherproof (approved for outdoor use) and have maintenance lockout provisions.

(d) Grease interceptors. Grease interceptors shall be used on kitchen waste-lines from institutions, hotels, restaurants, schools with lunchrooms, and other buildings that may discharge large amounts of greases and oils to the OSSF. Grease interceptors shall be structurally equivalent to, and backfilled according to, the requirements established for septic tanks under §285.32(b)(1)(D) - (F) of this title. The interceptor shall be installed near the plumbing fixture that discharges greasy wastewater and shall be easily accessible for cleaning. Grease interceptors shall be cleaned out periodically to prevent the discharge of grease to the disposal system. Grease interceptors shall be properly sized and installed according to the requirements of the 2000 edition of the Uniform Plumbing Code, other prevailing code, or under any other standards approved by the executive director.

(e) Holding tanks. Tanks shall be constructed according to the requirements established for septic tanks under §285.32(b)(1)(D) - (E) of this title. Inlet fittings are required. No outlet fitting shall be provided. A baffle is not required. Holding tanks shall be used only on sites where other methods of sewage disposal are not feasible (these holding tank provisions do not apply to portable toilets or to an office trailer at a construction site). All holding tanks shall be equipped with an audible and visible alarm to indicate when the tank has been filled

to within 75% of its rated capacity. A port with its smallest dimension being at least 12 inches shall be provided in the tank lid for inspection, cleaning, and maintenance. This port shall be accessible from the ground surface and must be easily removable and watertight.

(1) Minimum capacity. The minimum capacity of the holding tank shall be sufficient to store the estimated or calculated daily wastewater flow for a period of one week (wastewater usage rate in gallons per day x seven days).

(2) Location. Holding tanks shall be installed in an area readily accessible to a pump truck under all weather conditions, and at a location that meets the minimum distance requirements in §285.91(10) of this title (relating to Tables).

(3) Pumping requirements. A scheduled pumping contract with a waste transporter, holding a current registration with the executive director, must be provided to the permitting authority before a holding tank may be installed. Pumping records must be retained for five years.

(f) Composting toilets. Composting toilets will be approved by the executive director provided the system has been tested and certified under NSF International Standard 41 (1999) or under any other standards approved by the executive director.

(g) Condensation. If condensate lines are plumbed directly into an OSSF, the increased water volume must be accounted for (added to the usage rate) in the system planning materials.

§285.35. Emergency Repairs.

(a) An emergency repair may be made to an OSSF providing that the repair:

(1) is made for the abatement of an immediate, serious and dangerous health hazard; and

(2) does not constitute an alteration of that OSSF system's planning materials and function.

(b) Emergency repairs include tasks such as replacing tank lids, replacing inlet and outlet devices, and repairing solid lines. Such repairs must meet criteria established in this chapter.

(c) The installer shall notify the permitting authority, in writing, within 72 hours after starting the emergency repairs. The notice must include a detailed description of the methods and materials used in the repair.

(d) An inspection of the emergency repairs may be required at the discretion of the permitting authority.

§285.36. Abandoned Tanks, Boreholes, Cesspools, and Seepage Pits.

(a) An abandoned tank is a tank that is not to be used again for holding sewage.

(b) To properly abandon, the owner shall conduct the following actions, in the order listed.

(1) All tanks, boreholes, cesspools, seepage pits, holding tanks, and pump tanks shall have the wastewater removed by a waste transporter, holding a current registration with the executive director.

(2) All tanks, boreholes, cesspools, seepage pits, holding tanks, and pump tanks shall be filled to ground level with fill material (less than three inches in diameter) which is free of organic and construction debris.

§285.39. OSSF Maintenance and Management Practices.

(a) An installer shall provide the owner of an OSSF with written information regarding maintenance and management practices and water conservation measures related to the OSSF installed, repaired, or maintained, by the installer.

(b) Owners shall have the treatment tanks pumped on a regular basis, in order to prevent sludge accumulation from spilling over to the next tank or the outlet device. Owners of treatment tanks shall engage only persons registered with the executive director to transport the treatment tank contents.

(c) Owners shall not allow driveways, storage buildings, or other structures to be constructed over the treatment or disposal systems.

(d) Owners shall not allow water softener and reverse osmosis back flush to enter into any portion of the OSSF.

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

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Margaret Hoffman
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Texas Natural Resource Conservation Commission
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SUBCHAPTER E. SPECIAL REQUIREMENTS FOR OSSFS LOCATED IN THE EDWARDS AQUIFER RECHARGE ZONE

30 TAC §§285.40 - 285.42

STATUTORY AUTHORITY

These new sections and amendments are adopted under the authority granted to the commission by the Texas Legislature in the Texas Health and Safety Code (THSC), §366.011. The revisions will be implemented pursuant to THSC, §366.012(a)(1), which requires the commission to adopt rules consistent with the policy defined in THSC, §366.001. The commission has authority to adopt rules to implement the requirements of THSC, §366.053(b), which requires the adoption of rules for permitting; THSC, §366.058, which requires adoption of rules addressing permit fees; and THSC, §366.072, which provides for the adoption of rules for registration.

These new sections and amendments are also adopted under the general authority granted in the Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of the TWC and the THSC.

§285.40. OSSFs on the Recharge Zone of the Edwards Aquifer.

(a) Applicability. The following additional provisions apply to the Edwards Aquifer recharge zone as defined in §285.2 of this title (relating to Definitions) and are not intended to be applied to any other areas in the State of Texas.

(b) Additional application requirements for new OSSFs. All planning materials shall be submitted to the permitting authority by a professional engineer or professional sanitarian.

(c) Conditions for obtaining an authorization to construct. In order to obtain an authorization to construct in the Edwards Aquifer recharge zone, the following conditions must be met.

(1) Minimum lot sizes. Each lot or tract of land on the recharge zone on which OSSFs are to be located shall have an area of at least one acre (43,560 square feet) per single family dwelling.

(2) Minimum separation distances from recharge features.

(A) No sewage treatment tank or holding tank may be located within 50 feet of a recharge feature as defined in §285.2 of this title.

(B) No soil absorption system may be located within 150 feet of a recharge feature.

(C) Additional separation distances in §285.91(10) of this title (relating to Tables) shall be used.

(d) Existing OSSFs. OSSFs shall comply with the provisions of this subchapter except as provided under §285.3(f)(1) of this title (relating to General Requirements). If the OSSF is required to have a new permit, the permit shall be obtained according to §285.3 of this title. An OSSF installed on the recharge zone before April 11, 1977, in either Uvalde or Kinney Counties is not required to be permitted, provided the OSSF is not causing pollution, is not a threat to the public health, is not a nuisance, and has not been altered.

(e) Exceptions for certain lots. Lots platted and recorded with the following counties in their official plat record, deed, or tax records before the date indicated in this subsection, are exempted from the one-acre minimum lot size requirement, according to the conditions of subsection (f) of this section. However, an Edwards Aquifer protection plan under Chapter 213 of this title (relating to Edwards Aquifer) may be required for construction of regulated activities, including home construction:

(1) Kinney, Uvalde, Medina, Bexar, and Comal Counties--March 26, 1974;

(2) Hays County--June 21, 1984;

(3) Travis County--November 21, 1983; and

(4) Williamson County--May 21, 1985.

(f) Notice. Any owner who divides his property into two or more residential lots, on which any part of the OSSF will be on the recharge zone, must inform, in writing, each prospective purchaser, lessee, or renter of the following:

(1) which lots within the regulated development are subject to the terms and conditions of this section;

(2) that an authorization to construct shall be required before an OSSF can be constructed in the subdivision;

(3) that a notice of approval shall be required for the operation of an OSSF; and

(4) whether an application for a water pollution abatement plan as defined in Chapter 213 of this title has been made, whether it has been approved, and if any restrictions or conditions have been placed on that approval.

§285.42. Other Requirements.

(a) If any recharge feature is discovered during construction of an OSSF, all regulated activities near the feature shall be suspended immediately. The owner shall immediately notify the appropriate regional office of the discovery of the feature. Activities regulated under Chapter 213 of this title (relating to Edwards Aquifer) or this chapter shall not proceed near the feature until the permitting authority, in conjunction with the appropriate regional office, has reviewed and approved a plan proposed to protect the feature, the structural integrity of the OSSF, and the water quality of the aquifer. The plan shall be sealed, signed, and dated by a professional engineer.

(b) No OSSF may be installed closer than 75 feet from the banks of the Nueces, Dry Frio, Frio, or Sabinal Rivers downstream from the northern Uvalde county line to the recharge zone.

(c) Additional requirements may apply as required by the permitting authority's order, ordinance, or resolution.

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

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SUBCHAPTER F. REGISTRATION, CERTIFICATION AND/OR TRAINING REQUIREMENTS FOR INSTALLERS, APPRENTICES, SITE EVALUATORS OR DESIGNATED REPRESENTATIVES

30 TAC §§285.50 - 285.63

STATUTORY AUTHORITY

These repeals are adopted under the authority granted to the commission by the Texas Legislature in the Texas Health and Safety Code (THSC), §366.011. The revisions will be implemented pursuant to THSC, §366.012(a)(1), which requires the commission to adopt rules consistent with the policy defined in THSC, §366.001. The commission has authority to adopt rules to implement the requirements of THSC, §366.053(b), which requires the adoption of rules for permitting; THSC, §366.058, which requires adoption of rules addressing permit fees; and THSC, §366.072, which provides for the adoption of rules for registration.

These repeals are also adopted under the general authority granted in the Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of the TWC and the THSC.

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SUBCHAPTER F. LICENSING AND REGISTRATION REQUIREMENTS FOR INSTALLERS, APPRENTICES, AND DESIGNATED REPRESENTATIVES

30 TAC §§285.50 - 285.65

STATUTORY AUTHORITY

These new sections are adopted under the authority granted to the commission by the Texas Legislature in the Texas Health and Safety Code (THSC), §366.011. The revisions will be implemented pursuant to THSC, §366.012(a)(1), which requires the commission to adopt rules consistent with the policy defined in THSC, §366.001. The commission has authority to adopt rules to implement the requirements of THSC, §366.053(b), which requires the adoption of rules for permitting; THSC, §366.058, which requires adoption of rules addressing permit fees; and THSC, §366.072, which provides for the adoption of rules for registration.

These new sections are also adopted under the general authority granted in the Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of the TWC and the THSC.

§285.50. General Requirements.

(a) The purpose of this subchapter is to provide a uniform procedure for issuing licenses to installers and designated representatives, and issuing registrations to apprentices.

(b) Any individual who constructs any part of an OSSF shall hold a current installer license appropriate for the type of system being installed, except as noted in §285.51 of this title (relating to Exemptions to Licensing Requirements). This does not include the individuals under the direct supervision of the licensed installer or registered apprentice.

(1) Individuals may not advertise or represent themselves to the public as installers unless they possess a current installer license. Entities may not advertise or represent to the public that they can perform installer services unless they employ a currently licensed individual.

(2) The executive director may waive qualifications, training, or examination for an installer with a current authorization from another state if that state has requirements equivalent to those in this subchapter.

(c) Any individual who performs the duties of a designated representative under §285.62 of this title (relating to Duties and Responsibilities of Designated Representatives) on behalf of the authorized agent shall possess a current designated representative license. Individuals may not advertise or represent themselves to the public as designated representatives unless they are employed, appointed, or contracted by an authorized agent and hold a current designated representative license.

(d) Any individual who performs the duties of an apprentice under §285.63 of this title (relating to Duties and Responsibilities of Registered Apprentices) must hold a current apprentice registration under a licensed installer.

(e) When required by the permitting authority, the installer or the installer's apprentice must be present at the job site during the inspection or re-inspection of the OSSF.

(f) Any individual who acts in any capacity for a permitting authority shall not, within that permitting authority's area of jurisdiction:

(1) work as an apprentice to an OSSF installer;

(2) work as an OSSF installer;

(3) work for an OSSF maintenance company; or

(4) perform any other OSSF-related activities which fall under the permitting authority's regulatory jurisdiction, except those activities directly related to the individual's duties as an employee of, appointee to, or contractor for the permitting authority.

§285.51. Exemptions to Licensing Requirements.

(a) The individual owner of a single family dwelling is not required to be a licensed installer in order to install or repair an OSSF on his property. This provision does not apply to developers or to those that develop property for sale or lease. If the owner compensates a person to construct any portion of an OSSF, the individual performing the work must be a licensed installer. The owner must meet all permitting, construction, and maintenance requirements of the permitting authority.

(b) A licensed electrician who installs the electrical components, or a person who delivers a treatment or pump tank and sets the tank or tanks into an excavation, is not required to have an installer license.

§285.55. Examinations.

(a) An individual shall take an examination for an Installer I, Installer II, or Designated Representative license after completing the basic training course. Examinations shall be graded and the results shall be forwarded to the applicant no later than 45 days after the examination date. The minimum passing score for an examination shall be 70%.

(b) Any individual who fails an examination may repeat the examination after waiting 60 days and paying the reexamination fee according to §285.60(d) of this title (relating to Terms and Fees). The examination may not be repeated more than four times within 12 months of the initial application submission.

(c) Examinations shall be given at places and times approved by the executive director.

§285.56. Applications for License.

(a) Application for Initial License. Applications for licenses shall be made on a standard form provided by the executive director or the executive director's designee. The application must be submitted before taking the examination.

(b) Supplemental information for Installer II application. Applicants must submit statements attesting to the individual's work experience. Such statements shall include a description of the type of OSSF work that was performed by the individual and the physical addresses where the activity occurred. The experience shall be actual work accomplished under the license or registration during the time frames required under experience qualifications for an Installer II according to §285.53(b)(2) of this title (relating to Qualifications). The number of systems will not substitute for the time required.

(1) Experience as an installer. The individual shall submit either:

(A) sworn statements from at least three individuals for whom the applicant performed construction services - references cannot be provided by individuals related to the applicant or applicant's spouse, such as a child, grandchild, parent, sister, brother, or grandparent;

(B) a sworn statement from a Designated Representative who has approved a minimum of three installations performed by the individual; or

(C) other documentation of the individual's work experience, as determined by the executive director to be sufficient under this section.

(2) Experience as an apprentice. An individual shall submit either:

(A) a sworn statement from the installer for whom the individual performed construction services;

(B) a sworn statement from a Designated Representative who witnessed the individual working on at least six OSSF installations; or

(C) other documentation of the applicant's work experience, as determined by the executive director to be sufficient under this section.

(c) Notification. Within 45 days after the date of the executive director's receipt of the application, the executive director will notify each applicant in writing whether the applicant meets the experience and fee requirements of this subchapter. If the applicant meets the experience and fee requirements of this subchapter, the executive director will include in the written notice an approval for the individual to take the next available course and examination.

(d) Application expiration. An application is good for 12 months from the date the applicant submits the application to the executive director or executive director's designee. If after the 12-month period, the applicant has not met the requirements of this subchapter, the application will be denied. The individual must repeat the appropriate training course, submit a new application and fee, and pass the examination.

(e) Issuance of license.

(1) The effective date of the license shall be the date the executive director determines and notifies the applicant that he has met all the licensing requirements of this subchapter. The license will be issued by the executive director no later than 45 days after the effective date of the license. The license shall be for the term specified in §285.60(a) of this title, shall be issued to an individual only, and is not transferable.

(2) On the effective date of these rules, if the executive director is holding an unexpired Installer I, Installer II, or Designated Representative license application that has not been denied for failure of the applicant to either meet the experience requirements under the previous rules or pay the required license fee, the individual will be eligible to receive the appropriate license either on the effective date of these rules, or on the date the license fee is paid, whichever is later, only if he meets the requirements of this subchapter. The term of the license shall be from the date of issuance.

§285.57. Registration of Apprentices.

(a) General. An individual who begins an apprentice program under the supervision of a licensed installer shall be registered with the executive director.

(b) Application. The completed application and fee must be submitted to the executive director by a licensed installer for each individual being registered as an apprentice under that installer's supervision. The application shall be on a form obtained from the executive director.

(c) Notification. Within 45 days after the date the executive director receives the application, the executive director will notify the supervising installer in writing whether the individual has been registered as an apprentice. The apprentice's registration will be effective when the executive director receives the completed apprentice application and fee as listed in §285.60 of this title (relating to Terms and Fees). An individual's application may be denied according to §285.59 of this title (relating to Conditions for Denial of License, Registration, or Renewal).

(d) Expiration or termination. The apprentice registration will expire on the same date as the supervising installer's license. Either the supervising installer or the apprentice may terminate the apprentice training program by providing written notice to the executive director. No reason for termination is required. Upon receipt of a letter stating that the apprentice training has been terminated, the agency shall terminate the apprentice's registration under the supervising installer.

(e) Renewal. It is the responsibility of the supervising installer to renew all of the registrations of his apprentices. If an apprentice registration is renewed late, the apprentice will be assigned a new registration date, but will not lose any experience gained under the previous registration.

§285.58. Applications for Renewal.

(a) General. A license may be renewed unless it has been expired more than 30 days after the license expiration date, is revoked, or has been replaced by a higher class of license. Any individual who fails to renew within 30 days after the license expiration date will have to meet the requirements in §285.53 and §285.56 of this title (relating to Qualifications and Applications for License, respectively).

(b) Renewal application procedure. Applications for renewal shall be made on a form provided by the executive director.

(1) The executive director shall mail a renewal application at least 30 days before the license expires to the most recent address provided to the executive director. If the executive director fails to mail out, or the individual does not receive, the renewal application, the individual is not relieved of the responsibility to timely submit a renewal application.

(2) The applicant is responsible for ensuring that the renewal application (with corrected information as applicable), the nonrefundable renewal fee, and proof of completion of the continuing education requirements are submitted to the executive director before the license expires.

(3) An installer is responsible for providing the name, social security number, and renewal fee for each apprentice under the installer's supervision with the renewal application.

(c) Late renewal application procedure.

(1) The executive director may renew a license within 30 days after the license expires provided the following conditions are met.

(A) The individual has completed the continuing education requirements before the license expired; and

(B) The individual has paid all fees according to §285.60 of this title (relating to Terms and Fees).

(2) Within 120 days after the effective date of these rules, individuals who had a license that expired within the two years before the effective date of these rules, may renew their license by:

(A) demonstrating proof of completion of continuing education (eight hours for licenses that have been expired for one year or less and 16 hours for licenses that have been expired for more than one year, but less than two years); and

(B) paying a fee.

(i) For licenses that have been expired for one year or less, the fee for a Designated Representative is $50, and the fee for an Installer I or an Installer II is $75.

(ii) For licenses that have been expired for more than one year, but less than two years, the fee for a Designated Representative is $100, and the fee for an Installer I or an Installer II is $150.

(d) Renewal Cycle. Licenses that are active on the effective date of these rules or renewed according to subsection (c) of this section shall be renewed on a biennial basis. Licenses that expire on August 31 after the effective date of these rules, provided the renewal process has not already begun, shall be renewed in the following manner.

(1) Licenses with odd license numbers shall be initially renewed for a minimum of one year, from August 31, with an expiration date of the last day of the month the license was first issued.

(A) To renew for the first year, the individual must:

(i) demonstrate completion of at least eight hours of continuing education training before the license expires on August 31; and

(ii) pay a license fee of $50 for a Designated Representative or $75 for an Installer I or an Installer II on or before August 31.

(B) After this renewal, the licenses will be renewed on a two-year basis according to the requirements of subsections (a) - (c) of this section.

(C) To renew the next year for a two-year period, the individual must:

(i) demonstrate completion of at least eight hours of continuing education; and

(ii) pay a license fee of $100 for a Designated Representative or $150 for an Installer I or an Installer II.

(2) Licenses with even license numbers shall be renewed for a minimum of two years, from August 31, with an expiration date of the last day of the month of the first issue date. To renew, the individual must:

(A) demonstrate completion of at least eight hours of continuing education before their license expires on August 31; and

(B) pay a license fee of $100 for a Designated Representative or $150 for an Installer I or an Installer II on or before August 31. After this renewal, the license will be renewed according to the requirements of subsections (a) - (c) of this section.

(e) Notification. The executive director will determine whether the applicant meets the renewal requirements of this subchapter. If all requirements have been met, the executive director will renew the license by sending the license to the applicant within 45 days after the date the executive director receives the renewal application. The license shall be for the term specified in §285.60(a) of this title, shall be issued to an individual only, and is not transferable. The executive director will notify the applicant in writing, within 45 days after the date the executive director receives the renewal application, if the applicant does not meet the requirements and the application is therefore denied.

§285.59. Conditions for Denial of License, Registration, or Renewal.

The executive director may deny a new or renewal application for a license or registration:

(1) if the individual fails to meet the licensing or registration requirements in §§285.53, 285.56, or 285.57 of this title (relating to Qualifications; Applications for License; and Registration of Apprentices, respectively) or the renewal requirements in §285.58 of this title (relating to Applications for Renewal), as applicable;

(2) if the individual is delinquent in the payment of any fee or penalty imposed under the Texas Health and Safety Code, Chapter 366, the Texas Water Code, Chapter 7, or this chapter unless:

(A) the individual pays the fee or penalty to the executive director within 30 days after submitting an application; or

(B) the executive director has agreed to a payment plan within 30 days after the individual submits an application;

(3) if the individual is identified by the Texas Guaranteed Student Loan Corporation (TGSLC) as being in default on loans guaranteed by the TGSLC (the executive director will proceed as described in the Texas Education Code, Chapter 57);

(4) if the individual is identified by the Office of the Attorney General as being delinquent on child support payments (upon receipt of a final order suspending a license or registration, the executive director will proceed as described in the Texas Family Code, Chapter 232); or

(5) for other good cause that constitutes adequate grounds for denial as determined by the executive director. When other good cause exists for denial of a new or renewal application, the executive director may take action according to §285.64(b) of this title (relating to Denial, Reprimand, Suspension, or Revocation of License or Registration).

§285.61. Duties and Responsibilities of Installers.

An installer shall:

(1) possess a current Installer I or Installer II license before beginning construction of an OSSF;

(2) record his license number on all bids, proposals, contracts, invoices, proposed construction drawings, or other correspondence with owners, the executive director, or authorized agents;

(3) provide true and accurate information on any application or any other documentation;

(4) begin the construction of an OSSF only after obtaining documentation that the owner, or owner's agent, has the permitting authority's authorization to construct, unless a permit is not required;

(5) notify the permitting authority of the date on which he plans to begin the construction of an OSSF, unless a permit is not required;

(6) construct an OSSF to meet the minimum criteria required by this chapter or the more stringent requirements of the permitting authority;

(7) construct the OSSF that has been authorized by the permitting authority for the specific location identified in the site evaluation;

(8) stop construction and return to the permitting authority to change the planning materials for the permit if site or soil conditions, materials, or supplies make compliance with the planning materials impossible;

(9) be present at the job site during the construction of the OSSF or be represented by an apprentice;

(10) be present at the job site at least once each work day if the OSSF work is supervised by an apprentice and verify that the work performed by the apprentice is according to the requirements of this chapter;

(11) request the initial, final, and any other required inspection or inspections from the permitting authority;

(12) refrain from removing materials from, or altering components of, an OSSF after the final inspection;

(13) submit to the permitting authority, within 72 hours of starting emergency repairs, a written statement describing the need for any emergency repair and the work performed;

(14) perform maintenance, keep a maintenance record, and submit maintenance reports to the permitting authority and the owner for an OSSF for which the installer has contracted to provide maintenance according to §285.7 of this title (relating to Maintenance Requirements); and

(15) maintain a current address and phone number with the executive director and submit any change in address or phone number in writing within 30 days after the date of the change.

§285.62. Duties and Responsibilities of Designated Representatives.

A Designated Representative shall:

(1) possess a current license from the executive director;

(2) be employed, appointed, or contracted by an authorized agent;

(3) enforce the rules and regulations of the Texas Health and Safety Code, Chapter 366, the Texas Water Code, this chapter, and the permitting authority;

(4) assist the authorized agent in amending the authorized agent's order, ordinance, or resolution when necessary;

(5) conduct subdivision reviews in conformance with this chapter;

(6) review variance requests to ensure compliance with the requirements of the permitting authority;

(7) approve only planning materials that conform with the requirements of this chapter and the requirements of the permitting authority;

(8) issue the authorization to construct;

(9) verify, before the initial inspection, that the installer possesses a current license and has the correct classification for constructing the permitted or planned OSSF;

(10) conduct construction inspections as required under §285.3(d) of this title (relating to General Requirements);

(11) approve only construction that conforms with this chapter, the authorized agent's approved order, ordinance, or resolution, and the notice of approval;

(12) issue the notice of approval;

(13) ensure collection of all OSSF related fees;

(14) ensure maintenance of accurate records of permitting, fees, inspections, maintenance reports, and complaints;

(15) investigate complaints and take appropriate and timely action;

(16) record his license number on all plan reviews, complaint investigations, inspection reports, site evaluations, and any other correspondence prepared in performance of the duties of a Designated Representative under this chapter;

(17) record the installer license number in any inspection reports relating to that installer;

(18) receive compensation for OSSF related services within the authorized agent's area of jurisdiction, only from the authorized agent or according to a signed contract with the authorized agent;

(19) while employed by, appointed to, or contracted by the authorized agent, refrain from performing any of the following activities within the authorized agent's area of jurisdiction:

(A) working as an apprentice to an OSSF installer;

(B) working as an OSSF installer;

(C) working for an OSSF maintenance company; or

(D) performing any other OSSF-related activities which fall under the authorized agent's regulatory jurisdiction, except those activities directly related to the individual's duties as a designated representative for the authorized agent;

(20) verify the existence of a maintenance contract between an owner and the maintenance company according to §285.7(c) of this title (relating to Maintenance Requirements); and

(21) maintain a current address and phone number with the executive director and submit any change in address or phone number in writing within 30 days after the date of the change.

§285.64. Denial, Reprimand, Suspension, or Revocation of License or Registration.

(a) General. If an apprentice, installer, or designated representative causes, contributes to, or allows a violation of the Texas Water Code, Chapter 7 or Chapter 26, the Texas Health and Safety Code, Chapter 341 or Chapter 366, or this chapter to occur, he may be subject to a denial of a renewal, reprimand, suspension, or revocation of the license or registration. Notification of actions under this section will be issued in writing and delivered by first class and certified mail.

(b) Denial.

(1) New application. When the executive director denies an application for a new license for any of the violations listed under subsection (d) of this section, or for other good cause, the executive director shall notify the applicant of the executive director's intent to deny the application, and advise the applicant of the opportunity to file a motion for reconsideration under §50.39 of this title (relating to Motion for Reconsideration).

(2) Renewal application. When the executive director denies a renewal application for a license for any of the violations listed

under subsection (d) of this section, or for other good cause, the executive director shall notify the applicant of the executive director's intent to deny the application, and advise the applicant of the opportunity to request a hearing.

(c) Reprimand. If an apprentice, installer, or designated representative caused, contributed to, or allowed a violation of this chapter to occur, the executive director may issue a written reprimand. The reprimand shall be placed in the individual's permanent file maintained by the executive director. The reprimand shall be a warning that further violations or offenses by the individual may warrant suspension, revocation, enforcement action, or some combination thereof. A reprimand, however, is not a prerequisite for initiation of suspension, revocation, or enforcement proceedings.

(d) Suspension and revocation. The commission may suspend or revoke a license or registration if the commission finds that the license or registration holder caused, contributed to, or allowed a violation of this chapter to occur. If the executive director determines a suspension or revocation of a registration of an apprentice, or a license of an installer or a designated representative is warranted, the executive director shall initiate enforcement proceedings according to Chapters 70 and 80 of this title. The individual shall not perform the duties and responsibilities of an apprentice, installer, or designated representative while the license or registration is suspended or revoked.

(1) Suspension. A license or registration may be suspended for a period of up to one year, depending upon the seriousness of the violation or violations. A license or registration will be revoked automatically upon a second suspension. A license or registration may be suspended for the following:

(A) for an installer:

(i) failing to perform required maintenance on an OSSF for at least eight consecutive months (failing to maintain records is evidence of failure to perform maintenance on the OSSF);

(ii) failing to properly submit three maintenance reports for an individual OSSF in a 12 month period;

(iii) failing to properly submit five or more required OSSF maintenance reports over any two-year period;

(iv) being indebted to the state for a fee, penalty, or tax imposed by a statute or rule; or

(v) for other good cause as determined by the executive director;

(B) for a designated representative:

(i) failing to verify, before the initial inspection for a particular OSSF, that the individual is a properly licensed installer;

(ii) failing to investigate nuisance complaints or complaints against installers, within 30 days of receipt of the complaint, according to §285.71 of this title (relating to Authorized Agent Enforcement of OSSFs);

(iii) failing to enforce the requirements of the order, ordinance, or resolution of an authorized agent;

(iv) being indebted to the state for a fee, penalty, or tax imposed by a statute or rule; or

(v) for other good cause as determined by the executive director.

(2) Revocation. The commission may revoke a license or registration for either a designated term or permanently. If a license or registration is revoked a second time, the revocation shall be permanent. A license or registration may be revoked for the following:

(A) for an installer:

(i) constructing, or allowing the construction of, an OSSF that is not in compliance with this chapter;

(ii) practicing theft, fraud, or deceit in performance of his duties;

(iii) submitting false or inaccurate information to the permitting authority or an owner;

(iv) allowing, or beginning, the construction of an OSSF without a permit when a permit is required;

(v) for other good cause as determined by the executive director;

(B) for a designated representative:

(i) practicing theft, fraud, or deceit in the performance of his duties;

(ii) approving construction of an OSSF that is not in conformance with this chapter, the authorized agent's approved order, ordinance, or resolution, and the notice of approval;

(iii) failing to enforce the provisions of the Texas Health and Safety Code, Chapter 366 or this chapter;

(iv) practicing as an apprentice or an installer in the authorized agent's area of jurisdiction while employed, appointed, or contracted by that authorized agent;

(v) working for a maintenance company in the authorized agent's area of jurisdiction while employed, appointed, or contracted by that authorized agent; or

(vi) for other good cause as determined by the executive director;

(C) for an apprentice:

(i) acting as, or performing duties and responsibilities of, an installer without the direct supervision of, or direct communication with, his supervising installer; or

(ii) for other good cause as determined by the executive director.

(e) Reinstatement.

(1) The following procedures for renewal apply to individuals who have had their license or registration suspended.

(A) If the license or registration expiration date falls within the suspension period, the individual may renew his license or registration during the suspension period according to §285.58 of this title (relating to Applications for Renewal).

(B) After the suspension period has ended, the license or registration will be automatically reinstated, unless the license or registration expiration date fell within the suspension period and the individual failed to renew his license or registration during the suspension period.

(2) Individuals who have had their license or registration revoked will not have their license or registration automatically reinstated after the revocation period. After the revocation period has ended, an individual may apply for a new license or registration according to §285.56 and §285.57 of this title (relating to Applications for License and Registrations of Apprentices, respectively).

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

Filed with the Office of the Secretary of State on May 24, 2001.

TRD-200102952
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: June 13, 2001
Proposal publication date: December 8, 2000
For further information, please call: (512) 239-4712

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SUBCHAPTER G. OSSF ENFORCEMENT

30 TAC §285.70

STATUTORY AUTHORITY

The repeal is adopted under the authority granted to the commission by the Texas Legislature in the Texas Health and Safety Code (THSC), §366.011. The revisions will be implemented pursuant to THSC, §366.012(a)(1), which requires the commission to adopt rules consistent with the policy defined in THSC, §366.001. The commission has authority to adopt rules to implement the requirements of THSC, §366.053(b), which requires the adoption of rules for permitting; THSC, §366.058, which requires adoption of rules addressing permit fees; and THSC, §366.072, which provides for the adoption of rules for registration.

The repeal is also adopted under the general authority granted in the Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of the TWC and the THSC.

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

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Margaret Hoffman
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For further information, please call: (512) 239-4712

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30 TAC §285.70, §285.71

STATUTORY AUTHORITY

These new sections are adopted under the authority granted to the commission by the Texas Legislature in the Texas Health and Safety Code (THSC), §366.011. The revisions will be implemented pursuant to THSC, §366.012(a)(1), which requires the commission to adopt rules consistent with the policy defined in THSC, §366.001. The commission has authority to adopt rules to implement the requirements of THSC, §366.053(b), which requires the adoption of rules for permitting; THSC, §366.058, which requires adoption of rules addressing permit fees; and THSC, §366.072, which provides for the adoption of rules for registration.

These new sections are also adopted under the general authority granted in the Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of the TWC and the THSC.

§285.70. Duties of Owners With Malfunctioning OSSFs.

If the executive director or the authorized agent determines that an OSSF is malfunctioning, as defined in §285.2 of this title (relating to Definitions), the owner shall bring the OSSF into compliance by repairing the malfunction. The owner shall initiate repair of a malfunctioning OSSF no later than:

(1) the 30th day after the date which the owner is notified by the executive director or the authorized agent of the malfunctioning system, if the owner has not been notified of the malfunctioning system during the previous 12 months;

(2) the 20th day after the date on which the owner is notified by the executive director or the authorized agent of the malfunctioning system, if the owner has been notified of the malfunctioning system at least once during the previous 12 months; or

(3) the 10th day after the date on which the owner is notified by the executive director or the authorized agent of the malfunctioning system, if the owner has been notified of the malfunctioning system at least twice during the previous 12 months.

§285.71. Authorized Agent Enforcement of OSSFs.

(a) Complaints. The authorized agent shall investigate a complaint regarding an OSSF within 30 days after receipt of the complaint, notify the complainant of the findings, and take appropriate and timely action on all documented violations. Appropriate action may include criminal or civil enforcement action as necessary under the authority of their order, ordinance, or resolution, the Texas Water Code, Chapters 7 and 26, or the Texas Health and Safety Code, Chapters 341 and 366. This may include complaints against:

(1) registered apprentices and licensed installers and designated representatives;

(2) individuals performing the duties as an apprentice, installer, or designated representative without a current registration or license;

(3) owners in violation of this chapter or the authorized agent's order, ordinance, or resolution; or

(4) owners of malfunctioning OSSFs on the owners' property.

(b) Conviction or court judgment under subsection (a)(1) and (2) of this section. Upon conviction or court judgment, the authorized agent shall send a copy of the conviction or court judgment to the executive director.

(c) Referral of complaints under subsection (a)(1) and (2) of this section. If there are unusual circumstances involved, or if the authorized agent is unable to take enforcement action, the authorized agent may refer complaints to the executive director in writing at any

time after a documented investigation of the complaint has been completed.

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

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239-4712

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SUBCHAPTER H. TREATMENT AND DISPOSAL OF GREYWATER

30 TAC §285.80, §285.81

STATUTORY AUTHORITY

The new section and amendments are adopted under the authority granted to the commission by the Texas Legislature in the Texas Health and Safety Code (THSC), §366.011. The revisions will be implemented pursuant to THSC, §366.012(a)(1), which requires the commission to adopt rules consistent with the policy defined in THSC, §366.001. The commission has authority to adopt rules to implement the requirements of THSC, §366.053(b), which requires the adoption of rules for permitting; THSC, §366.058, which requires adoption of rules addressing permit fees; and THSC, §366.072, which provides for the adoption of rules for registration.

The new section and amendments are also adopted under the general authority granted in the Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of the TWC and the THSC.

§285.81. Criteria for Discharge of Laundry Greywater.

Wastewater from residential clothes washing machines, otherwise known as laundry greywater, may be discharged directly onto the ground surface under the following conditions.

(1) The disposal area shall not create a public health nuisance.

(2) Surface ponding shall not occur in the disposal area.

(3) The disposal area shall support plant growth or be sodded with vegetative cover.

(4) The disposal area shall have limited access and use by residents and pets.

(5) Laundry greywater that has been in contact with human or animal waste shall not be discharged on the ground surface and shall be treated and disposed of according to §285.32 and §285.33 of this title (relating to Criteria for Sewage Treatment Systems and Criteria for Effluent Disposal Systems, respectively).

(6) Laundry greywater shall not be discharged to the area if the soil is wet.

(7) The use of detergents that contain a significant amount of phosphorus, sodium, or boron should be avoided.

(8) A lint trap shall be required at the end of the discharge line.

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

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SUBCHAPTER I. APPENDICES

30 TAC §285.90, §285.91

STATUTORY AUTHORITY

These amendments are adopted under the authority granted to the commission by the Texas Legislature in the Texas Health and Safety Code (THSC), §366.011. The revisions will be implemented pursuant to THSC, §366.012(a)(1), which requires the commission to adopt rules consistent with the policy defined in THSC, §366.001. The commission has authority to adopt rules to implement the requirements of THSC, §366.053(b), which requires the adoption of rules for permitting; THSC, §366.058, which requires adoption of rules addressing permit fees; and THSC, §366.072, which provides for the adoption of rules for registration.

These amendments are also adopted under the general authority granted in the Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of the TWC and the THSC.

§285.90. Figures.

The following figures are necessary for the proper location, planning, construction, and installation of an OSSF.

(1) Figure 1. Maximum Application Rates for Surface Application of Treated Effluent in Texas.
Figure: 30 TAC §285.90(1)

(2) Figure 2. Affidavit to the Public.
Figure: 30 TAC §285.90(2)

(3) Figure 3. Sample Testing and Reporting Record.
Figure: 30 TAC §285.90(3)

(4) Figure 4. Typical Drainfields - Sectional View.
Figure: 30 TAC §285.90(4)

(5) Figure 5. Typical Drainfields.

Figure: 30 TAC §285.90(5)

(6) Figure 6. Two Compartment Septic Tank.
Figure: 30 TAC §285.90(6)

(7) Figure 7. Two Septic Tanks in Series.
Figure: 30 TAC §285.90(7)

(8) Figure 8. Intermittent Sand Filters.
Figure: 30 TAC §285.90(8) (No change.)

(9) Figure 9. Intermittent Sand Filter Underdrain and Pumpwell.
Figure: 30 TAC §285.90(9) (No change.)

§285.91. Tables.

The following tables are necessary for the proper location, planning, construction, and installation of an OSSF.

(1) Table I. Effluent Loading Requirements Based on Soil Classification.
Figure: 30 TAC §285.91(1) (No change.)

(2) Table II. Septic Tank Minimum Liquid Capacity.
Figure: 30 TAC §285.91(2)

(3) Table III. Wastewater Usage Rate.
Figure: 30 TAC §285.91(3)

(4) Table IV. Required Testing and Reporting.
Figure: 30 TAC §285.91(4)

(5) Table V. Criteria for Standard Subsurface Disposal Methods.
Figure: 30 TAC §285.91(5)

(6) Table VI. USDA Soil Textural Classifications.
Figure: 30 TAC §285.91(6)

(7) Table VII. Yearly Average Net Evaporation (Evaporation-Rainfall).
Figure: 30 TAC §285.91(7) (No change.)

(8) Table VIII. OSSF Excavation Length (3 Feet in Width or Less).
Figure: 30 TAC §285.91(8)

(9) Table IX. OSSF System Designation.
Figure: 30 TAC §285.91(9)

(10) Table X. Minimum Required Separation Distances for On-Site Sewage Facilities.
Figure: 30 TAC §285.91(10)

(11) Table XI. Intermittent Sand Filter Media Specifications (ASTM C-33).
Figure: 30 TAC §285.91(11) (No change.)

(12) Table XII. OSSF Maintenance Contracts, Affidavit, and Testing/Reporting Requirements.
Figure: 30 TAC §285.91(12)

(13) Table XIII. Disposal and Treatment Selection Criteria.
Figure: 30 TAC §285.91(13)

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

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TRD-200102956

Margaret Hoffman
Director, Environmental Law Division
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For further information, please call: (512) 239-4712

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.284

The Comptroller of Public Accounts adopts an amendment to §3.284, concerning drugs, medicines, medical equipment, and devices, without changes to the proposed text as published in the February 2, 2001, issue of the *Texas Register* (26 TexReg 1103).

This section is being amended to reflect changes made by Senate Bill 441 and House Bill 652, 76th Legislature, 1999. Effective April 1, 2000, the exemption for medical supplies is broadened to include blood glucose monitoring strips and over-the-counter drugs and medicines. Under House Bill 652, effective July 1, 1999, specially designed eating utensils are exempt when purchased for persons who are elderly or who have medical conditions and cannot feed themselves independently with conventional eating utensils. These items are exempt with or without prescriptions. This section is also amended to add wound care dressings and certain skin closure supplies to the definition of drugs and medicines and to add intravenous systems to the list of prosthetic devices. The term "diagnostic" replaces the term "identification" in the definition of drugs or medicines without changing the meaning.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §151.313.

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

Filed with the Office of the Secretary of State on May 24, 2001.

TRD-200102935
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Effective date: June 13, 2001
Proposal publication date: February 2, 2001
For further information, please call: (512) 463-3699

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34 TAC §3.298

The Comptroller of Public Accounts adopts an amendment to §3.298, concerning amusement services, without changes to the proposed text as published in the February 2, 2001, issue of the *Texas Register* (26 TexReg 1105).

The amendment is the result of a change to Tax Code, §151.3101, by House Bill 3211, 76th Legislature, 1999, effective October 1, 1999. The amendment allows public colleges and universities and other public institutions of higher education to provide tax-free amusement services without the limitations placed on other state agencies. Public institutions of higher education are able to provide tax-free amusement services as nonprofit private institutions of higher education. Subsection (g)(6) is also being amended to clarify that the exemption is not lost when members reimburse an exempt organization or pay the admission charges directly if an exemption certificate is issued by the organization. Subsection (g)(8) is added to clarify that the simple renting or leasing of facilities by an exempted organization to an organization that is not exempted does not create an exemption for the amusement service provided by the non-exempt organization. Various subsections are amended to correct errors in grammar and sentence structure, and to make the section easier to read and understand.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §151.3101.

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

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Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Effective date: June 13, 2001
Proposal publication date: February 2, 2001
For further information, please call: (512) 463-3699

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CHAPTER 17. PAYMENT OF FEES, TAXES, AND OTHER CHARGES TO STATE AGENCIES BY CREDIT, CHARGE, AND DEBIT CARDS

The Comptroller of Public Accounts adopts new §§17.1, 17.2, and 17.3, concerning the acceptance of credit, charge, and debit cards for the payment of fees, taxes, and other charges assessed by a state agency, without changes to the proposed text as published in the *Texas Register* and therefore the sections will not be republished. Two of the new sections, §17.1 and §17.3, were published in the February 23, 2001, issue of the *Texas Register* (26 TexReg 1684). The new §17.2 was published in the March 30, 2001, issue of the *Texas Register* (26 TexReg 2505).

The purpose of these rules is to provide a uniform procedure through which the comptroller may authorize a state agency to accept credit, charge, and debit cards if the comptroller determines that the best interest of the state will be promoted.

No comments were received regarding adoption of the new sections.

34 TAC §17.1, §17.3

These new sections are adopted under Government Code, §403.023, which provides that the comptroller may adopt rules relating to the acceptance of credit, charge, and debit cards for the payment of fees, taxes, and other charges assessed by a state agency.

The new sections implement Government Code, §403.023.

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

Filed with the Office of the Secretary of State on May 22, 2001.

TRD-200102851
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Effective date: June 11, 2001
Proposal publication date: February 23, 2001
For further information, please call: (512) 463-3699

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34 TAC §17.2

The new section is adopted under Government Code, §403.023, which provides that the comptroller may adopt rules relating to the acceptance of credit, charge, and debit cards for the payment of fees, taxes, and other charges assessed by a state agency.

The new section implements Government Code, §403.023.

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

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Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
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Proposal publication date: March 30, 2001
For further information, please call: (512) 463-3699

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 151. GENERAL PROVISIONS

37 TAC §151.53

The Texas Department of Criminal Justice adopts an amendment to §151.53 concerning multiple employment with the state, without changes to the proposed text as published in the March

23, 2001, issue of the *Texas Register* (26 TexReg 2325). The purpose of this section is to provide procedures regarding applications for, and the administration of, multiple employment with the State of Texas by employees of the Texas Department of Criminal Justice (TDCJ). The amendment stipulates that an employee may not work part-time for the TDCJ and full-time with another state agency.

The amendment will provides clear and complete guidelines for TDCJ employees in the application and administration of multiple employment with the State of Texas

No comments were received regarding adoption of the amendment as proposed.

The amendment is adopted under Texas Government Code, §492.013, which grants general rulemaking authority to the Board; the Texas Constitution, Article XVI, Section 40; and Texas Government Code, Chapter 574, which specifically authorizes this section.

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

Filed with the Office of the Secretary of State on May 25, 2001.

TRD-200102980
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Effective date: June 14, 2001
Proposal publication date: March 23, 2001
For further information, please call: (512) 463-9693

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37 TAC §151.73

The Texas Department of Criminal Justice adopts new §151.73 concerning Texas Board of Criminal Justice vehicle assignments, without changes to the proposed text as published in the April 20, 2001, issue of the *Texas Register* (26 TexReg 2964). The purpose of this new section is for all Agency vehicles to be assigned to the motor pool and be available for check out.

The new section will enable the availability of all Agency vehicles to administrative or executive employees on a regular basis in order to carry out the needs and mission of the Agency.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Government Code, §492.013, which grants general rulemaking authority to the Board and §2171.1045, which specifically authorizes this section.

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

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TRD-200102978
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Effective date: June 14, 2001
Proposal publication date: April 20, 2001
For further information, please call: (512) 463-9693

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CHAPTER 152. INSTITUTIONAL DIVISION SUBCHAPTER B. MAXIMUM SYSTEM CAPACITY OF THE INSTITUTIONAL DIVISION

37 TAC §152.12

The Texas Department of Criminal Justice adopts an amendment to §152.12 concerning the unit inmate capacity of TDCJ Institutional Division facilities, consistent with state law governing appreciable increases or reductions in such capacity, without changes to the proposed text as published in the April 20, 2001, issue of the *Texas Register* (26 TexReg 2964). The amendment concerns reductions in capacity in Institutional Division facilities that can be effected indefinitely by the Executive Director, for the purpose of deactivating housing areas in the event of excess capacity.

The amendment will increase the potential for unit safety and public safety by decreasing the number of inmates required to be housed in units that may lack sufficient staff to be fully operational.

No comments were received regarding adoption of the amendment as proposed.

The amendment is adopted under Texas Government Code, §492.013, which grants general rulemaking authority to the Board; and Government Code, Chapter 499, Subchapter E, Unit and System Capacity.

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

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Carl Reynolds
General Counsel
Texas Department of Criminal Justice
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Proposal publication date: April 20, 2001
For further information, please call: (512) 463-9693

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 7. REFUGEE CASH ASSISTANCE PROGRAM

The Texas Department of Human Services (DHS) adopts amendments to §§7.201, 7.204, 7.211, 7.212, 7.301, 7.305,

7.306, 7.307, 7.401, 7.403, 7.405, 7.502, 7.601, 7.602, and 7.603 ; repeals of §§7.304, 7.402, and 7.501; and new §§7.304, 7.402, and 7.404 published in the March 23, 2001 issue of the *Texas Register* (26 TexReg 2326). The amendments, repeals, and new sections are adopted without changes and will not be republished.

The justification for the amendments, repeals, and new sections is to update obsolete language and adhere to federal regulations that were effective in April and June 2000. The updates allow easier access to basic services for the refugee population.

The department received no comments regarding adoption of the amendment.

SUBCHAPTER B. ELIGIBILITY CRITERIA

40 TAC §§7.201, 7.204, 7.211, 7.212

The amendments are adopted under the Human Resources Code, Title 2, Chapter 31, which authorizes the department to administer financial assistance programs.

The amendments implement the Human Resources Code, §§31.001- 31.0325.

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

Filed with the Office of the Secretary of State on May 23, 2001.

TRD-200102885
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 2001
Proposal publication date: March 23, 2001
For further information, please call: (512) 438-3108

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SUBCHAPTER C. ELIGIBILITY DETERMINATION

40 TAC §§7.301, 7.304 - 7.307

The new section and amendments are adopted under the Human Resources Code, Title 2, Chapter 31, which authorizes the department to administer financial assistance programs.

The new section and amendments implement the Human Resources Code, §§31.001-31.0325.

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

Filed with the Office of the Secretary of State on May 23, 2001.

TRD-200102886
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 2001
Proposal publication date: March 23, 2001
For further information, please call: (512) 438-3108

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40 TAC §7.304

The repeal is adopted under the Human Resources Code, Title 2, Chapter 31, which authorizes the department to administer financial assistance programs.

The repeal implements the Human Resources Code, §§31.001-31.0325.

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

Filed with the Office of the Secretary of State on May 23, 2001.

TRD-200102887
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 2001
Proposal publication date: March 23, 2001
For further information, please call: (512) 438-3108

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SUBCHAPTER D. ELIGIBILITY FOR OTHER PROGRAMS

40 TAC §§7.401 - 7.405

The new sections and amendments are adopted under the Human Resources Code, Title 2, Chapter 31, which authorizes the department to administer financial assistance programs.

The new sections and amendments implement the Human Resources Code, §§31.001-31.0325.

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

Filed with the Office of the Secretary of State on May 23, 2001.

TRD-200102888
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 2001
Proposal publication date: March 23, 2001
For further information, please call: (512) 438-3108

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40 TAC §7.402

The repeal is adopted under the Human Resources Code, Title 2, Chapter 31, which authorizes the department to administer financial assistance programs.

The repeal implements the Human Resources Code, §§31.001-31.0325.

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

Filed with the Office of the Secretary of State on May 23, 2001.

TRD-200102889

Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 2001
Proposal publication date: March 23, 2001
For further information, please call: (512) 438-3108

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SUBCHAPTER E. CLIENT REPORTING REQUIREMENTS

40 TAC §7.501

The repeal is adopted under the Human Resources Code, Title 2, Chapter 31, which authorizes the department to administer financial assistance programs.

The repeal implements the Human Resources Code, §§31.001-31.0325.

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

Filed with the Office of the Secretary of State on May 23, 2001.

TRD-200102890
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 2001
Proposal publication date: March 23, 2001
For further information, please call: (512) 438-3108

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40 TAC §7.502

The amendment is adopted under the Human Resources Code, Title 2, Chapter 31, which authorizes the department to administer financial assistance programs.

The amendment implements the Human Resources Code, §§31.001- 31.0325.

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

Filed with the Office of the Secretary of State on May 23, 2001.

TRD-200102891
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 2001
Proposal publication date: March 23, 2001
For further information, please call: (512) 438-3108

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SUBCHAPTER F. PENALTY PROVISIONS

40 TAC §§7.601 - 7.603

The amendments are adopted under the Human Resources Code, Title 2, Chapter 31, which authorizes the department to administer financial assistance programs.

The amendments implement the Human Resources Code, §§31.001- 31.0325.

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

Filed with the Office of the Secretary of State on May 23, 2001.

TRD-200102892
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 2001
Proposal publication date: March 23, 2001
For further information, please call: (512) 438-3108

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CHAPTER 41. VENDOR FISCAL INTERMEDIARY PAYMENTS

40 TAC §§41.101, 41.103, 41.105

The Texas Department of Human Services (DHS) adopts new §41.101, in new Chapter 41 without changes to the proposed text published in the March 9, 2001, issue of the *Texas Register* (26 TexReg 2011) and will not be republished. New §41.103 and §41.105 are adopted with changes to the proposed text and will be republished.

The Vendor Fiscal Intermediary (VFI) model was piloted in DHS's Client Managed Attendant Services program and the Personal Attendant Services program of the Texas Rehabilitation Commission (TRC) under House Bill 2084 of the 75th Legislature. Justification for these new sections is to expand the model to other CCAD programs under Senate Bill 1586 of the 76th Legislature, which directs the Health and Human Services Commission (HHSC) to expand this model to other HHSC community programs.

The department received comments from the Texas Association for Home Care. A summary of the comments and the department's responses follows.

Comment: Under proposed §41.103(2), which "program requirements" are the VFI going to be expected to train the customers on?

Response: The VFI will be expected to train the customers on VFI requirements as specified in proposed §41.103 and §41.105.

Comment: Under proposed §41.103(3), the VFI should only be involved in the administrative aspects of payroll, taxes, etc., and should not be responsible for training the consumer in duties of the employer related to evaluation of the performance and knowledge of job duties of employees, and we would recommend that portion be deleted from the rule.

Response: DHS concurs with the comment and will change the proposed language for clarity.

Comment: Under proposed §41.103(4)(D), what liability coverage options are VFI going to be expected to provide the consumer information on when they do not provide workers' compensation?

Response: The VFI is only required to provide information regarding liability compensation coverage and to provide assistance in payment arrangements if the consumer requests it. DHS

concurs with the comment and will change the proposed language for clarity.

Comment: Under proposed §41.103(4)(K), the payroll checks should be distributed according to the VFI's (not the consumer's) check distribution policy, but at least twice a month.

Response: DHS concurs with the comment and is deleting the word "consumer" for clarity.

Comment: Under proposed §41.103(5), licensed home and community support services agencies, which could potentially act as the VFIs, only perform checks on their own potential employees according to Chapter 250 of the Health and Safety Code. Since the attendant under the VFI model is not an employee of the VFI, how can the VFI perform the check?

Response: Any individual can perform a criminal history check. When the VFI performs this function, they do so at the direction of the consumer and not under Chapter 250 of the Health and Safety Code.

Comment: Under proposed §41.103(8), it is not clear who the "contractor" is. Does this refer to the state agency or VFI? Is a copy of the authorization given to the VFI? We would suggest "not to exceed the authorization given to the VFI by DHS."

Response: DHS concurs with the comment and will change the words "the contractor" to "DHS."

Comment: Under proposed §41.105(11), does the sentence, "The receipt must be marked paid." mean that the client has to pay first out-of-pocket rather than the VFI paying the vendor?

Response: The proposed section provides that when the consumer has purchased an item, the consumer must provide a receipt for that purchase to be reimbursed, or the consumer can submit an invoice and have the provider pay the vendor directly.

Comment: Under proposed §41.105(12), who ultimately makes the decision that services should be discontinued due to the consumer's inability or refusal to comply with responsibilities? What if the VFI and DHS disagree as to whether the client can use the VFI model again? Can the VFI decline clients who have refused to comply in the past?

Response: DHS concurs with the comment and will change the proposed language from "non-VFI" to "agency" for clarity. Proposed §41.105(16) specifies that DHS must concur with the VFI decision, and at that point, the consumer has a right to appeal. If DHS doe not concur with the decision to terminate the VFI model, termination does not occur.

Comment: Under proposed §41.104(13), the second sentence should read, "The consumer is the employer of record and retains control over the hiring, management, and firing of an individual providing personal assistance services" in order to be consistent with the definition under proposed §41.104(4).

Response: DHS concurs with the comment and will change the language as noted.

Comment: It is not clear in these rules whether a licensed home and community care support services agency that is providing back-up personal assistance can bill the VFI directly, or if the HCSSA must send a bill to the client, who then must send it to the VFI.

Response: The back-up personal assistance is one of the spending decisions that can be made by the consumer under proposed §41.105(6). The consumer is billed and the invoice may be sent to the consumer or directly to the VFI depending on the consumer's arrangements with the HCSSA.

The new chapter and sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department 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 and Texas Government Code §531.051, which covers the voucher program for payment of certain services for persons with disabilities.

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

§41.103. Generic Contractor Responsibilities under the Vendor Fiscal Intermediary (VFI) Model.

This rule applies to all Community Care for the Aged and Disabled (CCAD) and Medicaid Programs that offer the VFI model of payment, unless stated differently in program rules. Contractors for any VFI model within Texas Department of Human Services (DHS) CCAD programs must:

(1) contract with DHS to handle payroll, prepare and file tax-related forms and reports for Workers' Compensation, state and federal unemployment, Medicare, and Federal Insurance Contributions Act (FICA), and pay for other approved related expenses;

(2) train the consumer in VFI program requirements and any other legal requirements, such as the Occupational Safety and Health Act;

(3) provide the consumer with information, orientation, and training, as needed, concerning fiscal and payroll responsibilities and obligations as employers of personal assistant(s) and;

(4) act as the agent for the consumer for the purpose of:

(A) registering the consumer as an employer, including providing assistance to the consumer in completing forms required to obtain an employer identification number (EIN) from federal agencies, state agencies, and unemployment insurance agencies;

(B) taking the appropriate action to file for employer agent status with the federal and state tax authorities and successfully obtaining agent status;

(C) making all deposits of unemployment taxes that are withheld according to the appropriate schedule;

(D) assisting the consumer in acquiring workers' compensation insurance for the consumer's personal assistant who is the consumer's employee, if the consumer provides workers' compensation;

(E) computing and paying federal and state employment taxes, including federal withholding FICA (employer and employee shares), local taxes (optional), unemployment compensation taxes, workers' compensation insurance (if applicable), and other payments required as appropriate, within specified timeframes;

(F) preparing and filing income tax forms and reports within specified timeframes;

(G) maintaining original and file copies of all forms needed to comply with federal, state, and local tax payment of unemployment compensation premiums, and all other reporting requirements of employers;

(H) remitting the required forms to the appropriate state agency and maintaining copies of the forms in the consumer's file upon receipt of the required completed forms from the consumer. The VFI

must return copies of all forms to the consumer for the consumer's permanent personnel records;

(I) receiving and processing personal assistant care timesheets, processing the payroll for the consumer's personal assistant(s) upon receipt of the approved timesheets, preparing the payroll for the consumer's personal assistant(s), performing appropriate income tax, FICA, workers' compensation (if applicable), and other withholding according to federal and state regulations;

(J) preparing payroll for the consumer's personal assistant(s) according to approved time sheets after making appropriate deductions;

(K) distributing payroll checks to the consumer's personal assistant(s) according to the VFI's check distribution policy. Distribution must be at least twice a month;

(L) providing, at the consumer's request, the consumer with regular summaries of payroll and deductions made on the consumer's behalf; and

(M) answering questions and distributing information to concerned parties pertaining to the VFI's responsibilities.

(5) at the request of the consumer, conduct checks of criminal conviction of personal assistants directly from the Texas Department of Public Safety (DPS) Conviction Data base website and provide the history of convictions to the consumer. If the consumer prefers to request the check from DPS, or to require the personal assistant to obtain the information from DPS, this task does not need to be performed by the VFI. The consumer cannot employ the personal assistant until after the criminal history check is obtained.

(A) The VFI must also document that the consumer was informed of the criminal history results or that the consumer chose to obtain the criminal history information themselves or through the personal assistant rather than through the VFI. If there is a criminal record that prevents employment according to state law, the participant cannot hire the prospective personal assistant.

(B) If there is a criminal history result that does not prevent employment by Chapter 250 of the Health and Safety Code, the VFI must document that the consumer was informed of the result. In this case, the VFI must document that the consumer was informed of the criminal history results and that the consumer prefers to hire an employee with a criminal history (when this is not prevented by Chapter 250 of the Health and Safety Code);

(6) keep a record of expenses paid, related to personal assistant services.

(7) based on each personal assistant's time sheets and other documentation, pay for each of the consumer's costs incurred relating to personal assistant services, such as substitute (back-up) personal assistants and health insurance, not to exceed the authorization given by the contractor. Invoice payment must be made within 30 working days of the VFI's receipt of the invoice;

(8) pay costs incurred relating to personal assistance services, such as recruitment (including advertisement, travel, or telephone calls), and provision of substitute (backup) personal assistants, not to exceed the authorization given by DHS. Payment to the consumer must be made within 30 working days of the VFI receiving the receipt from the consumer;

(9) serve as the consumer's fiscal intermediary for unexpended funds within the fiscal year;

(10) maintain record keeping of the reimbursement received, payroll disbursed, and consumer account balances;

(11) comply with all state and federal rules, laws, and regulations; and

(12) retain an amount of the unit rate for personal assistant services approved by DHS as an administrative payment.

§41.105. Generic Consumer Responsibilities under the Vendor Fiscal Intermediary Model.

Consumers choosing the vendor fiscal intermediary (VFI) model within any Texas Department of Human Services (DHS) Community Care for the Aged and Disabled (CCAD) program must:

(1) be capable of performing all employer tasks that the VFI model requires, or appoint a designated person to perform these employer tasks and participate in the training offered by the VFI as specified in §41.103(2) of this title (relating to generic contractor responsibilities under the vendor fiscal intermediary (VFI) model).

(2) appoint the VFI as the consumer's fiscal and payroll agent;

(3) request criminal history checks of personal assistant(s), either through the VFI, personal assistant, or directly from the Texas Department of Public Safety Conviction Data base website and consider this information in determining whether to hire the personal assistant(s) as per Chapter 250 of the Health and Safety Code. An individual cannot be hired as a personal assistant until the criminal history check is obtained;

(4) provide substitute (backup) personal assistant(s);

(5) resolve any employer/employee-related problems or disagreements directly with his personal assistant(s);

(6) make payroll spending decisions pertaining to provisions of personal assistant services and wages and any personal assistant employment-related costs within the consumer's authorized individual service plan, including:

(A) using the approved budget to cover related personal assistant employment expenses incurred by the consumer, such as recruitment, requesting a criminal history check or an open records check (which is more in-depth than a criminal check) of a potential employee, and provision of substitute (backup) personal assistants;

(B) providing the personal assistant with one or more of the optional benefits selected from the following list: increased wages, paid vacation, health insurance, workers' compensation, work-related travel expenses, and bonus, holiday, overtime, and sick pay. If the consumer elects not to provide workers' compensation insurance coverage for the personal assistant, the consumer must disclose this election to the personal assistant by having the personal assistant sign a written notice that workers' compensation will not be provided;

(C) purchasing more hours of personal assistant services by paying a decreased rate per hour when the consumer's services are at the maximum allowed by the program as long as the total amount does not exceed the authorized service plan amount for the category of service and the hours are used for the purpose of the program; and

(D) purchasing other authorized services related to personal assistant services, provided the services are covered by the consumer's budget plan developed by the VFI in conjunction with the consumer. The VFI must not pay for services excluded from the service plan, non-allowable costs according to DHS rule, or for services that exceed the service plan.

(7) not discriminate against personal assistants or applicants based on race, creed, color, national origin, sex, age, disability, or sexual orientation;

(8) perform all other employer tasks except for employer-related administrative functions specifically assumed by the VFI;

(9) notify the VFI of all personal assistant enrollments, substitutions, dismissals, and the reasons therefore;

(10) specify the tasks the personal assistant is to perform for the consumer, the schedule the personal assistant will work for the consumer, the hourly rate (which must be at least the minimum wage level) the consumer will pay the personal assistant, timeframes (at least twice a month) the VFI will pay the personal assistant, and benefits the personal assistant will receive;

(11) submit to the VFI receipts or invoices for personal assistance services related costs as specified in paragraph (6)(D) of this section. The consumer cannot receive reimbursement for those services lacking copies of receipts. The copy of the receipt or invoice must be legible, verify how purchase of an allowable service pertains to the personal assistant employment-related cost, and not be dated prior to the date the individual was certified eligible for the CCAD program or prior to the date the VFI option was chosen. Additionally, the copy of the receipt or invoice must include specifications of service purchased, date service was purchased, and the vendor's name and identifying information. The receipt must be marked paid. If the consumer does not provide required invoices, the VFI must not make payments;

(12) accept services through a non-vendor fiscal intermediary model for three months if the consumer discontinues services through the VFI model. If services are discontinued due to consumer inability or refusal to comply with responsibilities, a VFI and DHS representative or designee must review consumer's plan for correction of previous deficiencies before re-initiation of the VFI model;

(13) assume liability. Personal assistants of consumers participating in the VFI model are considered employees of the consumer. The consumer is the employer of record and retains control over the hiring, management, and firing of an individual providing personal assistance services. Personal assistants are not employees of the VFI or DHS, and the VFI and DHS are not responsible or liable for any negligent acts or omissions by the personal assistant or the employer;

(14) assume all disability related training for the personal assistant including nature of the disability, type of care needed, steps in carrying out procedures, and safety precautions;

(15) perform annual evaluations and provide ongoing feedback regarding job performance to all personal assistants;

(16) change to the agency model on VFI's recommendation, if there is a documented, substantiated pattern of consumer's refusal or inability to comply with the responsibilities listed in paragraphs (1)-(15) of this section. With concurrence from the authorized DHS representative, this recommendation will be enacted immediately. A request for a hearing to appeal the decision may be made in accordance with program guidelines; and

(17) consumer complaints regarding actions of the VFI or the personal assistant relating to abuse, neglect, and exploitation, will be addressed to the authorized Texas Department of Protective and Regulatory Services (TDPRS) representative.

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

Filed with the Office of the Secretary of State on May 21, 2001.

TRD-200102842

Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: June 10, 2001
Proposal publication date: March 9, 2001
For further information, please call: (512) 438-3108

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PART 11. TEXAS COMMISSION ON HUMAN RIGHTS

CHAPTER 338. EXEMPTED RESIDENTIAL REAL ESTATE-RELATED TRANSACTIONS

40 TAC §338.6

The Commissioners of the Texas Commission on Human Rights (TCHR) adopt amended §338.6, concerning Familial Status. This section is adopted without changes to the proposed text as published in the March 23, 2001, issue of the *Texas Register* (26 TexReg 2346) and will not be republished.

On April 2, 1999, HUD issued its final rule to implement amendments to the Housing for Older Persons Act of 1995 (HOPA). 64 Fed. Reg. 16324 (1999) (now codified at 24 C.F.R. §100.304-.308) The amendments modify the requirements for qualification for housing for persons who are 55 years of age or older portion of the "housing for older persons" exemption established in the federal Fair Housing Act.

Pursuant to §301.002(3) of the Texas Property Code, a purpose of the Texas Fair Housing Act is to provide rights and remedies substantially equivalent to those granted under federal law. The Commission provides, as detailed in §301.043(3) of the Texas Property Code, for an exemption for housing intended and operated for occupancy by at least one person 55 years of age or older for each housing unit as determined by Commission rules. Additionally, pursuant to 40 Texas Administrative Code §335.3, the Commission intends that its substantive rules impose obligations, rights, and remedies that are the same as provided by federal laws and regulations

This section sets forth the requirements for a facility seeking to claim the 55 and older exemption. A facility must show three factors: (1) that the housing is intended and operated for persons 55 years of age or older; (2) that at least 80% of the occupied units be occupied by at least one person who is 55 years or older; and (3) the housing facility or community publish and adhere to policies and procedures that demonstrate its intent to qualify for the exemption. The housing facility or community must also comply with rules for the verification of occupancy.

Section §338.6(d), establishes a good faith defense against civil money damages for a person who reasonably relies in good faith on the application of the housing for older persons exemption, even when, in fact, the housing facility or community does not qualify for the exemption.

No comments were received in response to the proposed rule amendment.

This rule is adopted under the Texas Property Code, Chapter 301, Section 301.062, and 40 Texas Administrative Code Chapter 336, Section 336.1 and Chapter 335, Section 335.4. Under the Texas Property Code, Section 301.062, the Commission may adopt rules as necessary to implement the Texas Fair Housing

Act. The Texas Administrative Code Title 40, Sections 335.4 and 336.1, provide that the Commission may adopt rules and regulations to execute the duties and functions of the Texas Commission on Human Rights.

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

Filed with the Office of the Secretary of State on May 24, 2001.

TRD-200102933
Katherine A. Antwi
Interim Executive Director
Texas Commission on Human Rights
Effective date: June 13, 2001
Proposal publication date: March 23, 2001
For further information, please call: (512) 437-3458

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REVIEW OF AGENCY RULES

This Section contains notices of state agency rules review as directed by Texas Government Code, §2001.039. 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.

Proposed Rule Reviews

General Land Office

Title 31, Part 1

In accordance with Section 2001.039 Government Code, the Texas General Land Office (GLO) submits the following Notice of Intent to Review the rules found in 31 TAC, Part 1, Chapter 14 relating to Relationship Between Agency and Private Organizations.

Review of the rules under this chapter will determine whether the reasons for adoption of the rules continues to exist. During the review process, the GLO may also determine that a specific rule may need amended to further refine the directives and goals of the GLO, that no changes to a rule as currently in effect are necessary or that a rule is no longer valid or applicable. Rules will also be combined or reduced for simplification and clarity when feasible. Readopted rules will be noted in the *Texas Register's* Rules Review section without publication of the text. Any proposed amendments or repeal of a rule or chapter 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 prior to final adoption or repeal.

The GLO invites suggestions from the public during the review process and will address any comments received. Any questions or comments should be directed to Melinda Tracy, General Land Office, 1700 North Congress, Room 626, Austin, Texas, 78701-1495, (512) 305-9129 within 30 days of publication.

TRD-200102920
Larry Soward
Chief Clerk
General Land Office
Filed: May 24, 2001

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In accordance with Section 2001.039 Government Code, the Texas General Land Office (GLO) submits the following Notice of Intent to Review the rules found in 31 TAC, Part 1, Chapter 19 relating to Oil Spill Prevention and Response.

Review of the rules under this chapter will determine whether the reasons for adoption of the rules continue to exist. During the review process, the GLO may also determine that a specific rule may need to be amended to further refine the directives and goals of the GLO, that no changes to a rule as currently in effect are necessary or that a rule is no longer valid or applicable. Rules will also be combined or reduced for simplification and clarity when feasible. Readopted rules will be noted in the *Texas Register's* Rules Review section without publication of the text. Any proposed amendments or repeal of a rule or chapter 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 prior to final adoption or repeal.

The GLO invites suggestions from the public during the review process and will address any comments received. Any questions or comments should be directed to Melinda Tracy, General Land Office, 1700 North Congress, Room 626, Austin, Texas, 78701-1495, (512) 305-9129 within 30 days of publication.

TRD-200102921
Larry Soward
Chief Clerk
General Land Office
Filed: May 24, 2001

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Texas Historical Commission

Title 13, Part 2

The Texas Historical Commission files its notice of intention to review its rules contained within Title 13, Part 2, Texas Administrative Code, Chapters 19, and 21. This review is conducted pursuant to Appropriations Act, 1997, House Bill 1, Article IX, §167.

The commission will review its rules associated with Chapter 19 (concerning the Texas Main Street Project), and Chapter 21 (concerning the Local History Program) to determine what changes, if any, are needed for both of these chapters. Both Chapter 19 and Chapter 21 will be reviewed to determine administrative efficiency and clarity of functions and policies.

Comments may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to F. Lawerence Oaks, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711.

TRD-200102999
F. Lawerence Oaks
Executive Director
Texas Historical Commission
Filed: May 25, 2001

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Railroad Commission of Texas

Title 16, Part 1

The Railroad Commission of Texas (Commission) files this notice of intention to review §3.101, relating to certification for severance tax exemption or reduction for gas produced from high-cost gas wells. This review and consideration is being conducted in accordance with Texas Government Code, §2001.039 (*as added by Acts 1999, 76th Legislature, chapter 1499, §1.11(a)*).

The Commission is concurrently proposing amendments to this rule. As required by Texas Government Code, §2001.039 (*as added by Acts 1999, 76th Legislature, chapter 1499, §1.11(a)*), the Commission will accept comments regarding whether the reason for readopting the rule with the proposed amendments continues to exist.

Any questions pertaining to this notice of intention to review or the proposed amendments should be directed to Mark Helmueller, Hearings Examiner, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967 or via electronic mail at mark.helmueller@rrc.state.tx.us. Comments are due no later than 5 p.m. on the 30th day after publication in the *Texas Register*.

Issued in Austin, Texas, on May 22, 2001.

TRD-200102915
Mary Ross McDonald
Deputy General Counsel, Office of the General Counsel
Railroad Commission of Texas
Filed: May 24, 2001

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Adopted Rule Reviews

General Land Office

Title 31, Part 1

The General Land Office (GLO) adopts the review of the rules found in 31 TAC, Part 1, Chapter 2 relating to Rules of Practice and Procedure pursuant to the Texas Government Code, §2001.039.

The GLO finds that the reasons for the original adoption of each rule in Chapter 2 continues to exist and therefore the rules are valid and applicable. These rules are necessary to the proper administration of their authorizing statutes.

The GLO received no comments in response to the notice of rule review published in the November 24, 2000, edition of the *Texas Register* (25 TexReg 11675).

TRD-200102922
Larry Soward
Chief Clerk
General Land Office
Filed: May 24, 2001

♦ ♦ ♦

The General Land Office (GLO) adopts the review of the rules found in 31 TAC, Part 1, Chapter 4 relating to General Rules of Practice and Procedure pursuant to the Texas Government Code, §2001.039.

The GLO finds that the reasons for the original adoption of each rule in Chapter 4 continues to exist and therefore the rules are valid and applicable. These rules are necessary to the proper administration of their authorizing statutes.

The GLO received no comments in response to the notice of rule review published in the February 16, 2001, edition of the *Texas Register* (26 TexReg 1577).

TRD-200102923
Larry Soward
Chief Clerk
General Land Office
Filed: May 24, 2001

♦ ♦ ♦

The General Land Office (GLO) adopts the review of the rules found in 31 TAC, Part 1, Chapter 8 relating to Gas and Marketing Program pursuant to the Texas Government Code, §2001.039.

The GLO finds that the reasons for the original adoption of each rule in Chapter 8 continues to exist and therefore the rules are valid and applicable. These rules are necessary to the proper administration of their authorizing statutes.

The GLO received no comments in response to the notice of rule review published in the February 16, 2001, edition of the *Texas Register* (26 TexReg 1578).

TRD-200102924
Larry Soward
Chief Clerk
General Land Office
Filed: May 24, 2001

♦ ♦ ♦

The General Land Office (GLO) adopts the review of the rules found in 31 TAC, Part 1, Chapter 16 relating to Coastal Protection pursuant to the Texas Government Code, §2001.039.

The GLO finds that the reasons for the original adoption of each rule in Chapter 16 continues to exist and therefore the rules are valid and applicable. These rules are necessary to the proper administration of their authorizing statutes.

The GLO received no comments in response to the notice of rule review published in the November 24, 2000, edition of the *Texas Register* (25 TexReg 11676).

TRD-200102925
Larry Soward
Chief Clerk
General Land Office
Filed: May 24, 2001

♦ ♦ ♦

The General Land Office (GLO) adopts the review of the rules in 31 TAC, Part 1, Chapter 17 relating to Hearing Procedures for Administrative Penalties and Removal of Unauthorized or Dangerous Structures on State Land pursuant to the Texas Government Code, §2001.039.

The GLO finds that the reasons for the original adoption of each rule in Chapter 17 continues to exist and therefore the rules are valid and applicable. These rules are necessary to the proper administration of their authorizing statutes. The GLO may reanalyze these rules if certain pending legislation becomes law.

The GLO received no comments in response to the notice of rule review published in the November 24, 2000, edition of the *Texas Register* (25 TexReg 11676).

TRD-200102926
Larry Soward
Chief Clerk
General Land Office
Filed: May 24, 2001

♦ ♦ ♦

The General Land Office (GLO) adopts the review of the rules found in 31 TAC, Part 1, Chapter 25 relating to Beach Cleaning and Maintenance Assistance Program pursuant to the Texas Government Code, §2001.039.

The GLO finds that the reasons for the original adoption of each rule in Chapter 25 continues to exist and therefore the rules are valid and applicable. These rules are necessary to the proper administration of their authorizing statutes.

The GLO received no comments in response to the notice of rule review published in the November 24, 2000, edition of the *Texas Register* (25 TexReg 11676).

TRD-200102927
Larry Soward
Chief Clerk
General Land Office
Filed: May 24, 2001

♦ ♦ ♦

Texas Natural Resource Conservation Commission

Title 30, Part 1

The Texas Natural Resource Conservation Commission (commission) adopts the rules review and readopts Chapter 115, Control of Air Pollution from Volatile Organic Compounds in accordance with the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999, which require state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the reasons for the rules continue to exist. The proposed notice of intention to review was published in the March 9, 2001 issue of the *Texas Register* (26 TexReg 2057).

CHAPTER SUMMARY

Chapter 115 requires control of air pollution from volatile organic compounds (VOC) and was initially adopted on January 26, 1972. Since its initial adoption, Chapter 115 has gone through numerous revisions. A completely reformatted Chapter 115, which arranged the rules into program- specific subchapters and renumbered the sections to create a more logical organization, was adopted on December 8, 1989.

Currently, Chapter 115 is organized into eight subchapters: Subchapter A, Definitions, contains the definitions which are used in multiple divisions throughout the entire chapter. Subchapter B, General Volatile Organic Compound Sources, contains the requirements for storage tanks, vent gas control, VOC/water separation, industrial wastewater, municipal solid waste landfills, and batch processes. Subchapter C, Volatile Organic Compound Transfer Operations, contains the requirements for loading and unloading of VOC, Stage I and Stage II vapor recovery at motor vehicle fuel dispensing facilities, testing for VOC leaks from transport vessels, and volatility limits for gasoline. Subchapter D, Petroleum Refining, Natural Gas Processing, and Petrochemical Processes, contains the requirements for process unit turnaround and vacuum-producing systems at petroleum refineries, and fugitive emission control at petroleum refineries, natural gas/gasoline processing operations, and synthetic organic chemical, polymer, resin, and methyl tertiary-butyl ether manufacturing processes. Subchapter E, Solvent-Using Processes, contains the requirements for degreasing, surface coating, and offset, flexographic, and rotogravure printing. Subchapter F, Miscellaneous Industrial Sources, contains the requirements for cutback asphalt, pharmaceutical manufacturing, petroleum dry cleaners, and degassing or cleaning of storage tanks, transport vessels, and marine vessels. Subchapter G, Consumer-Related Sources, contains the requirements for consumer products. Subchapter J, Administrative Provisions, contains the requirements for alternate means of control, early reductions, and compliance and control plans.

ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The commission determined that the reasons for the rules in Chapter 115 continue to exist. The VOC rules contained in Chapter 115 were specifically developed to meet the national ambient air quality standards (NAAQS) for ozone set by the United States Environmental Protection Agency (EPA) under the Federal Clean Air Act (FCAA), 42 United States Code (USC) §7409; the reasonably available control technology (RACT) requirements under 42 USC §7511a(b)(2); the Stage II vapor recovery requirements under 42 USC §7511a(b)(3); and the control programs for serious and severe ozone nonattainment areas required under 42 USC §7511a(c) and (d). Therefore, the rules meet a federal requirement because they implement requirements of the FCAA.

States are primarily responsible for ensuring attainment and maintenance of NAAQS once the EPA has established those standards. Under 42 USC §7410 and related provisions, states must submit revisions to the state implementation plan (SIP) for EPA approval that provide for the attainment and maintenance of the NAAQS through control programs directed to sources of the pollutants involved. The VOCs are major contributors to the formation of ozone, and the rules contained in Chapter 115 are significant components of the Texas SIP to attain NAAQS for ozone (see 40 Code of Federal Regulations §52.2270(c), which lists Chapter 115 rules included in the SIP). Chapter 115 rules also implement the Texas Clean Air Act (TCAA), Texas Health and Safety Code, §382.011, concerning General Powers and Duties, which provides the commission with the authority to establish the level of quality to be maintained in the state's air and the authority to control the quality of the state's air; §382.012, concerning State Air Control Plan, which requires the commission to develop plans for protection of the state's air, such as the SIP; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; §382.017, concerning Rules, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; and §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe the sampling methods and procedures.

PUBLIC COMMENT

The public comment period closed April 9, 2001, and no comments were received.

TRD-200102970
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: May 24, 2001

♦ ♦ ♦

Railroad Commission of Texas

Title 16, Part 1

The Railroad Commission of Texas (Commission), readopts §3.11, relating to Inclination and Directional Surveys. The notice of review was published in the March 23, 2001, issue of the *Texas Register* (26 TexReg 2412). The Commission received no comments regarding the proposed rule review or the amendments to §3.11 which were also published in that issue. After review, the Commission readopts this section, as amended.

The Commission has determined that the reason for adopting this rule, with the adopted amendments, continues to exist.

Issued in Austin, Texas, on May 22, 2001.

TRD-200102913
Mary Ross McDonald
Deputy General Counsel, Office of the General Counsel
Railroad Commission of Texas
Filed: May 24, 2001

♦ ♦ ♦

Texas Real Estate Commission

Title 22, Part 23

The Texas Real Estate Commission adopts the review of Chapters 539, 542 and 543 in accordance with the Texas Government Code, §2001.039, and the General Appropriations Act of 1999, Article IX, Section 167. The proposed rule review was published in the January 19, 2001, issue of the *Texas Register* (26 TexReg 783)

Chapter 539. Provisions of the Residential Service Company Act.

Chapter 542. Rules Relating to the Provisions of House Bill 5.

Chapter 543. Rules Relating to the Provisions of the Texas Timeshare Act.

In conjunction with this review, the agency adopted new §539.71 and amended §539.91, §539.231, and §§543.1-543.6. The agency has determined that with these changes, the reasons for adopting the sections in Chapters 539 and 543 continue to exist. The agency repealed §542.1 after determining that the reason for adopting that section no longer exists and that the provisions of the Texas Government Code, § 2005.003, relating to permits, do not apply to the various licenses and registrations issued by the agency. Notice of these actions appeared in the May 11, 2001, issue of the *Texas Register* (26 TexReg 3490).

TRD-200102919
Mark A. Moseley
General Counsel
Texas Real Estate Commission
Filed: May 24, 2001

♦ ♦ ♦

School Land Board

Title 31, Part 4

The School Land Board (SLB) adopts the review of the rules found in 31 TAC, Part 4 Chapter 154 relating to Land Sales Acquisitions and Trades pursuant to the Texas Government Code, §2001.039.

The SLB finds that the reasons for the original adoption of each rule in Chapter 154 continues to exist and therefore the rules are valid and applicable. These rules are necessary to the proper administration of their authorizing statutes.

The SLB finds that the reasons for adopting all the rules in the chapter continue to exist and received no comments in response to the notice of rule review published in the November 24, 2000, edition of the *Texas Register* (25 TexReg 11677).

TRD-200102928
Larry Soward
Chief Clerk, General Land Office
School Land Board
Filed: May 24, 2001

♦ ♦ ♦

The School Land Board (SLB) adopts the review of the rules found in 31 TAC, Part 4 Chapter 155 relating to Land Resources pursuant to the Texas Government Code, §2001.039.

In conjunction with the review of the rules contained in this chapter, the proposal of amendments and proposal of repeals with simultaneously proposed new rules for certain sections were determined essential. Section 155.1 relating to General Provisions and §155.3 relating to Easements are currently proposed with amendments. Section 155.2 relating to Leases and §155.5 relating to Structure Registrations are also proposed for repeal with new sections simultaneously proposed. These rule making actions are necessary because the rules required significant rewriting and reorganization to streamline the process by which projects on coastal public lands are authorized. In addition, any language from the rules that duplicates statutory provisions will be deleted. These proposed actions were published for public comment in the May 4, 2001, edition of the *Texas Register* (26 TexReg 3378). Any adoptive or withdrawn action on these proposed actions will be published in the *Texas Register* by no later than November 4, 2001.

For further information regarding any of the above rule making actions, please contact Melinda Tracy, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78701, (512) 305-9129.

The SLB finds that the reasons for adopting the rules contained in this chapter continues to exist and received no comments in response to the notice of rule review published in the November 24, 2000, edition of the *Texas Register* (25 TexReg 11677).

TRD-200102929
Larry Soward
Chief Clerk, General Land Office
School Land Board
Filed: May 24, 2001

♦ ♦ ♦

Texas Veterans Land Board

Title 40, Part 5

The Veterans Land Board (VLB) adopts the review of the rules found in 40 TAC, Part 5 Chapter 175 relating to General Rules of the Veterans Land Board (Board) pursuant to Texas Government Code, §2001.039. In conjunction with the review of the rules contained in this chapter, the proposal of amendments and proposal of repeals with simultaneously proposed new rules for certain sections were determined essential.

An amendment to §175.2 relating to Loan Eligibility Requirements was proposed for public comment in the December 8, 2000, edition of the *Texas Register* (25 TexReg 12167) and was adopted with non-substantive changes to the text as proposed with an effective date of April 15, 2001. The adopted amendment added definitions that are used in other

Chapter 175 sections, deleted the procedures for evidencing eligibility by authorizing the Board to adopt resolutions as necessary for such procedures, and provide for a single standard for all loan programs administered by the Board.

Amendments to §§175.9 relating to Death of a Purchaser, 175.12 relating to Severances, 175.14 relating to Mineral Leases, 175.15 relating to Approval of Easements, 175.16 relating to Payment in Full, and 175.19 relating Subdivision Loan Processing were proposed for public comment in the April 27, 2001, edition of the *Texas Register* (26 TexReg 3200). The proposed amendments correct some punctuation errors, eliminate some procedures that relate to appraisals of subdivisions, delete a specific fee amount in §175.19 that is no longer charged by the Board, and remove references to all fee amounts charged in any of these sections. The simultaneously proposed repeal and proposed new §175.17 relating to Fees and Deposits is being proposed so that all fees the Board charges in the Veterans Land Program are contained in a single rule. All of the proposed rule actions, if adopted, protect the best interests of the Program by allowing the Board to list all fees in one rule and set the amount of individual fees, expenses, and interest rates by resolution. This allows the Board to operate the Program in a manner that is responsive to the needs of veterans as market conditions change over time. Any adoptive or withdrawn action on these proposed actions will be published in the *Texas Register* by no later than October 27, 2001.

Most recently, the Board has proposed the repeal and proposed new §175.5 relating to Appraisal of Land. This proposed rule making action will reduce the amount of time needed to process veterans' loan applications and eliminate the travel expenses and missed work days for a veteran to meet with an appraiser. The simultaneously proposed amendments to §175.20 relating to Delinquencies and Forfeiture Procedures will discourage repeated forfeitures thereby encouraging more efficient loan servicing. The rule, if adopted, will also allow the Board Chairman to restore in certain instances the eligibility of a person to participate in the Board's loan programs; provide for a usury savings clause; and ensure that land contracts are in compliance with the constitution, statutes and other Board rules as they may be amended as necessary. These actions are currently being proposed and were published in the May 18, 2001, edition of the *Texas Register* (26 TexReg 3614). Any adoptive or withdrawn action on these proposed actions will be published in the *Texas Register* by no later than November 18, 2001.

For further information regarding any of the above rule making actions, please contact Melinda Tracy, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78701, (512) 305-9129.

The VLB finds that the reasons for adopting the rules contained in this chapter continue to exist and received no comments in response to the notice of rule review published in the November 24, 2000, edition of the *Texas Register* (25 TexReg 11677).

TRD-200102930
Larry Soward
Chief Clerk, General Land Office
TexasVeterans Land Board
Filed: May 24, 2001

♦ ♦ ♦

The Veterans Land Board (VLB) adopts the review of the rules found in 40 TAC, Part 5, Chapter 176 relating to Veterans Homes pursuant to the Texas Government Code, §2001.039. In conjunction with the review of the rules contained in this chapter, the proposal of amendments to certain sections was determined essential.

Amendments to §176.1 relating to Definitions were proposed for public comment in the November 7, 2000, edition of the *Texas Register* (25 TexReg 11377) and adopted with non-substantive changes with an effective date of April 12, 2001. The amendments were necessary in order to correct the definition for "operator" of a nursing home and to add definitions for the terms "spouse" and "surviving spouse."

The amendments to §176.7 relating to Admission Requirements were proposed and adopted simultaneously with the amendments to §176.1. The adopted amendments to §176.7 concern the eligibility of persons to participate in the VLB Veterans Home Program. The amendments deleted the requirement that applicants be citizens of the United States and increased the scope of eligibility for participating in the program. The adopted amendments also restrict eligibility to persons who satisfy the requirements of the United States Department of Veterans Affairs relating to nursing home care. The adopted amendments to §176.7 also give the Board the authority to establish by resolution both procedures for processing applications for admission and a priority system for admitting applicants.

For further information regarding any of the above rule making actions, please contact Melinda Tracy, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78701, (512) 305-9129.

The VLB finds that the reasons for adopting all the rules in the chapter continue to exist and received no comments in response to the notice of rule review published in the November 24, 2000, edition of the *Texas Register* (25 TexReg 11678).

TRD-200102931
Larry Soward
Chief Clerk, General Land Office
Texas Veterans Land Board
Filed: May 24, 2001

♦ ♦ ♦

The Veterans Land Board (VLB) adopts the review of the rules found in 40 TAC, Part 5 Chapter 177 relating to Housing Assistance Program pursuant to Texas Government Code, §2001.039. In conjunction with the review of the rules contained in this chapter, the proposal of amendments and the proposal of a repeal with a simultaneously proposed new rule for certain sections were determined essential.

An amendment to §177.5 relating to Loan Eligibility Requirements was proposed for public comment in the December 8, 2000, edition of the *Texas Register* (25 TexReg 12170) and was adopted without changes as proposed with an effective date of April 12, 2001 The adopted amendment deleted the description of loan eligibility in the program and now refers to the description for eligibility in §175.2 relating to Loan Eligibility Requirements. Any program-specific eligibility requirements were retained in the section. This adopted action was necessary in order to establish a single standard for eligibility in all loan programs.

A proposed rule making action was proposed for public comment in the April 27, 2001, edition of the *Texas Register* (26 TexReg 3204). By repealing and proposing a new §177.9, the Board will describe in a single rule all the fees that may be charged by all parties participating in any of the loan programs available through the Housing Assistance Program. Any adoptive or withdrawn action on these proposed actions will be published in the *Texas Register* by no later than October 27, 2001.

For further information regarding any of the above rule making action, please contact Melinda Tracy, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78701, (512) 305-9129.

The VLB finds that the reasons for adopting the rules contained in this chapter continues to exist and received no comments in response to the

notice of rule review published in the November 24, 2000, edition of the *Texas Register* (25 TexReg 11678).

TRD-200102932
Larry Soward
Chief Clerk, General Land Office
Texas Veterans Land Board
Filed: May 24, 2001

♦ ♦ ♦

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.

Figure: 30 TAC §115.423(3)(A)

$$E = (VOC_a - S) / VOC_a$$

where:

E = the required overall control efficiency

VOC_a = the VOC content of the coatings used on the coating line expressed on a pounds of VOC per gallon of coating basis. The owner or operator may choose to use either a daily weighted average or the maximum VOC content.

S = the applicable emission limit from §115.421 of this title expressed on a pounds of VOC per gallon of solids basis (as calculated in paragraph (1) of this section)

Figure: 30 TAC §285.32(e)

Biochemical Oxygen Demand (BOD) and Total Suspended Solids (TSS):

30-day average	20 mg/l
seven-day average	30 mg/l
Daily Maximum	45 mg/l
Single Grab	65 mg/l

pH ..... 6.0 - 9.0 standard units

Carbonaceous Biochemical Oxygen Demand (CBOD) - to be used instead of BOD for proprietary treatment systems tested after 1996

30-day average	15 mg/l
seven-day average	25 mg/l
Daily Maximum	40 mg/l
Single Grab	60 mg/l

The 30-day average is the average of all 30-day averages, and seven-day average is the average of all seven-day averages over the length of the testing period.

Figure: 30 TAC §285.33(b)(1)(A)(vii)

A = absorptive area
Q = average daily sewage flow in gallons per day
Ra = soil application rate in gallons per square foot per day

Figure: 30 TAC §285.33(b)(1)(A)(vii)(I)

Absorptive Area = (L x W) + 2 (L+W) x 1.0 ft
Where: L = excavation length
W = excavation width

Figure: 30 TAC §285.33(b)(1)(A)(vii)(II)

L = (A-2W)/(W+2)

A = absorptive area
W = excavation width

Figure: 30 TAC §285.33(b)(1)(A)(vii)(III)

$L = A/(W+2)$

A = absorptive area

W = excavation width

Figure: 30 TAC §285.33(b)(1)(E)

Minimum values

Weight oz/sq yd (ASTM D3776)	0.70
Grab Strength lbs (ASTM D4632)	11
Air Permeability cfm/sq ft (ASTM D737)	500
Water Flow Rate gpm/sq ft @ 3" head (ASTM D4491)	33
Trapezoidal Tear Strength Lbs (ASTM D4533)	6

Figure: 30 TAC §285.33(b)(2)(B)

$A = 1.6\ Q/Ret$

Where: A = total top surface area of the excavations.

Q = estimated daily water usage in gallons/day in §285.91(3) of this title (relating to Tables).

Ret = net local evaporation rate in §285.91(7) of this title.

Figure: 30 TAC §285.33(c)(1)(C)

$L = A/(W+2)$

A = absorptive area as calculated in subsection (b)(1)(A)(vii) of this section

W = excavation width

Figure: 30 TAC §285.33(c)(2)(A)(i)

$L = 0.6A/(W+2)$

Where: A = minimum absorptive area calculated with no flow reduction; and

W = leaching chamber panel width

Figure: 30 TAC §285.33(c)(2)(A)(ii)

$L = 0.75A/(W+2)$

Where: A = minimum absorptive area calculated with flow reduction; and

W = leaching chamber panel width

Figure: 30 TAC §285.90(1)

Figure 1. Maximum Application Rates for Surface Application of Treated Effluent in Texas (Gallons/Square Foot/Day)

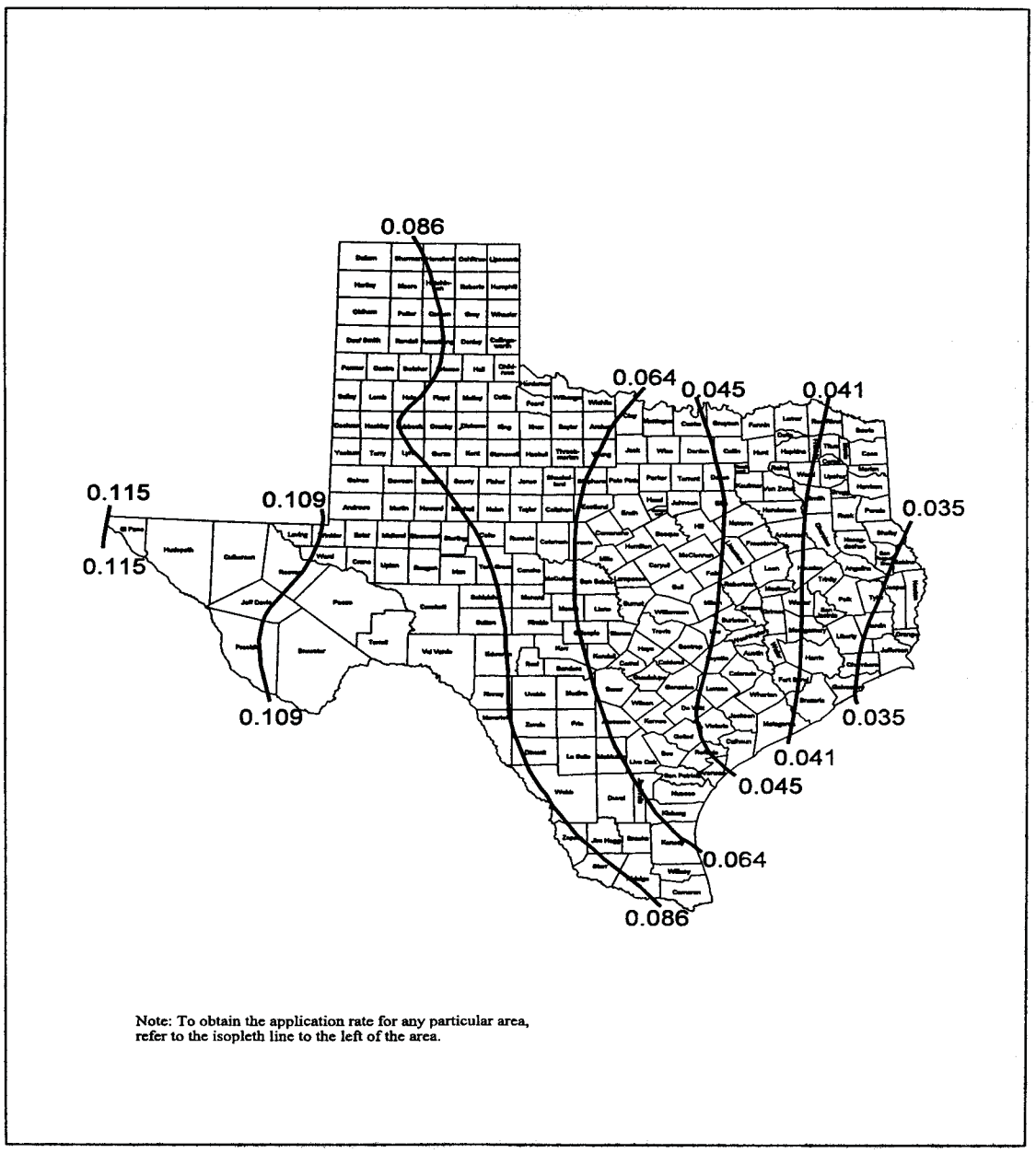


Figure: 30 TAC §285.90(2)

Figure 2. Model Deed and Affidavit Language

THE COUNTY OF (insert County name)

STATE OF TEXAS

CERTIFICATION OF OSSF REQUIRING MAINTENANCE

According to Texas Natural Resource Conservation Commission Rules for On-Site Sewage Facilities, this document is filed in the Deed Records of (insert county name) County, Texas.

I

The Texas Health and Safety Code, Chapter 366 authorizes the Texas Natural Resource Conservation Commission (TNRCC) to regulate on-site sewage facilities (OSSFs). Additionally, the Texas Water Code (TWC), § 5.012 and § 5.013, gives the TNRCC primary responsibility for implementing the laws of the State of Texas relating to water and adopting rules necessary to carry out its powers and duties under the TWC. The TNRCC, under the authority of the TWC and the Texas Health and Safety Code, requires owner's to provide notice to the public that certain types of OSSFs are located on specific pieces of property. To achieve this notice, the TNRCC requires a deed recording. Additionally, the owner must provide proof of the recording to the OSSF permitting authority. This deed certification is not a representation or warranty by the TNRCC of the suitability of this OSSF, nor does it constitute any guarantee by the TNRCC that the appropriate OSSF was installed.

II

An OSSF requiring a maintenance contract, according to 30 Texas Administrative Code §285.91(12) will be installed on the property described as (insert legal description):

The property is owned by (insert owner's full name)

This OSSF must be covered by a continuous maintenance contract. All maintenance on this OSSF must be performed by an approved maintenance company, and a signed maintenance contract must be submitted to (insert name of the permitting authority) within 30 days after the property has been transferred.

The owner will, upon any sale or transfer of the above-described property, request a transfer of the permit for the OSSF to the buyer or new owner. A copy of the planning materials for the OSSF can be obtained from (insert name of permitting authority).

WITNESS BY HAND(S) ON THIS ____ DAY OF _____, _____.

_____

_____

(Owner(s) signature(s))

SWORN TO AND SUBSCRIBED BEFORE ME ON THIS ____ DAY OF

_____, _____.

_____

Notary Public, State of Texas

Notary's Printed Name:

My Commission Expires:

Figure: 30 TAC §285.90(3)

Figure 3. Sample Testing and Reporting Record.

This testing and reporting record shall be completed, signed and dated after each maintenance check and test. One copy shall be retained by the maintenance company. The second copy shall be sent to the local permitting authority and the third copy shall be sent to the system owner.

1. Required frequency of maintenance check and tests - (daily, weekly, monthly, quarterly, every 4 months).
   Actual date of test: _____

2. System inspection:
   Property Address: _____
   Permit Number: _____
   Person Performing Inspection: _____
   _____
   (Signature)

Inspected Item	Operational	Inoperative
Aerators		
Filters		
Irrigation Pumps		
Recirculation Pumps		
Disinfection Device		
Chlorine Supply		
Electrical Circuits		
Distribution System		
Sprayfield Vegetation/Seeding (if applicable)		
Other as Noted		

3. Repairs to system (list all components replaced): _____
   _____
   _____

4. Tests required and results:

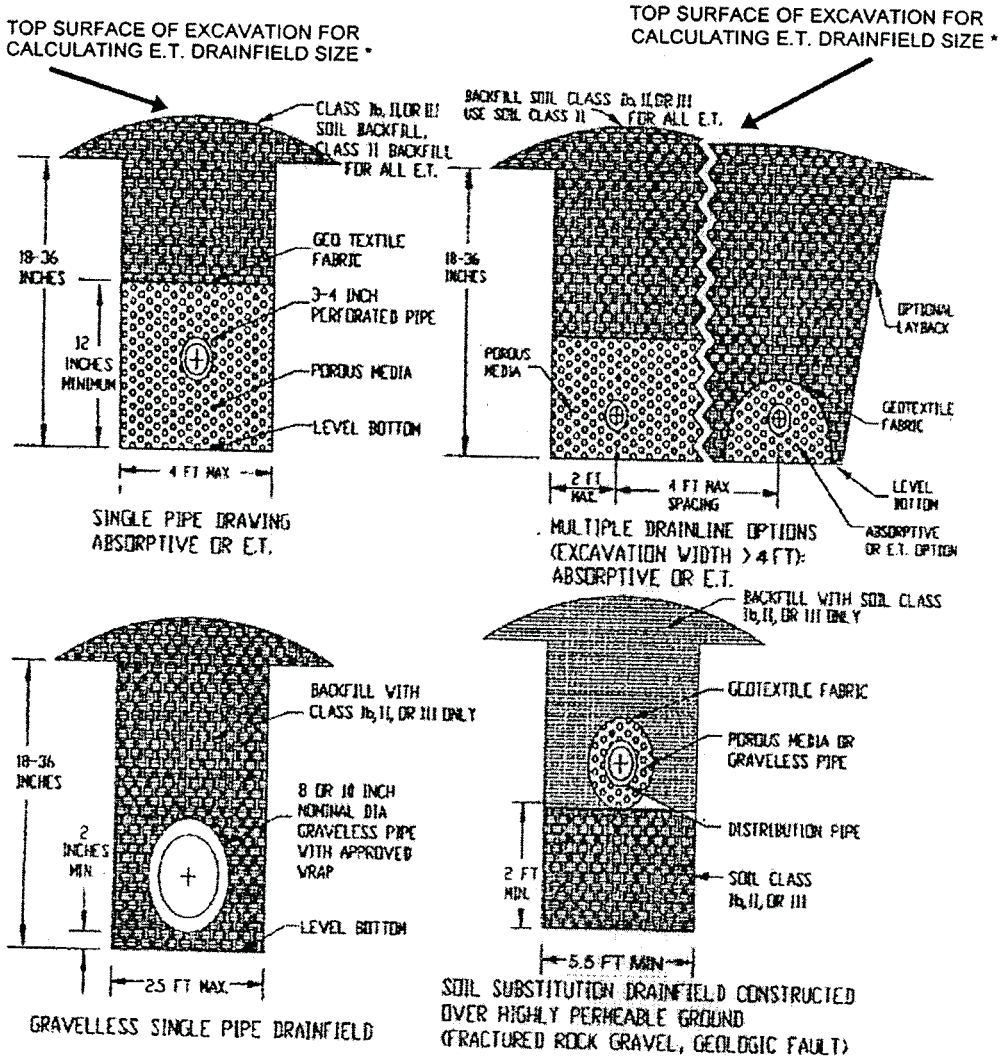
Test	Required Yes	Required No	Results mg/l, mpn/100 ml, or trace	Test Method
BOD (Grab)				
TSS (Grab)				
Cl_2 (Grab)				
Fecal Coliform				

5. Date(s) responded to owner complaints during reporting period (attach copy of complaint and findings): _____

6. General comments or recommendations: _____
   _____
   _____

Figure: 30 TAC §285.90(4)

Figure 4. Typical Drainfields - Sectional View.



* Credit for top surface area shall be limited to 2 feet past outside drainline.

Figure: 30 TAC §285.90(5)

Figure 5. Typical Drainfields.

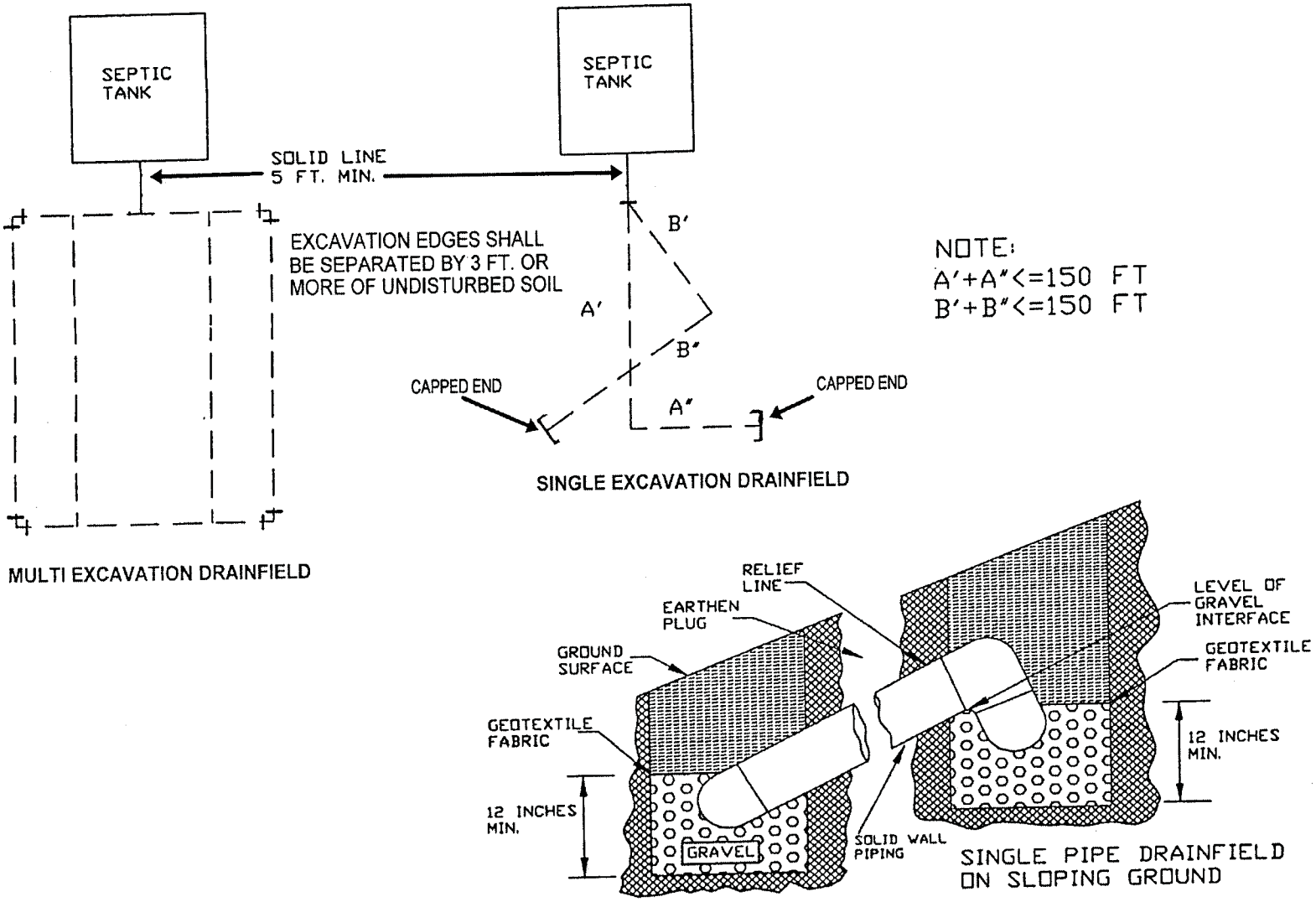
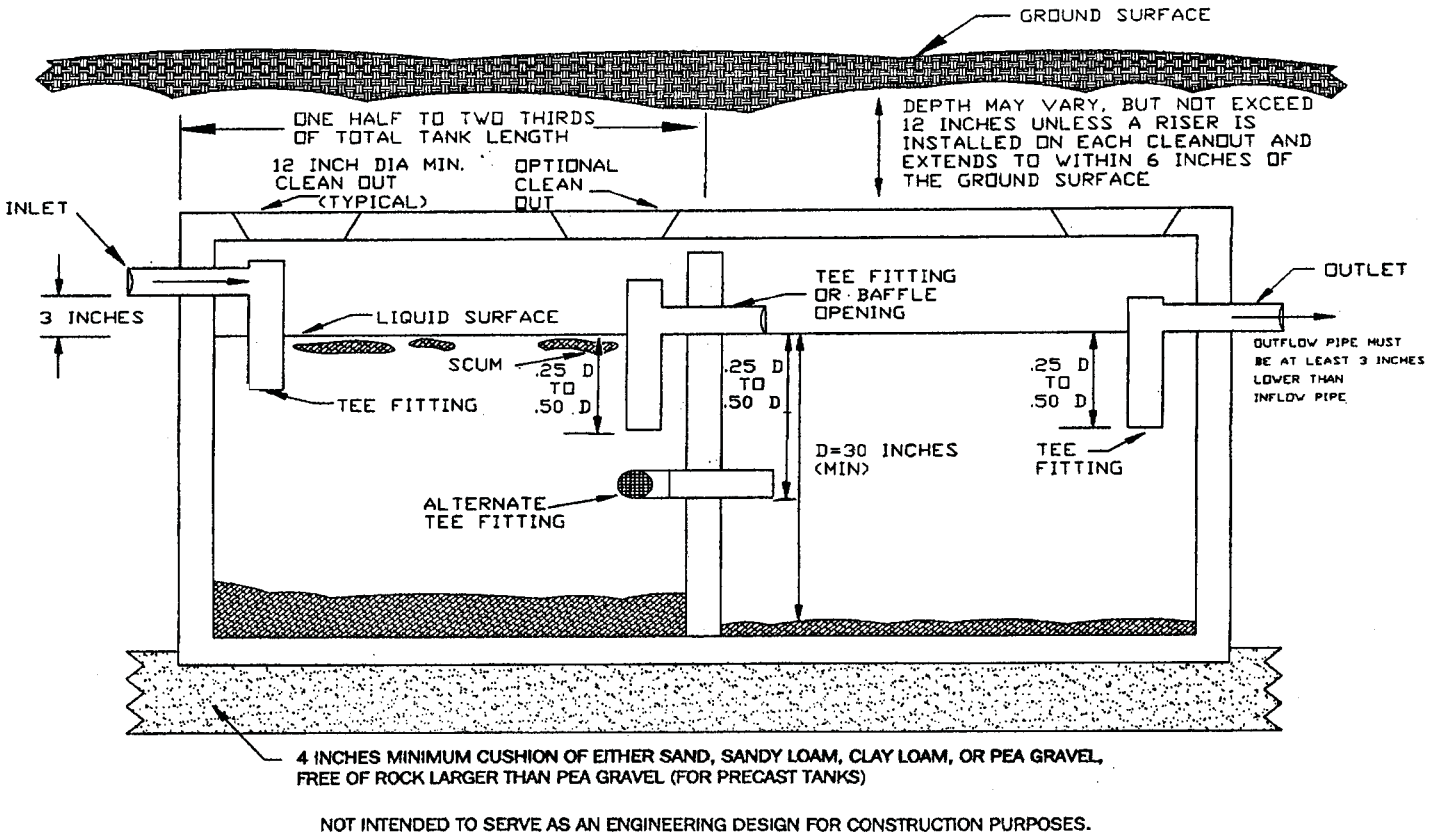


Figure: 30 TAC §285.90(6)

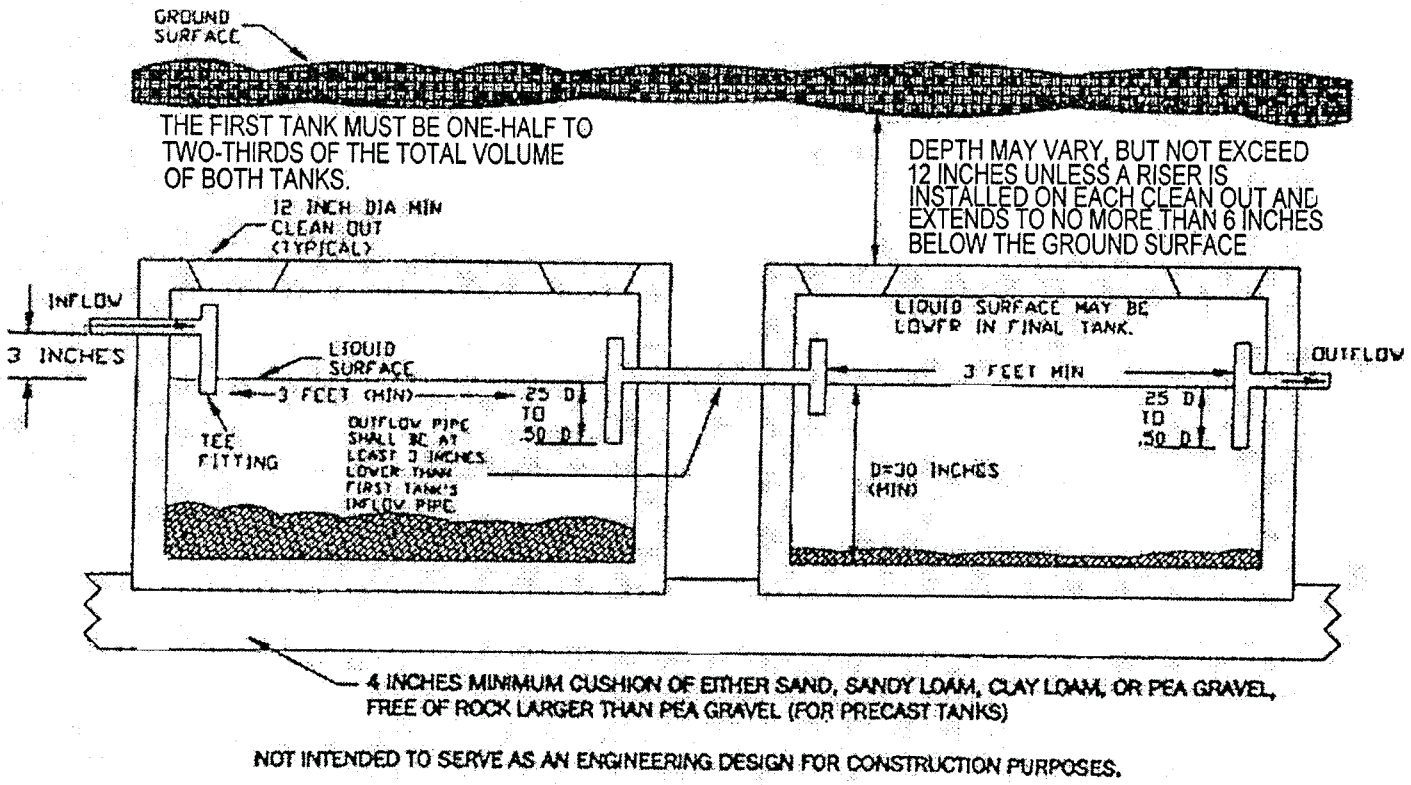
Figure 6. Two Compartment Septic Tank.



NOT INTENDED TO SERVE AS AN ENGINEERING DESIGN FOR CONSTRUCTION PURPOSES.

Figure: 30 TAC §285.90(7)

Figure 7. Two Septic Tanks in Series.



NOT INTENDED TO SERVE AS AN ENGINEERING DESIGN FOR CONSTRUCTION PURPOSES.

Figure: 30 TAC §285.91(2)

Table II. Septic Tank Minimum Liquid Capacity.

SEPTIC TANK MINIMUM LIQUID CAPACITY

A. Determine the applicable wastewater usage rate (Q) in TABLE III of 30 TAC Chapter 285.

B. Calculate the minimum septic tank volume (V) as follows:

1. For Q equal to or less than 250 gal/day:
   V = 750 gallons

2. For Q greater than or equal to 251 gal/day but less than or equal to 350 gal/day:
   V = 1000 gallons

3. For Q greater than or equal to 351 gal/day but less than or equal to 500 gal/day:
   V = 1250 gallons

4. For Q greater than or equal to 501 gal/day but less than or equal to 1000 gal/day:
   V = 2.5 Q

5. For Q greater than or equal to 1001 gal/day:
   V= 1,750 + 0.75Q

Figure: 30 TAC §285.91(3)

Table III. Wastewater Usage Rate.

This table shall be used for estimating the hydraulic loading rates only [daily wastewater usage rate (Q) for sizing septic tank liquid capacity and drainfield area]. Sizing formulas are based on residential strength BOD_5. Commercial/institutional facilities must pretreat their wastewater to 140 BOD_5. **Actual water usage data or other methods of calculating wastewater usage rates may be used by the system designer if it is accurate and acceptable to the Texas Natural Resource Conservation Commission or its authorized agents. If actual water use records are greater than the usuage rates in this table, the system shall be designed for the higher flow.**

TYPE OF FACILITY	USAGE RATE GALLONS/DAY (Without Water Saving Devices)	USAGE RATE GALLONS /DAY (With Water Saving Devices)
Single family dwelling (one or two bedrooms) - less than 1,500 square feet.	225	180
Single family dwelling (three bedrooms) - less than 2,500 square feet.	300	240
Single family dwelling (four bedrooms) - less than 3,500 square feet.	375	300
Single family dwelling (five bedrooms) - less than 4,500 square feet.	450	360
Single family dwelling (six bedrooms) - less than 5,500 square feet.	525	420
Greater than 5,500 square feet, each additional 1,500 square feet or increment thereof.	75	60
Condominium or Townhouse (one or two bedrooms)	225	180
Condominium or Townhouse (each additional bedroom)	75	60
Mobile home (one or two bedrooms)	225	180
Mobile home (each additional bedroom)	75	60
Country Clubs (per member)	25	20
Apartment houses (per bedroom)	125	100
Boarding schools (per room capacity)	50	40
Day care centers (per child with kitchen)	25	20
Day care centers (per child without kitchen)	15	12
Factories (per person per shift)	15	12
Hospitals (per bed)	200	160
Hotels and motels (per bed)	75	60
Nursing homes (per bed)	100	80
Laundries (self service per machine)	250	200
Lounges (bar and tables per person)	10	8
Movie Theaters (per seat)	5	4
Office buildings (no food or showers per occupant)	5	4
Office buildings (with food service per occupant)	10	8
Parks (with bathhouse per person)	15	12
Parks (without bathhouse per person)	10	8
Restaurants (per seat)	35	28
Restaurants (fast food per seat)	15	12
Schools (with food service & gym per student)	25	20
Schools (without food service)	15	12
Service stations (per vehicle)	10	8
Stores (per washroom)	200	160

TYPE OF FACILITY	USAGE RATE GALLONS/DAY (Without Water Saving Devices)	USAGE RATE GALLONS /DAY (With Water Saving Devices)
Swimming pool bathhouses (per person)	10	8
Travel trailer/RV parks (per space)	50	40
Vet clinics (per animal)	10	8
Construction sites (per worker)	50	40
Youth camps (per camper)	30	24

Figure: 30 TAC §285.91(4)

Table IV. Required Testing and Reporting.

Type and Size of Treatment Unit	Testing Frequency	Required Tests	Minimum Acceptable Test Results
Any Treatment Method in Conjunction with Surface Application	At least once every four months	One BOD_5 and TSS Grab Sample Per Year (non-single family residences only) Total Chlorine Residual or Fecal Coliform at Each Required Test	BOD_5 and TSS Grab Samples Not To Exceed 65 mg/l 0.1 mg/l Residual in Pump Tank or Fecal Coliform Not To Exceed 200 MPN/100 ml (CFU/100 ml)
Any Secondary Treatment System	At least once every four months	None	None
Non Standard	Permit Specific	Permit Specific	Permit Specific

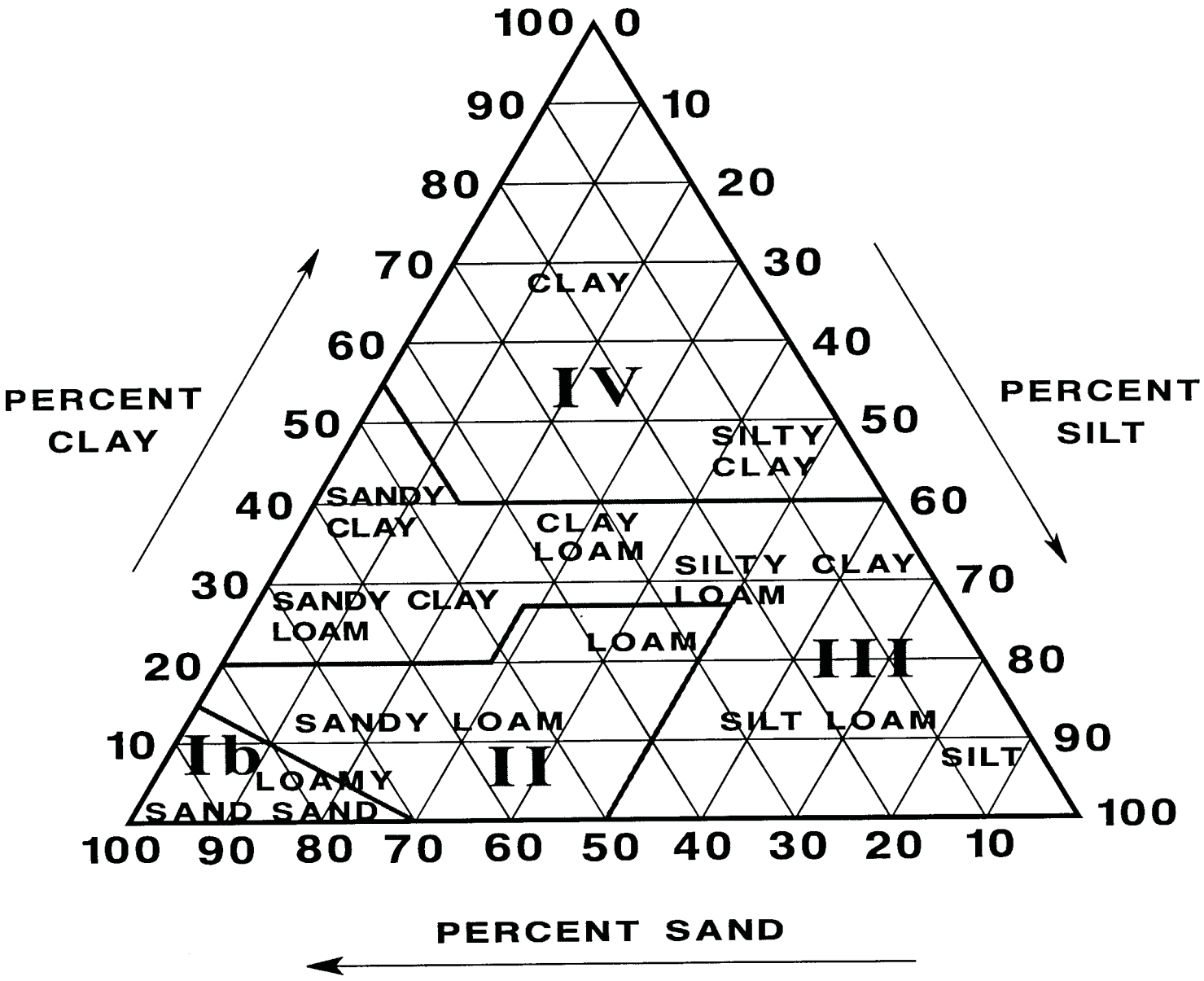
Figure: 30 TAC §285.91(5)

Table V. Criteria for Standard Subsurface Absorption Systems.

FACTORS	SUITABLE (S)	UNSUITABLE (U)
Topography	Slopes 0-30%	Slopes greater than 30% Complex slopes
Subsoil Texture	Soil Class Ib, II, or III soils along the sidewall and two feet below the bottom of the excavation	Soil Class Ia soils along the sidewall or within two feet below the bottom of the excavation (Except for lined ET) Soil Class IV along the sidewall or within two feet below the bottom of the excavation (Except for pumped effluent and ET)
Restrictive Horizon	No restrictive horizon intersects the sidewall or is within 24 inches below the bottom of the proposed excavation.	A restrictive horizon intersects the sidewall or is within 24 inches below the bottom of the proposed excavation (Except as indicated in §285.33(b)(1)(A)(vi))
Gravel analysis	In Class II or III soils, only; Gravel portion less than 30% and gravel greater than 2.0 mm; or If greater than 30% gravel, 80% of the gravel portion must be less than 5.0 mm	All other Class II and III soils, which contain gravel in excess of what is described as suitable All other soils with greater than 30% gravel
Groundwater	No indication of seasonal groundwater anywhere within 24 inches of the bottom of the proposed excavation.	Indications of seasonal groundwater or drainage mottles anywhere within 24 inches of the bottom of the proposed excavation (Except for lined ET)
Flood Hazard	No flooding potential.	Areas located in the floodplain and regulatory floodway unless system designed according to §285.31(c)(2) Depressional areas without adequate drainage
Other		Fill material

Figure: 30 TAC §285.91(6)

Table VI. USDA Soil Textural Classifications.



SOIL PARTICLE SIZE:

Clay - Smaller than 0.002 mm in diameter
Silt - 0.05 to 0.002 mm in diameter
Sand - 2.0 to 0.05 mm in diameter
Gravel - Greater than 2.0 mm in diameter
mm = millimeter

Note 1: Sand shall be free of organic matter and shall be composed of silica, quartz, mica, or any other stable mineral.
Note 2: Class Ia soils contain more than 30% gravel; therefore, they are not portrayed on the soil triangle.

Figure: 30 TAC 285.91(8)

Table VIII. OSSF Excavation Length (3 Feet in Width or Less).

	Excavation Length (Feet)								
	Soil Class Ib			Soil Class II			Soil Class III		
Daily Sewage Flow (Q)[2]	For 1.5 Foot Excavation Width[3]	For 2.0 Foot Excavation Width	For 3.0 Foot Excavation Width	For 1.5 Foot Excavation Width[3]	For 2.0 Foot Excavation Width	For 3.0 Foot Excavation Width	For 1.5 Foot Excavation Width[3]	For 2.0 Foot Excavation Width	For 3.0 Foot Excavation Width
100	75	66	53	114	100	80	143	125	100
125	94	82	66	143	125	100	179	156	125
150	113	99	79	171	150	120	214	188	150
180	135	118	95	206	180	144	257	225	180
200	150	132	105	229	200	160	286	250	200
225	169	148	118	257	225	180	321	281	225
240	180	158	126	274	240	192	343	300	240
275	207	181	145	314	275	220	393	344	275
300	226	197	158	343	300	240	429	375	300
325	244	214	171	371	325	260	464	406	325
360	271	237	189	411	360	288	514	450	360
375	282	247	197	429	375	300	536	469	375
400	301	263	211	457	400	320	571	500	400
420	316	276	221	480	420	336	600	525	420
450	338	296	237	514	450	360	643	563	450
475	357	313	250	543	475	380	679	594	475
500	376	329	263	571	500	400	714	625	500

1. To determine excavation lengths, greater than 3 feet in width or where the area and width are known, use the formulas provided in §285.33(b)(1)(A)(vii).
2. To determine excavation lengths (3 feet or less in width, but greater than or equal to 1.5 feet in width) for daily sewage flows (Q) not provided in this table, use the formula provided in §285.33(b)(1)(A) (vii)(III).
3. Minimum excavation width is 1.5 feet for all excavation lengths.

Figure: 30 TAC §285.91(9)

Table IX. OSSF System Designation.

SYSTEM DESCRIPTION	SYSTEM TYPE	PLANNING MATERIAL TO BE PREPARED BY R.S. or P.E.[2]	INSTALLER REQUIREMENTS
Septic Tank & Absorptive Drainfield	Standard	No	Class I or II
Septic Tank & ET Drainfield (Unlined) Septic Tank & ET Drainfield (Lined)	Standard Standard	No No	Class I or II Class II
Septic Tank & Pumped Drainfield	Standard	No	Class I or II
Septic Tank & Leaching Chamber	Proprietary	No	Class I or II
Septic Tank & Gravelless Pipe	Proprietary	No	Class I or II
Septic Tank & Low Pressure Dosing	Non-standard	Yes	Class II
Septic Tank & Absorptive Mounds	Non-standard	Yes	Class II
Septic Tank & Soil Substitution	Non-standard	Yes	Class I or II
Septic Tank, Secondary Treatment, Filter & Surface Application	Non-standard	Yes	Class II
Aerobic Treatment & Standard Absorptive Drainfields	Proprietary	Yes	Class II
Aerobic Treatment & ET Drainfield	Proprietary	Yes	Class II
Aerobic Treatment & Leaching Chamber	Proprietary	Yes	Class II
Aerobic Treatment & Gravelless Pipe	Proprietary	Yes	Class II
Aerobic Treatment, Filter & Drip Emitter	Proprietary	Yes	Class II
Aerobic Treatment & Low Pressure Dosing	Proprietary	Yes	Class II
Aerobic Treatment & Absorptive Mounds	Proprietary	Yes	Class II
Aerobic Treatment & Surface Application	Proprietary	Yes	Class II
Any Other Treatment System	---	Yes	Class II
Any Other Subsurface Disposal System	---	(1)	(1)
Any Other Surface Disposal System	---	Yes	Class II
Non-Standard Treatment when Secondary Treatment Required	Non-Standard	Engineer Only	Class II
Holding Tank	---	No	Class I or II

(1) Determined by the executive director based upon review required by §285.5(b)(2) of this Chapter (relating to submittal requirements for planning materials).

(2) The site evaluation is not required to be performed by a professional sanitarian or a professional engineer.

Figure: 30 TAC §285.91(10)

Table X. Minimum Required Separation Distances for On-Site Sewage Facilities.

FROM	TO: Sewage Treatment Tanks or Holding Tanks	Soil Absorption Systems, & Unlined ET Beds	Lined Evapotranspiration Beds	Sewer Pipe With Watertight Joints	Surface Application (Edge of Spray Area)	Drip Irrigation
Public Water Wells[2]	50	150	150	50	150	150
Public Water Supply Lines[2]	10	10	10	10	10	10
Wells and Underground Cisterns	50	100	50	20	100	100
Private Water Line	10	10	5	10[5] except at connection to structure	No separation distances	10
Wells (Pressure Cemented or Grouted to 100 ft. or Pressure Cemented or Grouted to Watertable if Watertable is Less Than 100 ft. deep)	50	50	50	20	50	50
Streams, Ponds, Lakes, Rivers, Creeks (Measured From Normal Pool Elevation and Water Level); Salt Water Bodies (High Tide Only)	50	75, LPD (Secondary Treatment & Disinfection) - 50	50	20	50	25 when $R_a \leq 0.1$ 75 when $R_a > 0.1$ (With Secondary Treatment & Disinfection - 50)
Foundations, Buildings, Surface Improvements, Property Lines, Easements, Swimming Pools, and Other Structures	5	5	5	5	No Separation Distances Except: Property lines - 20[6] Swimming Pools - 25	No Separation Distances Except[4]: Property Lines - 5
Slopes Where Seeps may Occur	0 (special support may be required for zero separation distances)	25	5	10	25	10 when $R_a \leq 0.1$ 25 when $R_a > 0.1$
Edwards Aquifer Recharge Features (See Chapter 213 of this title relating to Edwards Aquifer)[3]	50	150	50	50	150	100 when $R_a \leq 0.1$ 150 when $R_a > 0.1$

1. All distances measured in feet, unless otherwise indicated.
2. For additional information or revisions to these separation distances, see Chapter 290 of this title (relating to Water Hygiene).
3. No OSSF may be installed closer than 75 feet from the banks of the Nueces, Dry Frio, Frio, or Sabinal Rivers downstream from the northern Uvalde County line to the recharge zone.
4. Drip irrigation lines may not be placed under foundations.
5. Private water line/wastewater line crossings should be treated as public water line crossings, see Chapter 290 of this title (relating to Water Hygiene).
6. Separation distance may be reduced to 10 feet when sprinkler operation is controlled by commercial timer. See §285.33(d)(2)(G)(i).

Figure: 30 TAC §285.91(12)

Table XII. OSSF Maintenance Contracts, Affidavit, and Testing/Reporting Requirements.

SYSTEM DESCRIPTION	Maintenance Contract/Affidavit Required	Maintenance Activities Required	Testing and Reporting Requirements [2]
Septic Tank & Absorptive Drainfield	No	See §285.39	No
Septic Tank & ET Drainfield (Unlined) Septic Tank & ET Drainfield (Lined)	No (3) No (3)	See §285.39 See §285.39	No No
Septic Tank & Pumped Drainfield	No	See §285.39	No
Septic Tank & Leaching Chamber	No	See §285.39	No
Septic Tank & Gravelless Pipe	No	See §285.39	No
Septic Tank & Low Pressure Dosing	No	See §285.39	No
Septic Tank & Absorptive Mounds	No	See §285.39	No
Septic Tank & Soil Substitution	No	See §285.39	No
Septic Tank, Secondary Treatment, Filter & Surface Application	Yes	Entire OSSF	Test & Report
Secondary Treatment & Standard Absorptive Drainfields	Yes	Treatment System	Report
Secondary Treatment & ET Drainfield	Yes	Treatment System	Report
Secondary Treatment & Leaching Chamber	Yes	Treatment System	Report
Secondary Treatment & Gravelless Pipe	Yes	Treatment System	Report
Secondary Treatment, Filter & Drip Emitter	Yes	Entire OSSF	Report
Secondary Treatment & Low Pressure Dosing	Yes	Treatment System	Report
Secondary Treatment & Absorptive Mounds	Yes	Treatment System	Report
Secondary Treatment & Surface Application	Yes	Entire OSSF	Test and Report
Any Other Treatment System	(1)	(1)	(1)
Any Other Subsurface Disposal System	(1)	(1)	(1)
Any Other Surface Disposal System	Yes	(1)	(1)
Non-Standard Treatment and Surface Application	Yes	Entire OSSF	Test and Report (1)
Holding Tank	Yes	Pump tank as needed	Keep pump records

(1) Determined by the permitting authority based upon review required by §285.5(b) of this title (relating to Submittal Requirements for Planning Materials).

(2) Testing criteria and reporting frequency for those systems not covered under (1) shall be according to §285.91(4) of this title.

(3) Required if design Q is less than required by §285.91(3) of this title.

Figure: 30 TAC §285.91(13)

TABLE XIII: DISPOSAL AND TREATMENT SELECTION CRITERIA

ON-SITE SEWAGE FACILITY[9] (OSSF)	SOIL TEXTURE OR FRACTURED ROCK[10] (MOST RESTRICTIVE CLASS ALONG MEDIA[1] OR 2 FEET BELOW EXCAVATION)				MINIMUM DEPTH TO GROUNDWATER	MINIMUM DEPTH TO RESTRICTIVE HORIZON[1]
DISPOSAL METHOD (SECTION) TREATMENT	CLASS Ia	CLASS Ib, II[8] OR III[8]	CLASS IV	FRACTURED ROCK	MEASURED FROM BOTTOM OF MEDIA[7]	MEASURED FROM BOTTOM OF MEDIA[7]
ABSORPTIVE DRAINFIELD[2] (285.33(B)(1))SEPTIC TANK	U	S	U	U	2 FEET	2 FEET
ABSORPTIVE DRAINFIELD[2] SECONDARY TREATMENT	S[5]	S	U	S[5]	2 FEET	2 FEET
LINED E-T[2] SEPTIC TANK	S	S	S	S	N/A	N/A
LINED E-T[2] SECONDARY TREATMENT	S	S	S	S	N/A	N/A
UNLINED E-T[2] SEPTIC TANK	U	S	S	U	2 FEET	2 FEET
UNLINED E-T[2] SECONDARY TREATMENT	S[5]	S	S	S[5]	2 FEET	2 FEET
PUMPED EFFLUENT DRAINFIELD[3] SEPTIC TANK	U	S	S	U	2 FEET	1 FOOT
LEACHING CHAMBER[2] SEPTIC TANK	U	S	U	U	2 FEET	2 FEET
LEACHING CHAMBER[2] SECONDARY TREATMENT	S[5]	S	U	S[5]	2 FEET	2 FEET
GRAVELLESS PIPE[2] SEPTIC TANK	U	S	U	U	2 FEET	2 FEET
GRAVELLESS PIPE[2] SECONDARY TREATMENT	S[5]	S	U	S[5]	2 FEET	2 FEET
DRIP IRRIGATION SEPTIC TANK/ FILTER	U	S	S	U	2 FEET	1 FOOT
DRIP IRRIGATION SECONDARY TREATMENT/ FILTER	S[5]	S	S	S[5]	1 FOOT	6 INCHES
LOW PRESSURE DOSING SEPTIC TANK	U	S	S	U	2 FEET	1 FOOT
LOW PRESSURE DOSING SECONDARY TREATMENT	S[5]	S	S	S[5]	2 FEET	1 FOOT
MOUND[4] SEPTIC TANK	S	S	S	S	2 FEET	1.5 FEET
MOUND[4] SECONDARY TREATMENT	S	S	S	S	2 FEET	1.5 FEET
SURFACE APPLICATION SECONDARY TREATMENT	S[6]	S[6]	S[6]	S[6]	N/A	N/A
SURFACE APPLICATION NON-STANDARD TREATMENT	S[6]	S[6]	S[6]	S[6]	N/A	N/A
SOIL SUBSTITUTION[2] SEPTIC TANK	S	S	U	S	2 FEET	2 FEET
SOIL SUBSTITUTION[2] SECONDARY TREATMENT	S	S	U	S	2 FEET	2 FEET

S = SUITABLE
U = UNSUITABLE

(1) An absorptive drainfield may be used, if a rock horizon is at least 6 inches above the bottom of the excavation, see §285.33(b)(1).
(2) If the slope in the drainfield area is greater than 30% or is complex, the area is unsuitable for the disposal method.
(3) Can only be installed in an area where the slope is less than or equal to 2.0%.
(4) Can only be installed in an area where the slope is less than 10%.
(5) Requires disinfection before disposal. A form of pressure distribution shall be used for effluent disposal in fractured or fissured rock.
(6) Requires vegetation cover and disinfection.
(7) When no media exists, measure from the bottom of the excavation or pipe, whichever is less.
(8) May require gravel analysis for further suitability analysis (see §285.30(b)(1)(B)).
(9) If OSSF is located within a Flood Hazard, see §285.31(c)(2) for special planning requirements.
(10) Includes fissured rock.
All OSSFs require surface drainage controls if slope is less than 2%.

Figure: 30 TAC §336.2(137)

Organ Dose Weighting Factors

Organ or Tissue	W_T
Gonads	0.25
Breast	0.15
Red bone marrow	0.12
Lung	0.12
Thyroid	0.03
Bone surfaces	0.03
Remainder	0.30[1]
Whole body	1.00[2]

[1] The value 0.30 results from 0.06 for each of five remainder organs, excluding the skin and the lens of the eye, that receive the highest doses.

[2] For the purpose of weighting the external whole body dose (for adding it to the internal dose) a single weighting factor, wT =1.0, has been specified. The use of other weighting factors for external exposure will be approved on a case-by-case basis until such time as specific guidance is issued.

Figure: 30 TAC §336.358

	Operating Mode	Assigned Protection Factors (APFs)[a]
I. Air Purifying Respirators (Particulate[b] only)[c]		
Filtering facepiece disposable	Negative Pressure	[d]
Facepiece, half[e]	Negative Pressure	10
Facepiece, full	Negative Pressure	100
Facepiece, half	Powered air-purifying respirators	50
Facepiece, full	Powered air-purifying respirators	1000
Helmet/hood	Powered air-purifying respirators	1000
Facepiece, loose-fitting	Powered air-purifying respirators	25
II. Atmosphere supplying respirators (particulate, gases, and vapors[f])		
1. Air-line respirator:		
Facepiece, half	Demand	10
Facepiece, half	Continuous Flow	50
Facepiece, half	Pressure Demand	50
Facepiece, full	Demand	100
Facepiece, full	Continuous Flow	1000
Facepiece, full	Pressure Demand	1000
Helmet/hood	Continuous Flow	1000
Facepiece, loose-fitting	Continuous Flow	25
Suit	Continuous Flow	[g]
2. Self-contained breathing apparatus (SCBA):		
Facepiece, full	Demand	[h]100
Facepiece, full	Pressure Demand	[i]10,000
Facepiece, full	Demand, Recirculating	[h]100
Facepiece, full	Positive Pressure Recirculating	[i]10,000
III. Combination Respirators:		
Any combination of air-purifying and atmosphere-supplying respirators.	Assigned protection factor for type and mode of operation as listed above.	

[a] These assigned protection factors apply only in a respiratory protection program that meets the requirements of this subchapter. They are applicable only to airbourne radiological hazards and may not be appropriate to circumstances when chemical or other respiratory hazards exist instead of, or in addition to, radioactive hazards. Selection and use of respirators for such circumstances must also comply with Department of Labor regulations.

Figure: 30 TAC §336.358

Radioactive contaminants for which the concentration values in §336.359 of this title (relating to Appendix B Annual Limits on Intake (ALI) and Derived Air Concentrations (DAC) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sanitary Sewerage) are based on internal dose due to inhalation may, in addition, present external exposure hazards at higher concentrations. Under these circumstances, limitations on occupancy may have to be governed by external dose limits.

[b] Air purifying respirators with APF<100 must be equipped with particulate filters that are at least 95% efficient. Air purifying respirators with APF=100 must be equipped with particulate filters that are at least 99% efficient. Air purifying respirators with APFs>100 must be equipped with particulate filters that are at least 99.97% efficient.

[c] The licensee may apply to the executive director for the use of an APF greater than one for sorbent cartridges as protection against airborne radioactive gases and vapors (e.g., radioiodine).

[d] Licensees may permit individuals to use this type of respirator who have not been medically screened or fit tested on the device provided that no credit be taken for their use in estimating intake or dose. It is also recognized that it is difficult to perform an effective positive or negative pressure pre-use user seal check on this type of device. All other respiratory protection program requirements listed in §336.321of this title (relating to Use of Individual Respiratory Protection Equipment) apply. An

assigned protection factor has not been assigned for these devices. However, an APF equal to 10 may be used if the licensee can demonstrate a fit factor of at least 100 by use of a validated or evaluated, qualitative or quantitative fit test.

[e] Under-chin type only. No distinction is made in this Appendix between elastomeric half-masks with replaceable cartridges and those designed with the filter medium as an integral part of the facepiece (e.g., disposable or reusable disposable). Both types are acceptable so long as the seal area of the latter contains some substantial type of seal-enhancing material such as rubber or plastic, the two or more suspension straps are adjustable, the filter medium is at least 95% efficient and all other requirements of this subchapter are met.

[f] The assigned protection factors for gases and vapors are not applicable to radioactive contaminants that present an absorption or submersion hazard. For tritium oxide vapor, approximately one-third of the intake occurs by absorption through the skin so that an overall protection factor of three is appropriate when atmosphere-supplying respirators are used to protect against tritium oxide. Exposure to radioactive noble gases is not considered a significant respiratory hazard, and protective actions for these contaminants should be based on external (submersion) dose considerations.

[g] No NIOSH approval schedule is currently available for atmosphere supplying suits. This equipment may be used in an acceptable respiratory protection program as long as all the other minimum program requirements, with the exception of fit testing, are met (i.e., §336.321 of this title (relating to Use of Individual Respiratory Protection Equipment)).

[h] The licensee should implement institutional controls to assure that these devices are not used in areas immediately dangerous to life or health.

[i] This type of respirator may be used as an emergency device in unknown concentrations for protection against inhalation hazards. External radiation hazards and other limitations to permitted exposure such as skin absorption shall be taken into account in these circumstances. This device may not be used by any individual who experiences perceptible outward leakage of breathing gas while wearing the device.

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 Bond Review Board

Biweekly Report of the 2001 Private Activity Bond Allocation Program

The information that follows is a report of the 2001 Private Activity Bond Allocation Program for the period of April 28, 2001 through May 11, 2001.

Total amount of state ceiling remaining unreserved for the $325,809,688 subceiling for qualified mortgage bonds under the Act as of May 11, 2001: $112,841,994.50

Total amount of state ceiling remaining unreserved for the $143,356,262 subceiling for state-voted issue bonds under the Act as of May 11, 2001: $143,356,262

Total amount of state ceiling remaining unreserved for the $97,742,906 subceiling for qualified small issue bonds under the Act as of May 11, 2001: $94,742,906

Total amount of state ceiling remaining unreserved for the $215,034,394 subceiling for residential rental project bonds under the Act as of May 11, 2001: $17,239,394

Total amount of state ceiling remaining unreserved for the $136,840,069 subceiling for student loans bonds under the Act as of May 11, 2001: $31,840,069

Total amount of state ceiling remaining unreserved for the $384,455,431 subceiling for all other issue bonds under the Act as of May 11, 2001: $23,855,431

Total amount of the $1,303,238,750 state ceiling remaining unreserved under the Act as of May 11, 2001: $421,849,056.50

Following is a comprehensive listing of applications, which have received a Certificate of Reservation pursuant to the Act from April 28, 2001 through May 11, 2001:

1) Issuer: Austin HFC

User: TWC Housing, LLC

Description: Multifamily Residential Rental Project--Blunn Creek Apts.

Amount: $15,000,000

2) Issuer: TDHCA

User: Quebec One Apartments LP

Description: Multifamily Residential Rental Project--Quebec One Apts.

Amount: $11,500,000

3) Issuer: Houston HFC

User: MV2000, Ltd

Description: Multifamily Residential Rental Project--Maxey Village Apts.

Amount: $8,800,000

4) Issuer: Hillsboro IDC

User: L. B. Foster Co.

Description: Small Issue IDB

Amount: $2,000,000

5) Issuer: Harris County IDC

User: Deer Park Refining LP

Description: All Other Issue--Deer Park, Texas

Amount: $25,000,000

Following is a comprehensive listing of applications, which have issued and delivered the bonds and received a Certificate of Allocation pursuant to the Act from April 28, 2001 through May 11, 2001:

1) Issuer: Housing Option, Inc.

User: Roseland Fellowship, LP

Description: Multifamily Residential Rental Project--Roseland Gardens

Amount: $6,425,000

2) Issuer: Gulf Coast Waste Disposal Authority

User: Republic Waste Services of Texas Ltd

Description: All Other Issue--League City, Texas

Amount: $3,500,000

3) Issuer: Colorado River Municipal Water District

User: Republic Waste Services of Texas Ltd

Description: All Other Issue--Odessa, Texas

Amount: $4,000,000

4) Issuer: Trinity River Authority

User: Community Waste Disposal, Inc.

Description: All Other Issue--Dallas, Texas

Amount: $20,000,000

5) Issuer: Port Arthur Navigation District IDC

User: Air Products and Chemical, Inc.

Description: All Other Issue--Port Arthur, Texas

Amount: $25,000,000

6) Issuer: Calhoun County Navigation District

User: Formosa Plastics Corp.

Description: All Other Issue--Point Comfort, Texas

Amount: $25,000,000

7) Issuer: Houston HFC

User: Houston Bellfort Pines Apts.

Description: Multifamily Residential Rental Project--Bellfort Pines Apts.

Amount: $10,000,000

8) Issuer: Panhandle-Plains Higher Education Authority, Inc.

User: Eligible Borrowers

Description: Student Loan Bonds

Amount: $35,000,000

9) Issuer: Montgomery County HFC

User: Montgomery Trace Apts.

Description: Multifamily Residential Rental Project--Montgomery Trace Apts.

Amount: $7,500,000

10) Issuer: TDHCA

User: Knollwood Villas

Description: Multifamily Residential Rental Project--Knollwood Villas

Amount: $13,750,000

11) Issuer: TDHCA

User: Texas Bluffview Housing

Description: Multifamily Residential Rental Project--Bluffview Senior Apts.

Amount: $10,700,000

12) Issuer: Brazos River Harbor Navigation District of Brazoria County, Texas

User: The Dow Chemical Co.

Description: All Other Issue--Freeport, Texas

Amount: $25,000,000

13) Issuer: North Central Texas HFC

User: One Bent Tree Ltd

Description: Multifamily Residential Rental Project--Bent Tree Town Homes

Amount: $12,400,000

14) Issuer: North Central Texas HFC

User: Ranch View Ltd

Description: Multifamily Residential Rental Project--Ranch View Town Homes

Amount: $12,000,000

15) Issuer: North Central Texas HFC

User: Silverton Ltd

Description: Multifamily Residential Rental Project--Silverton Town Homes

Amount: $12,400,000

16) Issuer: Harris County IDC

User: L. Bentley Sanford Investments

Description: Small Issue IDB

Amount: $3,000,000

17) Issuer: South Texas Higher Education Authority, Inc.

User: Eligible Borrowers

Description: Student Loan Bonds

Amount: $35,000,000

18) Issuer: Brazos River Harbor Navigation District of Brazoria County, Texas

User: BASF Corp.

Description: All Other Issue--Freeport, Texas

Amount: $25,000,000

Following is a comprehensive listing of applications, which were either withdrawn or cancelled pursuant to the Act from April 28, 2001 through May 11, 2001:

1) Issuer: TDHCA

User: Texas Bluffview Villas

Description: Multifamily Residential Rental Project--Bluffview Villas

Amount: $14,100,000

2) Issuer: TDHCA

User: Mesquite Affordable Housing

Description: Multifamily Residential Rental Project--Oakwood Village

Amount: $10,600,000

3) Issuer: Bexar County HFC

User: MAGI Management

Description: Multifamily Residential Rental Project--Swan's Landing

Amount: $8,700,000

4) Issuer: Port Arthur Navigation District IDC

User: The Premcor Refining Group Inc.

Description: All Other Issue--Port Arthur, Texas

Amount: $25,000,000

5) Issuer: Travis County HFC

User: Stonebridge Park

Description: Multifamily Residential Rental Project--Stonebridge Apts.

Amount: $15,000,000

For a more comprehensive and up-to-date summary of the 2001 Private Activity Bond Allocation Program, please visit the website (www.brb.state.tx.us). If you have any questions or comments, please contact Steve Alvarez, Program Administrator, at (512) 475-4803 or via email at alvarez@brb.state.tx.us.

TRD-200103007
Steve Alvarez
Program Administrator
Texas Bond Review Board
Filed: May 29, 2001

♦ ♦ ♦

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. Requests for federal consistency review were received for the following project(s) during the period of May 3, 2001, through May 25, 2001. The public comment period for these projects will close at 5:00 p.m. on June 11, 2001.

FEDERAL AGENCY ACTIONS

Applicant: Texas Parks and Wildlife Department; Location: The project is located in Dana Cove, West Galveston Bay, near Pirates Cove, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Lake Como, Texas. Approximate UTM Coordinates: Zone 15; Easting: 309169; Northing: 323339. CCC Project No.: 01-0135-F1; Description of Proposed Action: The applicant proposes to create a continuous marsh island directly behind the easternmost geotube (Geotube E) using material that was to be deposited to create 20, 130-foot diameter marsh islands under the original permit. Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

Applicant: Vopak Terminal Deer Park, Inc.; Location: The project is located on the Houston Ship Channel at 2759 Battleground Road, Deer Park, Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled La Porte, Texas. Approximate UTM Coordinates: Zone 15; Easting: 297266; Northing: 329475. CCC Project No.: 01-0148-F1; Description of Proposed Action: The applicant proposes to increase the current dredge depth of -43 feet MLT to -46 feet MLT to allow access of deep-draft vessels. The proposed work will be done via hydraulic dredge and will yield approximately 104,000 cubic yards of material. The dredged material will be placed in San Jacinto Marsh, Lost Lake, Peggy Lake or Alexander Island, as ordered by the Port of Houston Authority. Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899.

Applicant: Terramar Beach Community Improvement Association, Inc.; Location: The project is located on the Gulf of Mexico shoreline at the southeast end of Terramar Road, approximately 14 miles southwest of the southern end of the Galveston Seawall on Galveston Island in Galveston County, Texas. The project extends in both directions from the beach access road. The project can be located on the U.S.G.S. quadrangle map entitled Sea Isle, Texas. Approximate UTM Coordinates: Zone 15; Easting 299923; Northing: 3223890. CCC Project No.: 01-0155-F1; Description of Proposed Action: The applicant proposes to place 26,000 cubic yards of beach-quality sand seaward of the established vegetation to restore shoreline eroded by a tropical storm. The beach placement area (PA) would be approximately 2,850 feet long by 40 feet to 80 feet wide (5.23 acres) with a landward height limit of 4 feet. The sand source for this proposal will be obtained by maintenance dredging within existing bayside channels located pursuant to Department of the Army (DOA) determinations and permits: Spanish Grant (D-11062), Sea Isle (application D-12158, under evaluation), Isla del Sol (D-11223), and Terramar (DOA Permit 11899(05)) subdivisions on Galveston Island, in Galveston County, Texas. Sand would be placed in an upland dredged material placement area, dewatered, and then trucked to the proposed beach PA. Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

Applicant: Mr. M. J. Braxton; Location: The project site is located approximately 15 miles west of Port Arthur and 1 mile north of State Highway 73, between the entrance road to the Port Arthur Country Club and Taylors Bayou, in Jefferson County, Texas. The Neches River Cypress Swamp Preserve is located east of State Highway 69 and west of the Neches River, in north Beaumont, Jefferson County, Texas. CCC Project No.: 01-0162-F1; Description of Proposed Action: The applicant wishes to amend a previously authorized canal 75 feet to the west; to fill wetlands for homes instead of excavating for a canal; and to relocate a proposed wastewater treatment plant. This will cause an increase of 0.97 acres of impact. Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

Applicant: Glynn D. Morgan; Location: The project is located adjacent to Sabine Lake, at Lot Number 11 of the Lafitte's Landing Subdivision, Phase II, on Pleasure Island, in Jefferson County, Texas. The site can be located on the U.S.G.S. quadrangle map entitled Port Arthur South, Texas-Louisiana. Approximate UTM Coordinates: Zone 15; Easting: 409000; Northing 329600. CCC Project No.: 01-0163-F1; Description of Proposed Action: This is a revision to #00-086-F1. The applicant wishes to modify the original permit to retain 0.11 acres of fill instead of the original 0.31 acres of fill placed in wetlands without a permit. The applicant also wishes to modify the original request to delete the 2,381-square-foot concrete walkway and pull the fill material back 20 feet. Type of Application: This application is being evaluated under Section 404 of the Clean Water Act.

Applicant: Kiewit Offshore Services, Ltd.; Location: The project is located at the junction of the La Quinta Channel and Jewel Fulton Canal in Ingleside, San Patricio County, Texas. The project can be located

on the U.S.G.S. quadrangle map entitled Port Ingleside, Texas. Approximate UTM Coordinates: Zone 14, Easting: 674000; Northing 3082000. CCC Project No.: 01-0165-F1; Description of Proposed Action: The applicant proposes to construct a marine fabrication yard used to build large offshore drilling rigs. The project includes dredging, bulkheading, and filling of the project site to allow deep-draft vessel access to the site and a lay-down or work area on the applicant's property. The project includes 54.4 acres of dredging of a combination of shallow and deep water areas, filling of approximately 9.3 acres of jurisdictional areas (including wetlands, shallow and deep water habitats), and constructing approximately 3,600 feet of bulkhead along the La Quinta channel shoreline, and 1,600 feet of bulkhead along the Fulton Canal shoreline. The project also includes a trestle, or dock facility, used to load and unload equipment at the site. Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

Applicant: Cowboy Pipeline Service Company; Location: The project is located in the western portion of Galveston Bay, Galveston County, Texas. The project originates in the Upper San Jacinto Bay, Texas, and Bayport, Texas, areas and terminates in Texas City, Texas, and traverses Harris, Chambers, and Galveston counties, Texas. The site can be located on the U.S.G.S. quadrangle map entitled La Porte, Bacliff, League City, Texas City, and Virginia Point, Texas. Approximate center of pipeline UTM Coordinates: Zone 15; Easting: 311953; Northing 3271195. CCC Project No.: 01-0166-F1; Description of Proposed Action: The applicant proposes to install two 10.75-inch pipelines. The first pipeline would originate from Millenium Petro Chemicals in La Porte, Texas, and terminate at Sterling Chemicals. The second pipeline would originate at Celanese Chemical Bayport Terminal in Houston, Texas, join the first pipeline in Galveston Bay near a point due east of Seabrook, and share the same trench until terminating at Valero Refining Company.

Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

Applicant: Bermuda Beach Improvement Committee; Location: The project is located on the Gulf of Mexico shoreline at the southeast end of Bermuda Beach Drive, approximately 4 miles southwest of the southwestern end of the Galveston Seawall, on Galveston Island, in Galveston County, Texas. The project extends in both directions from the beach access road. The site can be located on the U.S.G.S. quadrangle map entitled Lake Como, Texas. Approximate UTM Coordinates: Zone 15; Easting: 312908; Northing 3232485. CCC Project No.: 01-0168-F1; Description of Proposed Action: The applicant proposes to place 28,500 cubic yards of beach-quality sand seaward of the established vegetation to restore erosion resulting from a tropical storm. The beach placement area (PA) would be approximately 3,100 feet long by 40 feet to 80 feet wide (5.7 acres) with a landward height limit of 4 feet. The sand for this proposal will be obtained by maintenance dredging within existing bayside channels located pursuant to the following Department of the Army (DOA) determinations and permits: Spanish Grant (D-11062), Sea Isle (application D-12158, under evaluation), Isla del Sol (D-11223), and Terramar (DOA Permit 11899(05)) subdivisions on Galveston Island, in Galveston County, Texas. Sand would be placed in an upland dredged material placement area, dewatered, and then trucked to the proposed beach PA. Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

Applicant: Spanish Grant Civic Association; Location: The project is located on the Gulf of Mexico shoreline at the southeast end of Spanish Grant Boulevard approximately 2 miles southwest of the southern end of the Galveston Seawall, on Galveston Island, in Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Lake Como, Texas. Approximate UTM Coordinates: Zone 15; Easting: 314289; Northing: 3233339. CCC Project No.: 01-0169-F1; Description of Proposed Action: The applicant proposes to place 16,000 cubic yards of beach-quality sand seaward of the established vegetation to restore erosion resulting from a tropical storm. The beach placement area (PA) would be approximately 1,720 feet long by 40 feet to 80 feet wide (3.1 acres) with a landward height limit of 4 feet. Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

Applicant: Trans Texas Gas Corporation; Location: The project is located in wetlands in the Anahuac National Wildlife Refuge (NWR), approximately 4 to 4.5 miles south of the intersection of the refuge road and FM 1985, in Anahuac, Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled High Island, Texas. Approximate UTM Coordinates: Zone 15; Easting: 360800; Northing: 3277400. CCC Project No.: 01-0173-F1; Description of Proposed Action: The applicant is proposing to fill approximately 2.6 acres of wetlands to construct two well pads, each 300 by 300 feet, for the purpose of exploration and development of oil and gas. Existing roads will be used to access both pads. Well pad 8/9 will require filling approximately 1.2 acres of wetlands, and well pad 10 will require filling of approximately 1.4 acres of wetlands, for a total of 2.6 acres of wetlands. To compensate for unavoidable impacts, the applicant proposes to restore 15.5 acres of wetland by removing an abandoned canal system and enhancing freshwater conditions in an a additional 500 acres located adjacent and north of two large reservoirs of the East Unit of Anahuac NWR west of Onion Bayou. Type of Application: This application is being evaluated under Section 404 of the Clean Water Act.

Applicant: Vintage Petroleum; Location: The project site is located in Trinity Bay, Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Umbrella Point, Texas. Approximate UTM Coordinates: Zone 15; Easting: 328611; Northing: 3279549. CCC Project No.: 01-0174-F1; Description of Proposed Action: The applicant proposes to install a drilling barge, a 270-foot-long by 100-foot-wide shell pad, a 4.5-inch diameter flowline, and appurtenant structures in State Tract 57 under Oil Field Development Permit 09161(16). The proposed shell pad will be installed in State Tract 57 for the purpose of drilling and producing Well No. 1. The proposed 4.5-inch diameter flowline will be 150 feet long, originating from Well No. 1 in State Tract 57, and terminating at the proposed 50-foot platform in State Tract 57. Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

Applicant: Matagorda County Palacios Seawall Commission; Location: The project site is located in Tres Palacios Bay on South Bay Boulevard, Matagorda County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Palacios, Texas. Approximate UTM Coordinates: Zone 14; Easting: 772120; Northing: 3177440. CCC Project No.: 01-0175-F1; Description of Proposed Action: The applicant proposes to reconstruct a public access fishing pier called "Pavilion Pier" and to reconfigure the T-head on the pier. The purpose of the project is to rebuild the end of the pier, which is in disrepair, and to accommodate patrons in wheelchairs. The existing pier is 26,085 square feet, and the reconstructed pier would be 27,130 square feet, for an increase of 1,045 square feet. Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899.

Applicant: Pirates Landing Fishing Pier; Location: The project is located at 202 North Garcia Street in Port Isabel, Cameron County, Texas. The site can be located on the U.S.G.S. quadrangle map

entitled Port Isabel, Texas. Approximate UTM Coordinates: Zone 14; Easting: 679500; Northing: 28855. CCC Project No.: 01-0176-F1; Description of Proposed Action: The applicant proposes to amend permit 19334(02) to add dock and mooring structures to an existing fishing pier in the Laguna Madre. The purpose of the dock is to provide an area for boaters to tie up small boats while they purchase bait or visit the restaurant. The proposed wooden dock would be 4 feet wide by 60 feet long and would be located perpendicular to the south side of the existing pier. The applicant also proposes to construct three mooring structures to the west of the proposed dock. The structures would be located approximately 24 feet from the proposed dock and consist of one single-pile and two 3-pile clusters. The water depth at the proposed dock would be -9.5 feet mean high tide. Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899.

Applicant: Department of the Navy; Location: The project site is located within a 10-mile (16-km) commute of the Corpus Christi Naval Airstation in Ingleside, Texas. CCC Project No.: 01-0177-F2; Description of Proposed Action: The applicant proposes to build military housing for trainees and their families. It will be compliant with local, state and federal environmental laws, codes and regulations. Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

Applicant: Gulf of Mexico Fishery Management Council; Location: The project is located in the Gulf of Mexico. CCC Project No.: 01-0180-F2; Description of Proposed Action: The applicant proposes to institute a 31-year rebuilding plan for red snapper with 5-year interim management goals. Type of Application: This application is being evaluated under Section 307 of the Coastal Management Act of 1972, as amended.

Applicant: DSND-Horizon, LLC; Location: The project is located on the right descending bank of the Sabine-Neches Waterway, above Sabine Lake. The site is approximately one-half mile downstream of the intersection of the Neches River, Sabine-Neches Waterway, and Intracostal Canal (USACE Station 540 + 00), at 8200 Yacht Club Road, Port Arthur, Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled West of Greens Bayou, Texas. Approximate UTM Coordinates: Zone 15; Easting: 416844; Northing: 3314111. CCC Project No.: 01-0184-F1; Description of Proposed Action: The applicant proposes to revise their proposed Amendment (01) to Department of the Army (DA) Permit 21750. DA Permit 21750 authorized the construction of a 428-foot finger dock and mooring area, including breasting structures, mooring structures, and associated access structures. It also authorized the initial dredging of a 145,000-square foot area (approximately 115,00 cubic yards), and maintenance dredging after the facility was constructed, with dredged materials to be placed on an upland portion of the permittee's property or in Corps of Engineers Disposal Areas 13, 14, 15, or 16. Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

Applicant: Port of Corpus Christi; Location: The project is located near the Corpus Christi Ship Channel on the south shoreline of Harbor Island, approximately 0.4 miles west of State Highway 361 Ferry Landing, in Port Aransas, Nueces County, Texas. The site can be located on the U.S.G.S. quadrangle map entitled Port Aransas, Texas. Approximate UTM Coordinates: Zone 14; Easting: 689500; Northing: 3081200. CCC Project No.: 01-0185-F1; Description of Proposed Action: The applicant proposes to hydraulically and/or mechanically maintenance dredge up to 4,000 cubic yards of sand from a boat basin authorized by Department of the Army Permit 16344, and to use the sand as fill for shoreline protection activities. Two options are being proposed to protect an 800-foot-long section of shoreline south of an existing, leveed, dredged material placement area (PA), and west of an industrial harbor. The first proposed option is placement of a 12-foot-wide by 5-foot-high geotube, which would be filled and backfilled with sand dredged from the boat basin. The second proposed option is construction of a rock revetment over sand dredged from the boat basin. Approximately 0.2 acre of shallow, unvegetated waters would be filled. Additionally, the applicant proposes to construct a 500-foot-long by 68 (maximum)-foot-wide groin extending from an existing bulkhead to within approximately 500 feet of the edge of the Corpus Christi Ship Channel. The project purpose is to stabilize the high-energy shoreline to protect harbor facilities and the PA levee. The project is targeted by the Texas General Land Office for funding under the recently passed Coastal Erosion Planning and Response Act (CEPRA). Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Applicant: Orange County Airport Location: The project is located at 2520 South Highway 87, two miles southeast of Orange, in Orange County County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Beaumont East, Texas. Approximate UTM Coordinates: Zone 15; Easting: 422000; Northing: 3327000. CCC Project No.: 01-0186-F1 Description of Proposed Action: The applicant proposes to fill and/or grade approximately 6 acres of wetland habitat for the purpose of extending an existing runway and parallel taxiway. A total of 4.2 acres of wetlands will be filled to provide surface for the runway. The remaining 1.8 acres will be cleared of all vegetation as per Federal Aviation guidelines. The applicant proposes to construct lateral drainage ditches and a 300-foot-long runway safety area at the end of the proposed runway. Approximately 2,248 cubic yards of material will be placed into 4.2 acres of wetlands for the proposed runway construction. Dominant vegetation within the project area consists primarily of soft rush (Juncus effusus), vasey grass (Paspalum urvillei), poison ivy (Toxicodendron radicans), St. Augustine grass (Stenotaphrum secundatum), Bahia grass (Paspalum notatum), Souther carpet grass (Axonopus affinis), erect coinleaf (Centella erecta), and Southern dewberry (Rubus trivalis). To compensate for direct impacts to 4.2 acres of wetland habitat, and indirect impacts to an addition 1.8 acres of wetlands, the applicant proposes to purchase 18 acre-credits from the Texas Department of Transportation Blue Elbow Swamp Mitigation Bank. Type of Application: This application is being evaluated under Section 404 of the Clean Water Act.

Applicant: Main Energy, Inc.; Location: The project is located in the Matagorda Bay in State Tract 194 and State Tract 199, approximately 10.5 miles southwest of Palacios, Matagorda County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Carancahua Pass, Texas. Approximate UTM Coordinates: Zone 14; Easting: 765861.61; Northing: 3162794.93 at the beginning point and Zone 14; Easting: 764701.20; Northing: 3162619.71 at the end point. CCC Project No.: 01-0187-F1; Description of Proposed Action: The applicant proposes to lay, bury and maintain a 2-1/2 inch flowline from the existing producing well #1 in State Tract 199 to the existing production facilities in State Tract 194. The total length of the flowline will be 3,848.30 feet. The flowline will be buried a minimum of 3 feet deep. Approximately 900 cubic yards of mud and silt will be displaced in the process. The purpose of the project is to transfer production of oil and or gas from the producing well to the production facilities. Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

Applicant: Main Energy, Inc.; Location: The project is located in Matagorda Bay in State Tract 295, State Tract 304 N/2 and State Tract 303 S/2, approximately 8 miles southwest of Palacios, Matagorda

County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Carancahua, Texas. Approximate UTM Coordinates: Zone 14; Easting: 766517.16; Northing: 31666786.04 at the beginning point and Zone 14; Easting: 768085.16; Northing: 3168540.55 at the end point. CCC Project No.: 01-0188-F1; Description of Proposed Action: The applicant proposes to lay, bury and maintain a 2-1/2 inch flowline from the existing producing well in State Tract 295 to the existing production facilities in State Tract 303. The total length of the flowline will be 3,245.49 feet. The flowline will be buried a minimum of 3 feet deep. Approximately 1,810 cubic yards of mud and silt will be displaced in the process. The purpose of the project is to transfer production of oil and/or gas from the producing well to the production facilities. Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

Applicant: Davis Petroleum Corporation; Location: The project is located in the Gulf of Mexico, near Padre Island, south of Corpus Christi, Texas. The project area includes State Tract 922S-925S, and 928S. The project can be located on the U.S.G.S. quadrangle map entitled Crane Island, S.W., Texas. Approximate UTM Coordinates: Zone 14; Easting: 67600; Northing: 3047000. CCC Project No.: 01-0189-F1; Description of Proposed Action: The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities within the state tracts listed above. Such activities include installation of typical marine barges and keyways, production structures with attendant facilities, and flowlines. Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

Applicant: Orange County Water Control and Improvement District, #1; Location: The project is located approximately 1.5 miles north of Interstate 10, from Ten Mile Bayou, crossing Ross Ridge, to an existing ditch ending at the Sewage Disposal Plant, in Vidor, Orange County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Pine Forest, Texas. Approximate UTM Coordinates: Zone 15; Easting: 398516; Northing: 3340689. CCC Project No.: 01-0190-F1; Description of Proposed Action: The applicant proposes to excavate a channel approximately 5,300 linear feet in length to 15 feet deep with a 30-foot bottom width, and a 75-foot top width. The excavation will impact an area of 397,500 square feet. A volume of 29.2 cubic yards per linear foot will be cast on the south side of the ditch creating a 13-foot-high levee with a roadway. The excavation of the ditch will require the use of a dragline, clamshell and bulldozer. The levee base will measure approximately 89 feet wide by 5,300 linear feet long. An area of 471,000 square feet will be impacted by the levee. The proposed project will impact an estimated 20 acres of jurisdictional wetlands. The purpose of the proposed project is to construct an outfall ditch from Ten Mile Bayou east to an existing drainage ditch to provide an effluent canal for the local drainage in Vidor and to provide the wastewater treatment plant effluent through the adjacent marsh area to an outlet into Ten Mile Bayou. Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

Applicant: Charles Gremminger; Location: The project is located on San Antonio Bay at Lots 38 and 39, Block B of the Swanpoint Subdivision. The project can be located on the U.S.G.S. quadrangle map entitled Seadrift, Texas. Approximate UTM Coordinates: Zone 14; Easting: 725079; Northing: 3141899. CCC Project No.: 01-0191-F1; Description of Proposed Action: The applicant proposes to construct a 325-foot-long by 4-foot-wide pier with a 10-foot-long by 30-foot-wide L-head and a 25-foot-long by 4-foot-wide wing pier. Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899.

Applicant: Vintage Petroleum, Inc.; Location: The project is located in State Tract 64, in Trinity Bay, Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Umbrella Point, Texas. Approximate UTM Coordinates: Zone 15; Easting: 327500; Northing: 3278700. CCC Project No.: 01-0193-F1; Description of Proposed Action: The applicant proposes to drill their No. 1 well in State Tract 64. A total of ten 10-pile clusters, 80 feet in diameter, would be installed to support a 230-foot-long by 60-foot-wide drilling barge. If fill material is necessary, the pad size and height would depend on bottom conditions. To accommodate the drilling barge, approximately 4,800 cubic yards of shell, crushed rock, or washed gravel would be needed. Water depth at the proposed fill site is approximately -16 feet mean low water. These activities would be performed under Oilfield Development Permit 90161(16). Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

Applicant: St. Mary Energy Company; Location: The project is located southeast of the town of Seadrift, Calhoun County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Seadrift, Texas and Mosquito Point, Texas. Approximate UTM Coordinates: Zone 14; Easting: 728167; Northing: 3141045. CCC Project No.: 01-0196-F1; Description of Proposed Action: The applicant proposes to install, operate, and maintain two well pads and attendant structures and equipment necessary for oil and gas drilling, production, and transportation activities, with attendant facilities and flowlines. The project would result in the temporary impact of 5.315 acres of wetlands, and the permanent impact of 2.6 acres of wetlands. The applicant will use board roads as temporary access roads, and replace these roads with permanent roads if the exploration operations are successful. The applicant would remove the temporary drilling structures and reduce the footprint of the wells. The applicant proposes to restore and revegetate these areas of temporary impact. In addition, the applicant proposes to compensate for the permanent loss of wetlands by in-lieu fee mitigation. The applicant would supply funds to the Nature Conservancy to purchase 26 acres of salt marsh wetlands near the project area. This property has been identified a potential critical habitat for whooping cranes. Type of Application: This application is being evaluated under Section 404 of the Clean Water Act.

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. Diane P. Garcia, Council Secretary, Coastal Coordination Council, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495, or diane.garcia@glo.state.tx.us. Comments should be sent to Ms. Garcia at the above address or by fax at (512) 475-0680.

TRD-200103033
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: May 30, 2001

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Comptroller of Public Accounts

Notice of Award

Notice of Award: Pursuant to Chapters 403, 2305 and 2156, and Sections 2156.121 and 2156.122, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces this notice of contract award.

The notice of request for proposals (RFP #116b) was published in the November 17, 2000, issue of the *Texas Register* (25 TexReg 11556).

The contractor will assist Comptroller in designing and installing small scale (2kW) solar energy systems in selected Texas Independent School Districts.

The contract was awarded to: CSGServices, Inc., 1515 S. Capital of Texas Highway, Suite 210, Austin, Texas 78746. The total amount is not to exceed $200,000.00. The term of the contract is May 15, 2001 through May 15, 2002.

TRD-200102981
Pamela Ponder
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: May 25, 2001

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Sections 303.003, 303.005, 303.008, 303.009, 304.003, and 346.101. Tex. Fin. Code.

The weekly ceiling as prescribed by Sec. 303.003 and 303.009 for the period of 06/04/01 - 06/10/01 is 18% for Consumer [1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by Sec. 303.003 and 303.009 for the period of 06/04/01 - 06/10/01 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by Sec. 303.005 and 303.009[3]for the period of 06/01/01 - 06/30/01 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The monthly ceiling as prescribed by Sec. 303.005 and 303.009 for the period of 06/01/01 - 06/30/01 is 18% for Commercial over $250,000.

The standard quarterly rate as prescribed by Sec. 303.008 and 303.009 for the period of 07/01/01 - 09/30/01 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The standard quarterly rate as prescribed by Sec. 303.008 and 303.009 for the period of 07/01/01 - 09/30/01 is 18% for Commercial over $250,000.

The retail credit card quarterly rate as prescribed by Sec. 303.009 [1] for the period of 07/01/01 - 09/30/01 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The lender credit card quarterly rate as prescribed by Sec. 346.101 Tex. Fin. Code[1]for the period of 07/01/01 - 09/30/01 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The standard annual rate as prescribed by Sec. 303.008 and 303.009 [4]for the period of 07/01/01 - 09/30/01 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The standard annual rate as prescribed by Sec. 303.008 and 303.009 for the period of 07/01/01 - 09/30/01 is 18% for Commercial over $250,000.

The retail credit card annual rate as prescribed by Sec. 303.009[1]for the period of 07/01/01 - 09/30/01 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 06/01/01 - 06/30/01 is 10% for Consumer/Agricultural/Commercial/credit thru $250,000.

The judgment ceiling as prescribed Sec. 304.003 for the period of 06/01/01 - 06/30/01 is 10% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

[3]For variable rate commercial transactions only.

[4]Only for open-end credit as defined in Sec. 301.002(14), Tex. Fin. Code.

TRD-200103028
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: May 30, 2001

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Texas Department of Criminal Justice

Notice to Bidders

The Texas Department of Criminal Justice invites bids for a project which consists of the removal of the existing roof system, insulation and, membrane, and installation of new insulation, and 4-ply asphalt and gravel roof systems. Include all labor and materials, services, equipment, and appliances required in conjunction with the re-roofing of the ER & Chapel Buildings at the Gatesville unit, Riverside location, 1401 States School Rd, Gatesville, Texas 76599. The work includes roofing construction as further shown in the Contract Documents prepared by Amtech Roofing Consultants Inc.

The successful bidder will be required to meet the following requirements and submit evidence within five days after receiving notice of intent to award from the Owner:

A. Contractor must have a minimum of five years consecutive years of experience as a Roofing Contractor and provide references for at least three projects that have been completed of a dollar value and complexity equal to or greater than the proposed project.

B. Contractor must be bondable and insurable at the levels required.

All Bid Proposals must be accompanied by a Bid Bond in the amount of 5.0% of greatest amount bid. Performance and Payment Bonds in the amount of 100% of the contract amount will be required upon award of a contract. The Owner reserves the right to reject any or all bids, and to waive any informality or irregularity.

Bid Documents can be purchased from the Architect/Engineer at a cost of $30 (non-refundable) per set, inclusive of mailing/delivery costs, or they may be viewed at various plan rooms. Payment checks for documents should be made payable to the Architect/Engineer : Bob Alford, R. A., Amtech Roofing Consultants, Inc. ,3300 South Gessner, Suite 245, Houston, Texas 77063; Phone: (713) 266-4829; Fax: (713) 266-4977.

A Pre-Bid conference will be held at 2 PM on June 6, 2001, at the Gatesville Unit, Gatesville Unit Conference Center, Gatesville Texas, followed by a site-visit. ATTENDANCE IS MANDATORY.

Bids will be publicly opened and read at 2 PM on June 13, 2001, in the Purchases and Leases Conference Room, located at, Two Financial Plaza, Suite 525, Huntsville, Texas 77340.

The Texas Department of Criminal Justice requires the Contractor to make a good faith effort to include Historically Underutilized Businesses (HUB's) in at least 57.2% of the total value of this construction contract award. Attention is called to the fact that not less than the minimum wage rates prescribed in the Special Conditions must be paid on these projects.

TRD-200102976
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: May 25, 2001

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Notice to Bidders

The Texas Department of Criminal Justice invites bids for the construction of Visitation Canopy (Awning) at Houston, Texas. The project consists of a custom built steel canopy (awning) of approximately 3000 square feet with a minimum height of 14 feet. Roof material specified is MBCI or equal 26 gauge steel M-panel, white in color, and trim material is 26 gauge steel angle trim, white in color. Structural components include 10" galvanized steel C-channel x 2-1/2" x 14 gauge galvanized steel and 12" C-channel x 12 gauge galvanized with columns of 5" x 5" x .188 galvanized steel . Columns must go through concrete floor and are to be set in concrete base at the existing Kegans State Jail Unit, 707 Top Street, Houston, Texas 77210. The work includes structural and concrete as further shown in the Contract Documents.

The successful bidder will be required to meet the following requirements and submit evidence within five days after receiving notice of intent to award from the Owner:

A. Contractor must have worked in his trade for five consecutive years and have completed at least three projects of a dollar value and complexity equal to or greater than the proposed project.

B. Contractor must be bondable and insurable at the levels required.

C. Must provide references from at least three similar projects.

All Bid Proposals must be accompanied by a Bid Bond in the amount of 5.0% of greatest amount bid. Performance and Payment Bonds in the amount of 100% of the contract amount will be required upon award of a contract. The Owner reserves the right to reject any or all bids, and to waive any informality or irregularity.

Bid Documents can be obtained from the Texas Department of Criminal Justice at no charge from: Texas Department of Criminal Justice, Purchasing & Leases Department Contracts Branch, Two Financial Plaza, Suite 525, Huntsville Texas 77340; (936) 437-7136; (936) 437-7009 FAX, Attn: Gene Warzecha, Contract Administrator.

A Site Visit will be held at 10:30 AM on May 30, 2001, at the Kegans State Jail, 707 Top Street, Houston, Texas.

Bids will be publicly opened and read at 2 PM on June 13, 2001, in the Contracts Branch Conference Room at Two Financial Plaza, Suite 525, Huntsville, Texas 77340.

TRD-200102977
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: May 25, 2001

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East Texas Council of Governments

Request for Proposals to Provide Training to Currently Employed Workers

This Request for Proposals to interested vendors is filed under the provisions of Government Code 2254.

Notice is given that the East Texas Council of Governments (ETCOG) as the administrative entity for the local Workforce Development Board is soliciting proposals for current worker training. The Achieving Performance Excellence (APEX) Grant seeks to provide resources to businesses and educators in order to develop current worker training for the purpose of allowing workers to: obtain skills certification, enhance earnings potential, and secure career advancement opportunities.

Interested parties should contact: Daniel Pippin, Regional Planner, ETCOG (903) 984-8641. If Mr. Pippin is unavailable, you may speak with Gary Allen, Section Chief-Planning and Board Support. Requests for the Request for Proposals should be sent to: East Texas Council of Governments, 3800 Stone Road, Kilgore, Texas, 75662, Attention: Wendell Holcombe, Fax: (903) 983-1440

Proposals will not be released prior to May 30, 2001. The closing date for the receipt of responses to the Request for Proposals is 5:00 p.m. Central Daylight Time, July 6, 2001.

The ETCOG Executive Committee, who will be responsible for the contract award, will review the responses.

TRD-200103036
Glynn Knight
Executive Director
East Texas Council of Governments
Filed: May 30, 2001

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General Services Commission

Notice of Contract Airline Fares Request for Proposal

The General Services Commission (GSC) announces Amendment #1 to Request for Proposal (RFP) for Contract Airline Fares (RFP #11-0501AF) to be provided to the State of Texas pursuant to the Texas Government Code, §2171.052. Any contract which results from this RFP shall be for the term of September 1, 2001 through August 31, 2002.

Pre-proposal Conference: Amendment #1 reflects needed revisions that were identified at the pre-proposal conference held May 14, 2001, and written questions received by May 16, 2001. A summary of the questions and clarification requests is also available.

Submission of Response to the RFP: Responses to the RFP shall be submitted to and received by the GSC Bid Services Department on or before 3:00 p.m., Central Daylight Time, on June 7, 2001, and shall be delivered or sent to: The General Services Commission, Attention: Bid Services, RFP #11-0501AF, 1711 San Jacinto Boulevard, Room 180, Austin, Texas 78701, or P.O. Box 13047, Austin, Texas 78711-3047.

Copies of RFP: If you are interested in receiving a copy of the RFP and Amendment #1, contact Ms. Gerry Pavelka, Program Director, at (512) 463-3435 to request a copy.

TRD-200102884

Cynthia J. Hill
General Counsel
General Services Commission
Filed: May 23, 2001

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Texas Department of Health

Designation of El Centro del Barrio Children's Shelter as a Site Serving Medically Underserved Populations

The Texas Department of Health (department) is required under the Occupations Code §157.052 to designate sites serving medically underserved populations. In addition, the department is required to publish notice of such designations in the *Texas Register* and to provide an opportunity for public comment on the designations.

Accordingly, the department has designated the following as a site serving medically underserved populations: EL Centro del Barrio Children's Shelter of San Antonio (Infants Shelter), 2219 Babcock, San Antonio, Texas 78229. The designation is based on proven eligibility as a site serving a disproportionate number of clients eligible for federal, state, or locally funded health care programs.

Oral and written comments on this designation may be directed to Bruce Gunn, Ph.D., Director, Health Professions Resource Center, Office of Policy and Planning, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756; telephone (512) 458-7261. Comments will be accepted for 30 days from the publication date of this notice.

TRD-200103025
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: May 30, 2001

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Designation of Oak Tree Family Clinic as a Site Serving Medically Underserved Populations

The Texas Department of Health (department) is required under the Occupations Code §157.052 to designate sites serving medically underserved populations. In addition, the department is required to publish notice of such designations in the *Texas Register* and to provide an opportunity for public comment on the designations.

Accordingly, the department has designated the following as a site serving medically underserved populations: Oak Tree Family Clinic (Substance Abuse Testing, LLP), 3512 Texas Boulevard, Texarkana, Texas 75503. The designation is based on proven eligibility as a site serving a disproportionate number of clients eligible for federal, state, or locally funded health care programs.

Oral and written comments on this designation may be directed to Bruce Gunn, Ph.D., Director, Health Professions Resource Center, Office of Policy and Planning, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756; telephone (512) 458-7261. Comments will be accepted for 30 days from the publication date of this notice.

TRD-200103026
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: May 30, 2001

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Notice of Amendment to the Radioactive Material License of Nuclear Sources & Services, Inc., dba NSSI/Sources & Services, Inc.

Notice is hereby given by the Texas Department of Health (department), Bureau of Radiation Control that it has amended Radioactive Material License Number L01811 issued to Nuclear Sources & Services, Inc., doing business as NSSI/Sources & Services, Inc., located at 5711 Etheridge in Houston, Texas. Amendment number 44 removes the authorization for sealed sources from the license.

The department has determined that the amendment of the license, 25 Texas Administrative Code (TAC), Chapter 289, and the documentation submitted by the licensee provide reasonable assurance that the licensee's radioactive waste facility is sited, designed, operated, and will be decommissioned and closed in accordance with the requirements of 25 TAC, Chapter 289; the amendment of the license will not be inimical to the health and safety of the public or the environment; and the activity represented by the amendment of the license will not have a significant effect on the human environment.

This notice affords the opportunity for a public hearing upon written request within 30 days of the date of publication of this notice by a person affected as required by Texas Health and Safety Code, §401.116 and as set out in 25 TAC, §289.205(f). A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to a county, in which the radioactive material is or will be located; or (b) doing business or has a legal interest in land in the county or adjacent county.

A person affected may request a hearing by writing Mr. Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control, 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 this 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. Should no request for a public hearing be timely filed, the agency action will be final.

A public hearing, if requested, shall be conducted in accordance with the provisions of Texas Health and Safety Code, Chapter 401, the Administrative Procedure Act (Texas Government Code, Chapter 2001), the formal hearing procedures of the department (25 Texas Administrative Code (TAC), §1.21 et seq.) and the procedures of the State Office of Administrative Hearings (1 TAC, Chapter 155).

A copy of the license amendment and supporting materials are available for public inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, 8:00 a.m. to 5:00 p.m. Monday-Friday (except holidays). Information relative to inspection and copying the documents may be obtained by contacting Chrissie Toungate, Custodian of Records, Bureau of Radiation Control.

TRD-200103027
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: May 30, 2001

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Texas Health and Human Services Commission

Cancellation of Public Hearing

The Texas Health and Human Services Commission (HHSC) and the Texas Department of Human Services (DHS) are canceling the joint public hearing on proposed payment rates for the following programs operated by DHS: nursing facilities, swing beds, and hospice-nursing facilities. The hearing was scheduled for 8:30 a.m. on Thursday, June 14, 2001, in conference room 5501 of the Brown-Heatly Building. Notice of the hearing appeared in the June 1, 2001, issue of the *Texas Register* (26 TexReg 3968).

Only the public hearing on proposed payment rates for nursing facilities, swing beds, and hospice-nursing facilities is being canceled. The other three public hearings included in the original notice in the June 1, 2001, issue of the *Texas Register* (26 TexReg 3968) will be conducted as originally scheduled.

If there are any questions concerning this cancellation, contact Tony Arreola, DHS, MC W-425, P.O. Box 149030, Austin, Texas 78714-9030, (512) 438-4817.

TRD-200103023
Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: May 30, 2001

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Planning Forum and Public Hearing

The Texas Health and Human Services Commission (HHSC), in collaboration with the Health and Human Services agencies and the East Texas Council of Governments, will conduct one of a series of statewide public hearings to receive public comment on the development of the Health and Human Services Coordinated Strategic Plan and to fulfill statutory local planning requirements. The public hearing is required under §531.022(d)(4), Government Code, and §531.036, Government Code, and is intended to produce the following outcomes:

(1) Increase local involvement and participation in the planning process.

(2) Provide feedback to local communities on statewide and regional progress made on health and human services goals and strategic priorities since the community forums in 1999.

(3) Solicit input from the communities on the effectiveness of current health and human services efforts.

(4) Update regional demographic information and needs profiles.

(5) Assess local capacity to address the strategic priorities.

(6) Foster grass roots support for/build community coalitions to improve health and human service delivery in the area.

A public hearing and community planning forum will be conducted in Tyler, Texas, at the Marvin United Methodist Church, 300 West Erwin Street, Tyler, Texas, on June 26 and 27, 2001. The planning forum is intended to provide the opportunity for public input and participation. Agency clients and consumers of health and human services, advocates, consumer advisors, local state agency representatives, local governmental and non-governmental representatives, service providers and other interested parties are encouraged to participate.

The Health and Human Services Agencies will conduct a public hearing to receive public comment on June 26, 2001, beginning at 6:30 p.m., with registration beginning at 6:00 p.m. Testimony and comments should focus on regional needs and suggestions for the most effective ways to deliver and coordinate services funded by the state. Written comments may be submitted to the Texas Health and Human Services Commission until 5:00 p.m., Central Time, on July 3, 2001. Please address written comments to the attention of Colleen Edwards at HHSC, 4900 North Lamar Boulevard, 4th Floor, Austin, Texas 78751, fax (512) 424-6590 or email: colleen.edwards@hhsc.state.tx.us.

The planning forum will be held on June 27, 2001, from 10:00 a.m. to 2:00 p.m., Central Time, with registration beginning at 9:30 a.m. The morning session will provide break-out group activities for members of the community to discuss specific strategic priorities that significantly impact the Tyler area, such as children's medical and insurance needs, access to long-term care services and "successful aging", health and human services transportation issues, access to service information and referral, issues related to children and adolescents, and any major issue arising out of the June 26, 2001, public hearing.

AGENDA

Public Hearing--June 26, 2001

I. Registration for public testimony (6:00 p.m.)

II. Welcome and demographic presentation (6:30 p.m.)

III. Public Comment (7:00 p.m. - 8:20 p.m.)

Community Planning Forum--June 27, 2001

Morning Session

I. Registration (9:30 a.m.)

II. Welcome and overview (10:00 a.m.)

III. Breakout Groups (10:30)

Lunch--not provided (11:45 - 1:00)

Afternoon Session

I. Reports from Breakout Groups (1:00 p.m.)

II. Closing (1:45 p.m.)

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Patti Hinds at (903) 533-5365 or email: patti.hinds@tdh.state.tx.us, by June 20, 2001, so that appropriate arrangements can be made.

TRD-200103038
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: May 30, 2001

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Planning Forum and Public Hearing

The Health and Human Services Commission (HHSC), in collaboration with the Health and Human Services agencies and the North Central Texas Area Agency on Aging, will conduct one of a series of statewide public hearings to receive public comment on the development of the Health and Human Services Coordinated Strategic Plan and to fulfill statutory local planning requirements. The public hearing is required under §531.022(d)(4), Government Code, and §531.036, Government Code, and is intended to produce the following outcomes: (1) Increase local involvement and participation in the planning process. (2) Provide feedback to local communities on statewide and regional progress made on health and human services goals and strategic priorities since the community forums in 1999. (3) Solicit input from the communities on the effectiveness of current health and human services efforts. (4) Update regional demographic information and needs profiles. (5) Assess local capacity to address the strategic priorities. (6) Foster grass roots support for/build community coalitions to improve health and human service delivery in the area.

A community planning forum and public hearing will be conducted in Arlington, Texas on June 26, 2001 at the First Methodist Church of Arlington, 313 North Center, Arlington, Texas. Agency clients and consumers of health and human services, advocates, consumer advisors, local state agency representatives, local governmental and non-governmental representatives, service providers and other interested parties are encouraged to participate.

The planning forum will be held from 8:30 a.m. to 12:30 p.m., Central Time. The morning session will provide state and regional progress reports, local needs assessments and demographic information. Break-out group activities will be conducted for members of the community to discuss specific strategic priorities that significantly impact the Metroplex region, such as children's medical and insurance needs, long-term care access, information and referral, diabetes, business process improvements, supported employment, successful aging, mental health services and involvement of faith-based community in service delivery.

A public hearing to receive public comment will begin at 2:00 p.m. Testimony and comments should focus on regional needs and suggestions for the most effective ways to deliver and coordinate services funded by the state. Written comments may be submitted to the Health and Human Services Commission until 5:00 p.m., Central Time, on July 5, 2001. Please address written comments to the attention of Colleen Edwards at HHSC, 4900 North Lamar Blvd., 4th Floor, Austin, Texas 78751, Fax (512) 424-6590 or Email: colleen.edwards@hhsc.state.tx.us.

AGENDA

Morning Session (8:30 - 12:30)

I. Welcome and hearing overview (8:30)

II. Presentation by HHSC state representative (9:00)

III. Local presentations on local progress, needs assessments and demographics (9:15)

IV. Breakout Groups (10:45)

Afternoon Session (2:00 - 3:35 p.m.)

I. Public Comment (2:00)

II. Final thoughts (3:30)

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Doni Van Ryswyk at 817-695-9193, by June 18, 2001 so that appropriate arrangements can be made.

TRD-200103039
Marina S. Henderson
Executive Deputy Commissioner
Health and Human Services Commission
Filed: May 30, 2001

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Texas Higher Education Coordinating Board

Request for Proposals for Bond Counsel

The Texas Higher Education Coordinating Board (the "Board") solicits responses to this Request for Proposal ("RFP") from law firms interested in providing bond counsel services to the Board for the period September 1, 2001 to August 31, 2003.

Proposals from HUB certified firms are encouraged. State agencies are required to make a good faith effort to assist Historically Underutilized Businesses (HUBs) in receiving contract awards issued by the State of Texas. The goal of this program is to promote fair and competitive business opportunities for all businesses contracting with the state. HUB certified firms are defined as for-profit business entities that are certified by the Texas General Services Commission.

Non-HUB firms are encouraged, in the event they are selected as bond counsel, to consider entering into a partnership arrangement with a HUB firm. If the selected firm chooses to enter into such an arrangement, both the selected firm and the HUB firm would be parties to the contract as Co-Counsel. The selected firm would function as the managing partner making all decisions on division of work between the two firms and would be the contact to the Board on all matters.

FORM OF RESPONSE

A. Scope of Services

Responses to this RFP should be based upon performance of the following tasks:

(1) Regarding bond issues, the firm will:

(a) assist the Board in obtaining approval of the issue by the Bond Review Board and represent the Board at hearings of the Bond Review Board;

(b) prepare all legal documents required by the Board, Comptroller, Treasurer, Attorney General or outside parties;

(c) request and obtain approval of the Bond issue from the Attorney General, Governor and other required parties; and

(d) review all financial models and render opinions on the legality and relevant tax position of the proposed scenario.

(2) Regarding state and federal laws, the firm will:

(a) review issues and, in concert with the financial services firm and Board staff, recommend alternative legislative action where appropriate;

(b) if requested by the Board or staff, draft desired legislation at the federal or state level, and assist as necessary in informing state and federal officeholders of salient issues; and

(c) in response to real or anticipated changes in state and federal law, regulation or public policy, the firm will be expected to advise the Board and staff of potential or real impact on existing or anticipated:

(i) bond issues,

(ii) investment policy, and

(iii) loan policy.

(3) The firm will advise the Board and staff on the legality of new loan policy proposals and legal aspects of anticipated impacts on investment and loan policy.

(4) The firm will advise the Board and staff on the legality of proposed debt restructuring techniques.

(5) The firm will advise the Board on all other matters necessary or incidental to the issuance of the bonds.

B. Qualifications

Responses to this request for proposals should include at least the following information in the order requested:

(1) a description of the firm's qualifications for performing the legal services requested, including the firm's prior experience in bond issuance matters;

(2) the names, experience, and qualifications for performing the requested legal services of the individual attorneys who would be assigned to perform services under the contract;

(3) efforts made by the firm to encourage and develop the participation of minorities and women in the provision of the firm's legal services and proposed use of women and minorities in regard to the services required under this contract, if any, and previous experience and involvement working with HUB certified firms (if your firm is not HUB certified) or as a HUB certified firm in a co-counsel relationship;

(4) disclosures of conflicts of interest, identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the Board or to the State of Texas, or any of its boards, agencies, commissions, universities or elected or appointed officials;

(5) confirmation of willingness to comply with policies, directives and guidelines of the Board and the Attorney General of the State of Texas; and

(6) contact information for the proposer, including address, telephone, E-mail address, and fax number, and the name of the individual who will be the Board's primary contact on the contract.

C. Compensation

For the scope of services defined in this RFP, the proposal must specify:

(1) the firm's proposed hourly billing rates for attorneys and other staff who would be assigned to perform services under the contract; flat fees or other fee arrangements; and billable expenses; and

(2) how fees may differ in the cases of a competitive versus a negotiated sale.

SELECTION CRITERIA

(1) The Board will make its selection based on demonstrated knowledge and experiences, quality of staff assigned to perform services under the contract, compatibility with the goals and objectives of the Board and the state, and reasonableness of proposed fees.

(2) The Board has the sole discretion and reserves the right to reject any and all responses to this RFP and to cancel the RFP if it is deemed in the best interest of the Board to do so. Issuance of this RFP in no way constitutes a commitment by the Board to award a contract or to pay for any expenses incurred either in the preparation of a response to this RFP or in the production of a contract for legal services. The successful firm will be required to sign the Texas Attorney General's Outside Counsel Agreement.

(3) The Board previously contracted with the law firm of McCall, Parkhurst & Horton, LLP for these services and intends to award the contract to McCall, Parkhurst & Horton, LLP unless a better offer is received.

TERMS AND CONDITIONS

(1) The Board reserves the right to reject any or all proposals or to award the contract to the next most qualified firm if the successful firm does not execute a contract within thirty (30) days after the award of the proposal.

(2) The Board reserves the right to request clarification of information submitted and to request additional information of one or more applicants.

(3) The Board and staff will perform an evaluation of the selected firm's performance as necessary, and the Board shall have the right to terminate its contract by specifying the date of termination in a written notice to the firm at least thirty (30) working days before the termination date. In this event, the firm shall be entitled to just and equitable compensation for any satisfactory work completed.

(4) Any agreement or contract resulting from the acceptance of a proposal shall be on forms either supplied by or approved by the Board and shall contain, as a minimum, applicable provisions of the request for proposals. The Board reserves the right to reject any agreement that does not conform to the request for proposals and any Board requirements for agreements and contracts.

(5) The selected firm shall not assign any interest in the contract and shall not transfer any interest in the same without prior written consent of the Board.

(6) No reports, information or data given to or prepared by the firm under the contract shall be made available by the firm to any individual or organization without the prior written approval of the Board.

(7) Any and all data provided by the Board during the request for proposals process or under a contract for bond counsel services is the property of the Board and shall be returned to the Board upon request.

(8) Specific analytical software developed at the request and expense of the Board is the property of the Board and, upon request, shall be returned to the Board.

RELEASE OF INFORMATION AND OPEN RECORDS

Information submitted in response to this RFP shall not be released by the Board during the proposal evaluation process. After the evaluation process is completed as determined by the Board, all proposals and information contained therein may be subject to public disclosure under Chapter 552 of the Texas Government Code.

INSTRUCTIONS TO PROPOSERS

(1) All proposals must be in a sealed envelope and clearly marked: "Sealed Proposal C Bond Counsel Services." All proposals must be received by 11:00 a.m. (Central Time) on July 9, 2001.

(2) Seven (7) copies of the proposal are required and may be mailed to: Texas Higher Education Coordinating Board, Attention: Kenneth Vickers, Assistant Commissioner for Administrative Services, P.O. Box 12788, Austin, Texas 78711; or hand delivered to Room 3.110, 1200 East Anderson Lane, Austin, Texas, by 11:00 a.m. (Central Time) on July 9, 2001. Each proposal should indicate the name, E-mail address, and phone number of the principal contact for the firm.

(3) Questions or comments concerning this request for proposals should be submitted in writing to: Kenneth Vickers, Assistant Commissioner for Administrative Services, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711, (512) 427-6160.

TRD-200103002
Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
Filed: May 29, 2001

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Request for Proposals for Financial Services

The Texas Higher Education Coordinating Board (the "Board") solicits responses to this Request for Proposal ("RFP") from firms interested in providing financial services to the Board on all items of financing necessary for the Board's issuance of student loans under its $400 million bonding authority approved by the Legislature and the voters in November of 1999.

Proposals from HUB certified firms are encouraged. State agencies are required to make a good faith effort to assist Historically Underutilized Businesses (HUBs) in receiving contract awards issued by the State of Texas. The goal of this program is to promote fair and competitive business opportunities for all businesses contracting with the state. HUB certified firms are defined as for-profit business entities that are certified by the Texas General Services Commission.

Non-HUB firms are encouraged, in the event they are selected, to consider entering into a partnership arrangement with a HUB firm. The selected firm would function as the managing partner making all decisions on division of work between the two firms and would be the contact to the Board on all matters.

FORM OF RESPONSE

A. Scope of Services

The selected firm will provide the following services:

(1) Regarding bond issues, the firm will:

(a) Determine the timing and structure of any negotiated and/or competitive issues in concert with the bond counsel and Board staff, including:

(i) General Obligation Bonds,

(ii) Defeasance,

(iii) Refunding, and

(iv) Others.

(b) Assist the Board in obtaining approval of the issue by the Bond Review Board and represent the Board at hearings of the Bond Review Board.

(c) Develop a draft of the official statement in concert with the bond counsel and Board staff.

(d) Determine the structure of the escrow and paying/receiving agent bid packages.

(e) Make recommendations on the underwriting team and coordinate the efforts of the underwriting team.

(f) Prepare, in concert with bond counsel and Board staff, all necessary financial models and develop written criteria for evaluation of same.

(g) Assist with the bond closing and final document preparation.

(h) Conduct (with Board staff) a post-sale analysis documenting results of the bond issue.

(i) Advise the Board and staff of any new techniques in debt restructuring which may be beneficial to the loan programs, with specific recommendations for implementation.

(2) Regarding state and federal laws, the firm will:

(a) Review issues and, in concert with the bond counsel and Board staff, recommend legislative action where appropriate.

(b) In response to real or anticipated changes in state and federal law, regulation or public policy, advise the Board and staff of potential or real impact on existing or anticipated:

(i) Bond issues,

(ii) Investment policy, and

(iii) Loan policy.

B. Qualifications

(1) Describe how the firm is organized and how its resources will be put to work for the Board.

(2) List the firm's most recent three (3) years of experience in financial services relationships. State the term of the relationship and include the names, addresses and phone numbers of contact persons. Briefly describe the work performed, including the dollar amount and type of the issues or other financings and associated ratings achieved.

(3) Outline the firm's entire experience during the past three (3) years with the major rating agencies. Discuss this experience and its potential applicability to the Board.

(4) Attach a recent representative example of an official statement for a General Obligation Bond issue for which the firm provided financial services.

(5) Describe the three (3) most common uses of the firm's computer and computer-based analysis as it relates to financial services relationships specified in subsection 2 above.

(6) Describe the efforts made by the firm to encourage and develop the participation of minorities and women in the provision of the firm's financial services and proposed use of women and minorities in regard to the services required under this contract, if any, and previous experience and involvement working with HUB certified firms (if your firm is not HUB certified) or as a HUB certified firm in a financial relationship.

C. Personnel

(1) Indicate which individuals in the firm would be assigned in a direct, on-going working relationship with the Board and staff and include their resumes. Indicate the role these individuals assumed in the three-year history of financial services relationships as described in subsection 2 of the Qualifications section.

(2) Indicate the availability of the individuals described in subsection 1 of this section.

(3) Identify other individuals who would be available as analytical or tax counsel resources to the Board.

D. Compensation

For the scope of services defined in this RFP, the proposal must specify:

(1) the firm's proposed hourly billing rates for staff who would be assigned to perform services under the contract; flat fees or other fee arrangements; and billable expenses; and

(2) how fees may differ in the cases of a competitive versus a negotiated sale.

SELECTION CRITERIA

(1) The Board will make its selection based on demonstrated knowledge and experiences, quality of staff assigned to perform services under the contract, compatibility with the goals and objectives of the Board and the state, and reasonableness of proposed fees.

(2) The Board has the sole discretion and reserves the right to reject any and all responses to this RFP and to cancel the RFP if it is deemed in the best interest of the Board to do so. Issuance of this RFP in no way constitutes a commitment by the Board to award a contract or to pay for any expenses incurred either in the preparation of a response to this RFP or in the production of a contract for financial services.

(3) The Board previously contracted with First Southwest Company for these services and intends to award the contract to First Southwest Company unless a better offer is received.

TERMS AND CONDITIONS

(1) The Board reserves the right to reject any or all proposals or to award the contract to the next most qualified firm if the successful firm

does not execute a contract within thirty (30) days after the award of the proposal.

(2) The Board reserves the right to request clarification of information submitted and to request additional information of one or more applicants.

(3) The Board and staff will perform an evaluation of the selected firm's performance as necessary, and the Board shall have the right to terminate its contract by specifying the date of termination in a written notice to the firm at least thirty (30) working days before the termination date. In this event, the firm shall be entitled to just and equitable compensation for any satisfactory work completed.

(4) Any agreement or contract resulting from the acceptance of a proposal shall be on forms either supplied by or approved by the Board and shall contain, as a minimum, applicable provisions of the request for proposals. The Board reserves the right to reject any agreement that does not conform to the request for proposals and any Board requirements for agreements and contracts.

(5) The selected firm shall not assign any interest in the contract and shall not transfer any interest in the same without prior written consent of the Board.

(6) No reports, information or data given to or prepared by the firm under the contract shall be made available by the firm to any individual or organization without the prior written approval of the Board.

(7) Any and all data provided by the Board during the request for proposals process or under a contract for financial services is the property of the Board and shall be returned to the Board upon request.

(8) Specific analytical software developed at the request and expense of the Board is the property of the Board and, upon request, shall be returned to the Board.

(9) The selected firm will not be permitted to underwrite debt of the Board.

RELEASE OF INFORMATION AND OPEN RECORDS

Information submitted in response to this RFP shall not be released by the Board during the proposal evaluation process. After the evaluation process is completed as determined by the Board, all proposals and information contained therein may be subject to public disclosure under Chapter 552 of the Texas Government Code.

INSTRUCTIONS TO PROPOSERS

(1) All proposals must be in a sealed envelope and clearly marked: "Sealed Proposal C Financial Services." All proposals must be received by 11:00 a.m. (Central Time) on July 9, 2001.

(2) Seven (7) copies of the proposal are required and may be mailed to: Texas Higher Education Coordinating Board, Attention: Kenneth Vickers, Assistant Commissioner for Administrative Services, P.O. Box 12788, Austin, Texas 78711; or hand delivered to Room 3.110, 1200 East Anderson Lane, Austin, Texas, by 11:00 a.m. (Central Time) on July 9, 2001. Each proposal should indicate the name, E-mail address, and phone number of the principal contact for the firm.

(3) Questions or comments concerning this request for proposals should be submitted in writing to: Kenneth Vickers, Assistant Commissioner for Administrative Services, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711, (512) 427-6160.

TRD-200103003

Gary Prevost
Director of Business Services
Texas Higher Education Coordinating Board
Filed: May 29, 2001

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Texas Department of Housing and Community Affairs

Notice of 2001 Texas Community Development Program Grant Awards

The Texas Department of Housing and Community Affairs announces that the units of general local government listed as follows have been selected as contract recipients for 2001 program year Community Development Funds under the Texas Community Development Program established pursuant to Texas Government Code, Chapter 2306, §2306.096.

A contract is not effective until executed by the unit of general local government and the Executive Director of the Texas Department of Housing and Community Affairs.

Agua Dulce - $300,000, Alto - $245,000, Alvarado - $250,000, Amherst - $250,000, Anderson County - $250,000, Anson - $250,000, Atlanta - $250,000, Austwell - $300,000, Balmorhea - $350,000, Barry - $250,000, Bastrop - $250,000, Bay City - $350,000, Bertram - $250,000, Blackwell - $250,000, Blum - $250,000, Bowie - $125,000, Brady - $174,900, Brewster County - $300,000, Bryson - $125,000, Calvert - $250,000, Cameron County - $318,447, Carmine - $250,000, Carthage - $250,000, Chandler - $250,000, Chico - $250,000, China - $250,000, Coahoma - $350,000, Coleman - $250,000, Colorado County - $350,000, Combes - $318,447, Cotulla - $75,000, Crockett County - $174,999, Crystal City - $334,793, Cumby - $250,000, Cuney - $250,000, Daingerfield - $250,000, DeKalb - $250,000, Detroit - $250,000, Devers - $350,000, Eagle Pass - $762,826, East Mountain - $250,000, Eden - $174,900, Edgewood - $250,000, Edna - $250,000, El Paso County $300,000, Electra - $125,000, Elkhart - $250,000, Evant - $250,000, Falls City - $250,000, Falls County - $250,000, Fannin County - $250,000, Farwell - $250,000, Fayette County - $250,000, Flatonia - $250,000, Floresville - $250,000, Foard County - $125,000, George West - $300,000, Glasscock County - $350,000, Goliad County - $250,000, Grandfalls - $350,000, Granger - $250,000, Granite Shoals - $250,000, Greenville - $250,000, Gregory - $300,000, Groveton - $250,000, Gunter - $250,000, Hackberry - $250,000, Hardin - $350,000, Hart - $250,000, Higgins - $250,000, Holland - $250,000, Holliday - $135,000, Hudspeth County - $300,000, Huntington - $250,000, Huntsville - $350,000, Iowa Park - $107,050, Jasper - $250,000, Karnes City - $250,000, Karnes County - $250,000, Kaufman County - $250,000, Kemp - $250,000, Kendall County - $250,000, Kenedy - $228,695, Kirbyville - $250,000, Kountze - $250,000, Kyle - $250,000, La Feria - $318,447, Linden - $250,000, Liverpool - $350,000, Lometa - $350,000, Los Fresnos - $314,479, Lott - $250,000, Lyford - $315,240, Lytle - $250,000, Madisonville - $250,000, Malakoff - $250,000, Marfa - $300,000, Marlin - $250,000, Marquez - $250,000, Matagorda County - $350,000, Maverick County - $762,826, Maypearl - $250,000, McMullen County - $300,000, Meadow - $250,000, Menard - $174,999, Milam County - $250,000, Miles - $250,000, Milford - $250,000, Morton - $250,000, Mount Calm - $247,169, Mount Pleasant - $250,000, Munday - $250,000, Mustang - $150,450, Natalia - $250,000, Navarro County - $250,000, Newton - $250,000, Nome - $250,000, O'Brien - $250,000, Oakwood - $250,000, Olton - $250,000, Orange County - $250,000, Overton - $250,000, Palacios - $350,000, Palmer - $250,000, Pearsall - $250,000, Perryton - $233,658, Petrolia - $125,000, Pine Forest - $249,975, Pineland - $250,000, Polk County - $250,000, Port Lavaca -

$250,000, Queen City - $243,500, Quinlan - $250,000, Raymondville - $318,447, Refugio - $300,000, Richland - $250,000, Rio Vista - $250,000, Rockport - $300,000, Roma - $800,000, Ropesville - $250,000, Sabinal - $262,592, Saint Jo - $125,000, San Saba County - $250,000, Sanford - $250,000, Seadrift - $250,000, Seymour - $125,000, Shepherd - $250,000, Smiley - $250,000, Smith County - $250,000, Smyer - $250,000, Socorro - $300,000, Somerville - $250,000, Sonora - $174,999, Sour Lake - $250,000, Stamford - $250,000, Sweetwater - $225,210, Teague - $250,000, Tenaha - $250,000, Texline - $250,000, Three Rivers - $300,000, Timpson - $250,000, Tioga - $250,000, Toyah - $350,000, Travis County - $189,820, Trinidad - $250,000, Troup - $250,000, Turkey - $250,000, Val Verde County - $404,765, Van Horn - $300,000, Venus - $250,000, Vinton - $300,000, Webb County - $800,000, Wellman - $250,000, West Tawakoni - $250,000, Willacy County - $318,447, Windom - $250,000, Wink - $350,000, Woodsboro - $300,000, Zapata County - $800,000, Zavalla - $250,000.

TRD-200103010
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: May 29, 2001

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Notice of 2001 Texas Community Development Program Grant Awards

The Texas Department of Housing and Community Affairs announces that the units of general local government listed as follows have been selected as contract recipients for 2001 program year Planning and Capacity Building Funds under the Texas Community Development Program established pursuant to Texas Government Code, Chapter 2306, §2306.096.

A contract is not effective until executed by the unit of general local government and the Executive Director of the Texas Department of Housing and Community Affairs.

Anahuac - $34,900, Cleveland - $50,000, Coleman - $50,000, Crosbyton - $32,750, Dublin - $40,347, Eagle Pass - $36,500, Floydada - $50,000, Hamilton - $38,800, Jefferson - $47,200, Junction - $50,000, Liberty - $48,800, Los Fresnos - $33,800, Marion - $26,800, Mart - $44,800, Mathis - $50,000, Pecos City - $50,000, Seadrift - $33,800, Socorro - $40,000, Van Alstyne - $38,200.

TRD-200103011
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: May 29, 2001

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Notice of 2001 Texas Community Development Program Grant Awards

The Texas Department of Housing and Community Affairs announces that the units of general local government listed as follows have been selected as contract recipients for 2001 program year Housing Rehabilitation Funds under the Texas Community Development Program established pursuant to Texas Government Code, Chapter 2306, §2306.096.

A contract is not effective until executed by the unit of general local government and the Executive Director of the Texas Department of Housing and Community Affairs.

Brookshire - $250,000, Mason County - $250,000, Milano - $250,000, Mingus - $250,000, Paris - $250,000, Robstown - $250,000.

TRD-200103012
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: May 29, 2001

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Notice of 2001 Texas Community Development Program Grant Awards

The Texas Department of Housing and Community Affairs announces that the units of general local government listed as follows have been selected as contract recipients for 2001 program year Colonia Construction Funds under the Texas Community Development Program established pursuant to Texas Government Code, Chapter 2306, §2306.096.

A contract is not effective until executed by the unit of general local government and the Executive Director of the Texas Department of Housing and Community Affairs.

Bandera County - $500,000, Brooks County - $500,000, Cameron County - $500,000, Dimmit County - $475,000, Hidalgo County - $500,000, Karnes County - $500,000, Kenedy County - $500,000, Kerr County - $500,000, Kleberg County - $500,000, Maverick County - $500,000, Webb County - $500,000, Willacy County - $469,543, Zapata County - $500,000.

TRD-200103013
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: May 29, 2001

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Notice of 2001 Texas Community Development Program Grant Awards

The Texas Department of Housing and Community Affairs announces that the units of general local government listed as follows have been selected as contract recipients for 2001 program year Colonia Planning Funds under the Texas Community Development Program established pursuant to Texas Government Code, Chapter 2306, §2306.096.

A contract is not effective until executed by the unit of general local government and the Executive Director of the Texas Department of Housing and Community Affairs.

Hidalgo County - $200,000, Kendall County - $49,500, Kenedy County - $25,000, Live Oak County - $28,000.

If you have any questions or need additional information, please contact Jeff Vistein at (512) 475-3855 or by e-mail at the following address jvistein@tdhca.state.tx.us..

TRD-200103014
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: May 29, 2001

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Texas Department of Human Services

Cancellation of Public Hearing

The Texas Health and Human Services Commission (HHSC) and the Texas Department of Human Services (DHS) are canceling the joint public hearing on proposed payment rates for the following programs operated by DHS: nursing facilities, swing beds, and hospice-nursing facilities. The hearing was scheduled for 8:30 a.m. on Thursday, June 14, 2001, in conference room 5501 of the Brown-Heatly Building. Notice of the hearing appeared in the June 1, 2001, issue of the *Texas Register* (26 TexReg 3970).

Only the public hearing on proposed payment rates for nursing facilities, swing beds, and hospice-nursing facilities is being canceled. The other three public hearings included in the original notice in the June 1, 2001 issue of the *Texas Register* (26 TexReg 3970) will be conducted as originally scheduled.

If there are any questions concerning this cancellation, contact Tony Arreola, DHS, MC W-425, P.O. Box 149030, Austin, Texas 78714-9030, (512) 438-4817.

TRD-200103022
Paul Leche
General Counsel
Texas Department of Human Services
Filed: May 30, 2001

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Texas Lottery Commission

Instant Game Number 230 "Money Machine"

1.0. Name and Style of Game.

A. The name of Instant Game Number 230 is "MONEY MACHINE". The play style is a match three of nine with key number match and bonus".

1.1. Price of Instant Ticket.

A. Tickets for Instant Game Number 230 shall be $2.00 per ticket.

1.2. Definitions in Instant Game Number 230.

A. Display Printing--That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint--The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol--One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, $1.00, $2.00, $3.00, $5.00, $10.00, $20.00, $40.00, $100, $1,000, $25,000, GOLD SYMBOL, COIN SYMBOL, MONEY BAG SYMBOL, STACK OF BILLS SYMBOL, and MONEY SYMBOL.

D. Play Symbol Caption--the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Table 1

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$

$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN$
$20.00	TWENTY$
$40.00	FORTY
$100	ONE HUND
$1,000	ONE THOU
$25,000	25 THOU
GOLD BAR SYMBOL	GOLD
COIN SYMBOL	COIN
MONEY BAG SYMBOL	$BAG
STACK OF BILLS SYMBOL	BILLS
DOLLAR SIGN SYMBOL	MONEY

Table 2

E. Retailer Validation Code--Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

CODE	PRIZE
$2.00	TWO
$3.00	THR
$5.00	FIV
$10.00	TEN
$15.00	FTN
$20.00	TWN

Low-tier winning tickets use the required codes listed in Table 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Table 2 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number--A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize--A prize of $2.00, $3.00, $5.00, $10.00, $15.00, or $20.00.

H. Mid-Tier Prize--A prize of $40.00, or $100.

I. High-Tier Prize--A prize of $1,000 or $25,000.

J. Bar Code--A 22 character interleaved two of five bar code which will include a three digit game ID, the seven digit pack number, the three digit ticket number and the nine digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number--A 13 digit number consisting of the three digit game number (230), a seven digit pack number, and a three digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be: 230-0000001-000.

L. Pack--A pack of "MONEY MACHINE" Instant Game tickets contain 125 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one. There will be two fanfolded configurations for this game. Configuration A will show the front of ticket 000 and the back of ticket 124. Configuration B will show the back of ticket 000 and the front of ticket 124.

M. Non-Winning Ticket--A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket--A Texas Lottery "MONEY MACHINE" Instant Game Number 230 ticket.

2.0. Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. In the Match 3 Game, a prize winner in the "MONEY MACHINE" Instant Game is determined once the latex on the ticket is scratched off to expose nine play symbols. If the player matches three like amounts, the player wins that prize. In the Bonus Keypad Game, a prize winner in the "MONEY MACHINE" Instant Game is determined once the latex on the ticket is scratched off to expose one play symbol. If the player reveals a Stack of Bills, the player will win $40 automatically. In the Key Number Match game, a prize winner in the "MONEY MACHINE" Instant Game is determined once the latex on the ticket is scratched off to expose 22 play symbols. If the player's Your Numbers match either Winning Numbers the player will win the prize shown for that number. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1. Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 32 Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 32 Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 32 Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 32 Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2. Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. In the Match 3 Game, no four or more like play symbols will appear in a game.

C. In the Match 3 Game, no more than two pairs of like play symbols will appear in a game.

D. In the Bonus Game, the Stack of Bills symbol will only appear as dictated by the prize structure.

E. In the Key Number Match Game, duplicate non-winning Your Number symbols will not appear on a ticket.

F. In the Key Number Match Game, duplicate non-winning prize symbols will not appear in a game.

G. In the Key Number Match Game, duplicate Winning Number symbols will not appear on a ticket.

H. No correlation between a prize symbol and a play symbol on a ticket.

2.3. Procedure for Claiming Prizes.

A. To claim a "MONEY MACHINE" Instant Game prize of $2.00, $3.00, $5.00, $10.00, $15.00, $20.00, $40.00, or $100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $40.00 or $100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "MONEY MACHINE" Instant Game prize of $1,000 or $25,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MONEY MACHINE" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4. Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5. Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "MONEY MACHINE" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6. If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "MONEY MACHINE" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7. Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0. Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0. Number and Value of Instant Prizes. There will be approximately 20,554,250 tickets in the Instant Game Number 230. The approximate number and value of prizes in the game are as follows:

Table 3

Prize Amount	Approximate Number of Prizes*	Approximate Odds are 1 in **
$2.00	2,466,348	8.33
$3.00	1,068,774	19.23
$5.00	287,922	71.39
$10.00	246,650	83.33
$15.00	205,520	100.01
$20.00	164,434	125.00
$40.00	164,434	125.00
$100	13,633	1,507.68
$1,000	102	201,512.25
$25,000	10	2,055,425.00

*The number of actual prizes may vary based on sales, distribution, testing, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.45. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0. End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game Number 230 without advance notice, at which point no further tickets in that game may be sold.

6.0. Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game Number 230, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200102882
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: May 23, 2001

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Instant Game Number 238 "High Roller"

1.0. Name and Style of Game.

A. The name of Instant Game Number 238 is "HIGH ROLLER". The play style in Game 1 is a "key number match with tripler". The play style in Game 2 is "add up". The play style in Game 3 is "beat score". The play style in the Bonus Box is "key symbol match".

1.1. Price of Instant Ticket.

A. Tickets for Instant Game Number 238 shall be $5.00 per ticket.

1.2. Definitions in Instant Game Number 238.

A. Display Printing--That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint--The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol--One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: $1.00, $2.00, $4.00, $5.00, $10.00, $50.00, $100, $500, $1,000, $50,000, STAR SYMBOL, GOLD SYMBOL, STACK OF BILLS SYMBOLS, MONEY SYMBOL, WHEEL SYMBOL, CHIP SYMBOL, ACE CARD SYMBOL, 1 SYMBOL, 2 SYMBOL, 3 SYMBOL, 4 SYMBOL, 5 SYMBOL, 6 SYMBOL, KING CARD SYMBOL, QUEEN CARD SYMBOL, JACK CARD SYMBOL, TEN CARD SYMBOL, NINE CARD SYMBOL, EIGHT CARD SYMBOL, SEVEN CARD SYMBOL, SIX CARD SYMBOL, FIVE CARD SYMBOL, FOUR CARD SYMBOL, THREE CARD SYMBOL, and TWO CARD SYMBOL.

D. Play Symbol Caption--the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Table 1

PLAY SYMBOL	CAPTION
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU
$50,000	50 THOU
STAR SYMBOL	TRIPLE
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
GOLD SYMBOL	GOLD
STACK OF BILLS SYMBOL	BILLS
MONEY SYBMOL	MONEY
WHEEL SYMBOL	WHEEL
CHIP SYMBOL	WIN $10
ACE CARD SYMBOL	ACE
KING CARD SYMBOL	KNG
QUEEN CARD SYMBOL	QUN
JOKER CARD SYMBOL	JCK
TEN CARD SYMBOL	TEN
NINE CARD SYMBOL	NIN
EIGHT CARD SYMBOL	EGT
SEVEN CARD SYMBOL	SVN
SIX CARD SYMBOL	SIX
FIVE CARD SYMBOL	FIV
FOUR CARD SYMBOL	FOR
THREE CARD SYMBOL	THR
TWO CARD SYMBOL	TWO

Table 2

E. Retailer Validation Code--Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

CODE	PRIZE
$5.00	FIV
$8.00	EGT
$10.00	TEN
$20.00	TWN

Low-tier winning tickets use the required codes listed in Table 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Table 2 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number--A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be : 0000000000000.

G. Low-Tier Prize--A prize of $5.00, $8.00, $10.00, or $20.00.

H. Mid-Tier Prize--A prize of $50.00, $100, or $500.

I. High-Tier Prize--A prize of $1,000, $5,000, and $50,000.

J. Bar Code--A 22 character interleaved two of five bar code which will include a three digit game ID, the seven digit pack number, the three digit ticket number and the nine digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number--A 13 digit number consisting of the three digit game number (238), a seven digit pack number, and a three digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be : 238-0000001-000.

L. Pack--A pack of "HIGH ROLLER" Instant Game tickets contain 75 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one. The packs will alternate. One pack will show the front of ticket 000 and the back of 074, while the other fold will show the back of ticket 000 and front of 074.

M. Non-Winning Ticket--A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket--A Texas Lottery "HIGH ROLLER" Instant Game Number 238 ticket.

2.0. Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in Game 1 of the "HIGH ROLLER" Instant Game is determined once the latex on the ticket is scratched off to expose seven play symbols. If the player matches their Lucky Dollar Amounts to the Prize Amount in the center the player will win that prize. If the player gets a star symbol the player will win triple the Prize Amount in the center. A prize winner in Game 2 of the "HIGH ROLLER" Instant Game is determined once the latex on the ticket is scratched off to expose 12 play symbols. If the total of the player's YOUR ROLL equals seven or 11 for each roll, the player will win the prize shown for that roll. A prize winner in Game 3 of the "HIGH ROLLER" Instant Game is determined once the latex on the ticket is scratched off to expose 12 play symbols. If the player's YOUR CARD beats the DEALER'S CARD within a hand the player will win the prize shown. A prize winner in the bonus game of the "HIGH ROLLER" Instant Game is determined once the latex on the ticket is scratched off to expose one play symbol. The player wins $10 instantly if the player gets a chip symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1. Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 32 Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 32 Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 32 Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 32 Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2. Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. There will be no correlation between a prize symbol and the play symbol it appears with.

C. There will be no duplicate non-winning play symbols in Games 1, 2, and 3.

D. No duplicate non-winning rolls in any order will appear in Game 2.

E. No duplicate YOUR CARD play symbols will appear in Game 3.

F. No duplicate DEALER'S CARD play symbols will appear in Game 3.

G. No ties between YOUR CARD and the DEALER'S CARD within a hand in Game 3.

2.3. Procedure for Claiming Prizes.

A. To claim a "HIGH ROLLER" Instant Game prize of $5.00, $8.00, $10.00, $20.00, $50.00, $100, or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "HIGH ROLLER" Instant Game prize of $1,000, $5,000 or $50,000 the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "HIGH ROLLER" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4. Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5. Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "HIGH ROLLER" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6. If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "HIGH ROLLER" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7. Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0. Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0. Number and Value of Instant Prizes. There will be approximately 10,373,250 tickets in the Instant Game Number 238. The approximate number and value of prizes in the game are as follows:

Table 3

Prize Amount	Approximate Number of Prizes*	Approximate Odds are 1 in **
$5.00	1,106,472	9.38
$8.00	933,770	11.11
$10.00	760,520	13.64
$20.00	242,066	42.85
$50.00	78,227	132.60
$100	15,838	654.96
$500	3,458	2,999.78
$1,000	184	56,376.36
$5,000	78	132,990.38
$50,000	9	1,152,583.33

*The number of actual prizes may vary based on sales, distribution, testing, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.30. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0. End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game Number 238 without advance notice, at which point no further tickets in that game may be sold.

6.0. Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game Number 238, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200102883
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: May 23, 2001

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Texas Natural Resource Conservation Commission

Air Quality Standard Permit for Electric Generating Units

The Texas Natural Resource Conservation Commission (TNRCC or commission) is issuing a new standard permit for electric generating units. The new air quality standard permit will be effective June 1, 2001, and authorizes certain electric generating units installed or modified after June 1, 2001 that generate electricity for use by the owner or operator and/or generate electricity to be sold to the electric grid. The standard permit does not apply to electric generating units permitted by rule under title 30 TAC §§106.101, Domestic Use Facilities, 106.511, Portable and Emergency Engines and Turbines, 106.512, Stationary Engines and Turbines, or included on the list entitled "De Minimis Facilities or Sources."

Copies of the standard permit for electric generating units may be obtained from the commission web site at *http://www.tnrcc.state.tx.us/permitting/airperm*or by contacting the Texas Natural Resource Conservation Commission, Office of Permitting, Remediation and Registration, Air Permits Division at (512) 239-1240.

OVERVIEW OF STANDARD PERMIT

The commission is issuing an air quality standard permit authorizing certain electric generating units under authority of the Texas Clean Air Act (TCAA), §382.05195 and 30 TAC Chapter 116, Subchapter F, Standard Permits. The commission previously authorized the majority of the electric generating units under the conditions of a permit by rule, 30 TAC §106.512, or under Chapter 116, Subchapter B. This standard permit provides a streamlined preconstruction authorization mechanism that may be used by any electric generating unit complying with its requirements and not prohibited by some other state or federal permitting statute or regulation. The issuance of this standard permit is consistent with the desire of the commission to simplify its regulatory structure and recognize the potential significance of some sources by developing standard permits to replace existing permits by rule that provide qualification criteria that are lengthy and complex.

In addition, the Public Utility Commission (PUC) of Texas anticipates that small electric generating units (EGUs) may become an attractive option for electric customers as an alternative to central station generating units as a primary source of electricity due to electric restructuring and electric reliability concerns. These EGUs, sited at or near a load that will use all or most of the electricity generated, may be equipped to export electricity to the electrical grid. Until now, many EGUs have been eligible for authorization under §106.512. However, a number of

EGU technologies exist which can meet and exceed the emission limits in §106.512. Thus, it would be inappropriate to allow new or modified engines or turbines to operate under the §106.512 emission standards. Therefore, this standard permit contains emission limits more stringent than the emission limits in §106.512. The standard permit is designed to provide a streamlined permitting method to encourage the use of "clean" EGU technologies.

The standard permit is designed to allow for authorization of an electric generating unit. However, it is not intended to provide an authorization mechanism for all possible unit configurations or for unusual operating scenarios. Those facilities which cannot meet the standard permit conditions may apply for a case-by-case review of an air quality permit under 30 TAC §116.111.

PUBLIC MEETING AND COMMENTERS

In accordance with §116.603, the commission published notice of the proposed standard permit in the *Texas Register* and in daily newspapers of the largest general circulation in the following metropolitan areas: Austin, Corpus Christi, Dallas, El Paso, Houston, the Lower Rio Grande Valley, Lubbock, the Permian Basin, San Antonio, and Tyler. The notice was published on November 17, 2000. The initial comment period ran from November 17, 2000 to December 19, 2000. However, in response to comment, the comment period was extended to February 5, 2001.

STAKEHOLDERS MEETING

At the request of several commenters, staff hosted a stakeholders meeting on January 23, 2001 in Room 212W of the TNRCC, Building C, located at 12100 Park 35 Circle, Austin. Notice of the meeting was posted on the agency's web site on January 12, 2001. At that meeting, staff provided stakeholders with an update on the development of the standard permit based on the comments received to that date. Stakeholders were also provided an opportunity to make presentations to the group and to participate in a "roundtable" discussion with staff and with each other on the issue of the standard permit.

COMMENTS

A public meeting on the proposal was held December 19, 2000 in Room 2210 of the TNRCC Building F, located at 12100 Park 35 Circle, Austin. Oral comments were made by the following: Capstone Turbine Corporation (Capstone); Catalytica Energy Systems (Catalytica); Energy Developments Incorporated (EDI); the Engine Manufacturer's Association (EMA); Good Company Associates (Good Company); Honeywell Power Systems (Honeywell Power); and Public Citizen, Texas office (Public Citizen).

The period for written comments on the proposed standard permit closed at 5:00 p.m., February 5, 2001. Written comments were submitted by the following: the American Council for an Energy-Efficient Economy (ACEEE); the American Gas Cooling Center, Inc. (AGCC); ALSTOM Power Inc. (ALSTOM); American Electric Power (AEP); Atmos Energy Corporation (Atmos); Austin Energy; Calpine Corporation (Calpine); Capstone; Catalytica; Cotton, Bledsoe, Tighe & Dawson, P.C. (Cotton Bledsoe); Cummins, Inc., Cummins Inc./Onan (Cummins); Dresser-Waukesha, Waukesha Engine Division (Waukesha Engine); DTE Energy Technologies (DTE); Deutz Corporation (Deutz); EDI; the EMA on behalf of Caterpillar Inc., Cummins Inc./Onan, Deere & Company, Detroit Diesel Corporation, Deutz Corporation, General Motors Corporation, and Waukesha Engine Division; Encorp; Energy Transfer Group, L.L.C. (ETG); Environmental Defense; Global Power Corporation (Global Power); Good Company; Holt Companies (Holt); Holt Power Systems (Holt Power); Honeywell Power; Hunt Power, L.P. (Hunt Power); International Fuel Cells; the Natural Resources Defense Council (NRDC); the Office of the Attorney General of Texas, Consumer Protection Division, Public Agency Representation Section (OAG - Public Agency Representation Section); Plug Power Fuel Cell Systems (Plug Power); Public Citizen, Texas office (Public Citizen); the Railroad Commission of Texas, Alternative Fuels Research and Education Division (AFRED); Reliant Energy, Inc. (REI); Solar Turbines Incorporated (Solar); Southern Union Gas Company (Southern Union); Sure Power Corporation (Sure Power); the United States of America Department of Energy (DOE); United States of America Environmental Protection Agency, Office of Atmospheric Programs (EPA); the United States Combined Heat and Power Association (USCHPA); the Honorable Leticia Van de Putte, R. Ph., the Senate of Texas (Senator Van de Putte); and Waukesha-Pearce Industries, Inc. (Waukesha- Pearce).

ANALYSIS OF COMMENTS

Support for Standard Permit

Environmental Defense applauded the commission for the foresight it has shown by proposing the standard permit for small electric generating units. Environmental Defense stated that proliferation of small generation units, lacking meaningful emission standards, could undermine measures adopted to reduce nitrogen oxides (NO_x) emissions in the state implementation plans (SIPs). Public Citizen applauded the commission for using output-based measures for regulating small electric generators and assuring that efficiency is considered. Good Company supported the output-based measure. Capstone supported the intent and objective of the proposed standard permit, the tapered- down NO_x emission requirements over time, and the 9 parts per million (ppm), 5 ppm, 3 ppm profile of the taper down.

The commission appreciates the support expressed by these commenters.

Commitment to Solve Dallas/Fort Worth (DFW) Nonattainment Issue

Calpine stated its willingness and intent to play an integral role in solving the DFW nonattainment issue by putting state-of-the-art combined cycle generation to work in the DFW area.

The commission appreciates Calpine's commitment to help solve the DFW nonattainment issue.

Request for Extension of Original Comment Period

Good Company, DOE, Encorp, and Cummins requested an extension of the original comment period.

The original comment period was extended from December 19, 2000 to February 5, 2001.

Combining Gas Turbines and Duct Burners

Catalytica commented that if the best available emission rate for duct burners is currently 0.1 pounds per million British thermal unit (lb/MMBtu), then the standard permit should require the appropriate emission level from the turbine and limit the duct burner to 0.1 lb/MMBtu.

The standard permit has output-based standards (pounds of NO_x per megawatt-hour) and does not regulate based upon the use of specific technologies, such as duct burners. Therefore, no changes were made to the standard permit in response to this comment.

Statewide Applicability of Proposed Standard

ACEEE, AEP, ALSTOM, Cotton Bledsoe, Encorp, Environmental Defense, Good Company, Honeywell Power, NRDC, Public Citizen, Solar, Southern Union, USCHPA, and Waukesha Engine commented on the statewide applicability of the proposed standards. ACEEE and

USCHPA commented that areas that maintain environmental attainment should be given a greater technology choice than the nonattainment areas of downtown Houston and Dallas based on the theory that state- wide emissions can be decreased by allowing the implementation of distributed technologies throughout Texas, and since transmission and distribution losses in rural parts of the state may be more than in urban areas. AEP commented that the emission limitations should be based on siting the plant in an attainment area with special provisions being added for equipment being installed in nonattainment areas. ALSTOM stated that statewide applicability of the standard permit could be catastrophic for the implementation of distributed generation (DG) in NO_x attainment areas and increase demand for existing, higher polluting plants. Cotton Bledsoe questioned the appropriateness of applying the same emission standard to East and West Texas since West Texas has the potential to become a major power generating and exporting region but has not "used up" its portion of the NO_x increment as has East and Central Texas. Encorp recommended that two permits, each with different standards, be developed, one for attainment areas and the second for nonattainment areas. Encorp explained that adoption of a single statewide standard is arbitrary and capricious and penalizes areas which have maintained good air quality by eliminating the possibility of cheaper DG power. Environmental Defense commented that it may be appropriate in the first years of the revised standard permit to apply a different set of standards for East and West Texas. However, Environmental Defense commented that all sources in East Texas subject to the standard permit need to achieve the same standard set out for nonattainment areas. Good Company recommended that the commission establish "attainment area" and "nonattainment area" limits. Honeywell Power recommended that different emission standards be developed for attainment and nonattainment areas of the state. Honeywell Power stated that such an approach would match appropriate technology with each area at minimal cost to the ratepayer. NRDC commented that applying different standards to an East Texas and West Texas region may be useful for some interim period but that the ultimate goal should be a strong, statewide final emission standard. Public Citizen supported the commission proposal to divide the state into East and West Texas for emission limits. Solar proposed that the standard permit set different standards for attainment and nonattainment areas. Southern Union recommended that the proposed standard permit apply only to sources located in ozone nonattainment areas that do not have a Federal Clean Air Act, §182(f) waiver for nitrogen oxides. Southern Union recommended that sources in areas designated as attainment or unclassified, or in areas with a §182(f) waiver, continue to be permitted by rule under §106.512. Waukesha Engine recommended limiting applicability of additionally restrictive NO_x standards for DG units to nonattainment areas only.

The commission agrees that in the case of an ozone precursor, such as NO_x, different standards should apply in different areas of the state. The standard permit has been revised to include the Senate Bill (SB) 7 (76th Legislature, 1999) definitions of "East Texas region" and "West Texas region" (revised to include the El Paso region). Thus, the East Texas region includes all counties traversed by or east of Interstate Highway 35 or Interstate Highway 37, including Bosque, Coryell, Hood, Parker, Somervell, and Wise Counties. The West Texas region includes all of the state not contained in the East Texas region. As stated, the El Paso area is considered in the West Texas region for purposes of this standard permit, although it is considered separately in SB 7. Different standards will apply in each region based upon generating capacity, date of installation, and hours of operation. The commission plans to conduct a study to determine the environmental impact of DG on the State of Texas. The standards for each region will be reevaluated at the conclusion of that study.

Recordkeeping and Reporting Requirements

Good Company commented that the recordkeeping and reporting requirements are burdensome for residential and small business uses. NRDC recommended that units between 10 kilowatts (kW) and 50 kW be subject to reduced recordkeeping requirements.

Electric generating units used exclusively for domestic purposes are permitted by rule under §106.101 which has no recordkeeping or reporting requirements. The commission believes that requiring records of the hours of operation and maintenance schedule is reasonable for all units, including those between 10 kW and 50 kW. The standard permit has no reporting requirements per se. Instead, records required by the standard permit must be provided upon request to the commission.

Registration Fee

Good Company commented that the $450 registration fee is burdensome for residential and small business uses. Hunt Power commented that smaller scale DG technologies could be unfairly penalized with a flat fee of $450. Hunt Power recommended that the permit fee should be applied as a dollar per kW amount. NRDC recommended that units between 10 kW and 50 kW pay a registration fee of 0.15% of the capital cost of the project regardless if that amount is less than $450. Plug Power recommended that the registration fee be a factor of "x" dollars and the power output of the unit.

The commission has revised the fee schedule from a $450 registration fee for all units to a fee scale based on generating capacity of a unit. Units or multiple units with a generating capacity of 1 megawatt (MW) or greater will be subject to a $450 fee; units or multiple units with a generating capacity of less than 1 MW will be subject to a $100 fee; units or multiple units less than 1 MW that have certified NO_x emissions that are less than 10% of the required standards will be granted a fee waiver. The fee is intended to recover staff expenses in reviewing the registration. The commission reduced the fee for smaller units because a $450 fee may be a substantial percentage of the initial cost to operate some small units. The commission has waived the fee for ultra-clean small units to encourage their use. The commission notes that units used exclusively for domestic purposes are permitted by rule under §106.101 which requires no fee.

Registration of Propane-fueled or Gaseous-fueled Units

AFRED recommended that propane-fueled or gaseous-fueled units of 30 kW or less be permitted by rule. In the alternative, AFRED recommended a phased-in implementation over a period of four years for propane-fueled or gaseous-fueled units less than 30 kW and at a reduced permitting cost. AFRED commented that these units will most likely be used by residential customers and small businesses and sometimes in rural attainment areas.

Propane-fueled or gaseous-fueled units of 30 kW or less used exclusively for domestic purposes are permitted by rule under §106.101 which requires no fee. The commission has reduced the fee to $100 for units, like propane-fueled or gaseous-fueled units, operating under 1 MW. Should these units emit less than 10% of the standards, no fee is required. The intent of the standard permit is to provide a streamlined preconstruction authorization mechanism for all electric generating units.

Fee Exemption for State Agencies

The OAG - Public Agency Representation Section recommended that state taxpayer-supported facilities, such as state agencies and institutions of higher learning, should be exempt from paying the registration application fee. The OAG - Public Agency Representation Section explained that state agencies operate on limited budgets and that a fee requirement could have serious financial impacts on the larger agencies.

No change has been made directly in response to this comment. State agencies have historically paid all required fees required by the commission for various permitting projects regardless of the media. The standard permit is consistent with this process. It should be noted that the proposed registration fee has been reduced for small units and waived for ultra-clean units.

Applicability of Standard Permit to Wind or Solar-Driven Generators

Cotton Bledsoe asked whether the standard permit requirements apply to alternative energy DG projects, such as wind and solar power.

The standard permit requirements do not apply to wind and solar units. Since they do not have air emissions, the commission does not regulate them under the Texas Clean Air Act.

Applicability of Standard Permit to Emergency Engines or Turbines

NRDC commented that a benefit of the standard permit is that it clarifies that the exemption for emergency generators applies only to generators that run only when there is a loss of power on the electric grid. Waukesha Engine endorsed the exclusion of emergency generators in paragraph (1)(C). EMA approved of the exclusion of emergency EGUs from the scope of the standard permit's applicability. EMA also supported a permitting exemption for DG units installed for operation in the case of "Stage III" power shortages such as are occurring in California.

The commission appreciates the support of the commenters. Emergency engines and turbines will continue to be permitted by rule under §106.511, rather than be authorized under this standard permit. However, the commission notes that §106.511 applies only to units satisfying its requirements and that §106.511 does not use the term "Stage III."

ACEEE proposed that §106.511 be modified to tighten the regulations on emergency backup generators. Good Company recommended that the commission establish a new standard, to allow installation of standby generators, or the retrofit of existing standby generators, in a way which meets certain minimum emission levels in order that they might be interconnected to the grid and provide power during an ERCOT/ISO stage three, or higher, emergency. Good Company stated that the commission should work with the PUC to establish similar protocols for localized situations that may occur in the future. Good Company recommended that standby units and Stage II emergency units be exempt from the standard permit. Public Citizen agreed with the commission that there should be different limits for emergency generators but was concerned that the language in the rules is not "tough enough" to assure that emergency plants are required to apply for a permit if used more than a few hours each year. Public Citizen recommended that the operations limit be decreased to no more than 100 hours per year. Public Citizen recommended that the commission explicitly require a change in use patterns to require registration and compliance with emission limits and recommended that emergency generators be tested at night or at hours that would minimally affect ozone formation. Public Citizen recommended a requirement that all mechanics who work on emergency engines or turbines undergo a training and certification process, and that they be prohibited from modifying a backup unit to provide voltage stability or dispatchability until permitted under the standard permit.

The commission did not propose amendments to §106.511 as part of this action, and therefore, these comments are beyond the scope of this standard permit action.

The OAG - Public Agency Representation Section commented that the exemption for emergency units contained in paragraph (1)(C) would prohibit the use of DG in times of high demand. The OAG - Public Agency Representation Section recommended changing paragraph (1)(C) by deleting the word "exclusively" and adding the following language after the word meter: "or when conditions on the grid are such that the power source is unreliable or power quality is questionable." The OAG - Public Agency Representation Section explained that as the use of DG expands and the load on the grid increases, it will be desirable to have large customers that are capable of producing their own electricity, thereby reducing the demands on the utility.

The definition of emergency has been removed from the standard permit to avoid confusion between the standard permit and §106.511 which permits by rule emergency engines and turbines.

Applicability of Standard Permit to Non-road Engines and Portable Units

EMA commented that portable DG units are nonroad engines; therefore, the standard permit should not apply to portable DG units because the commission is "specifically and expressly preempted" from regulating nonroad engines pursuant to Federal Clean Air Act, §209(e). EMA stated that the commission should adopt the definition of "nonroad engine" contained in 40 Code of Federal Regulations §89.2. Good Company recommended that the standard permit not apply to portable units.

The commission agrees with this comment and does not consider portable "nonroad engines" that are not on a site more than 12 months a stationary source. Therefore, this standard permit does not apply to these units.

Applicability of Standard Permit to Units Generating More than 10 MW

ALSTOM recommended increasing the upper range of applicability to 15 MW because there are a number of industrial gas turbines offered by major suppliers in the 10 to 15 MW bracket which may benefit DG if the standard permit option is available. Catalytica commented that a number of turbines operate in the 10 MW area and that setting the limit at 10 MW would give a competitive advantage to some models just below the limit, while hindering competing models just above the limit. Catalytica stated that there are almost no popular models in the 15 to 25 MW range and, therefore, suggested that the standard permit apply to units up to 20 MW. Sure Power commented that the proposed 10 MW size limit will inhibit the use of DG systems in many data center applications. Sure Power commented that if Texas is to set a size limitation, then 50 MW, as is the case in California, should be considered and that Best Available Control Technology (BACT) should be required.

The standard permit has been revised in response to these comments. The commission has issued the standard permit with a provision for electric generating units greater than 10 MW that has separate standards that represent BACT for natural gas-fired turbines. The commission believes this change to the standard permit is appropriate to provide these clean units greater than 10 MW the opportunity to use a streamlined preconstruction authorization mechanism.

Affect of Standard Permit on Ability to Authorize Under Regular NSR Permitting

Global Power stated that issuance of the standard permit should not preclude authorization of small electrical generating units under a regular new source review (NSR) permit.

This standard permit does not preclude authorization by NSR. Any owner or operator may request a NSR permit. This standard permit and the permit by rule are provided as streamlined alternatives, if the unit meets the requirements of the permit by rule or the standard permit.

Applicability of Standard Permit to Landfill to Gas Energy (LFGTE) Projects, Stranded Gas to Energy Projects, and Units using Flare Gas

REI commented that the proposed standard permit should not apply to LFGTE projects because the proposed emission limits cannot be met by internal combustion engines fueled by landfill gas. REI commented that the proposed standard permit will eliminate the development of LFGTE projects in Texas and that LFGTE projects should continue to be permitted by rule under §106.512. Deutz commented that DG engines fueled by landfill/digester gas require their own specific NO_x standard because the contents of the fuel prohibit the application of standard aftertreatment technologies. Deutz recommended a standard of 0.6 grams per brake horsepower-hour (g/bhphr) which is the standard adopted by the South Coast Air Quality Management District for these units. Deutz recommended a +/- 10% tolerance be added to the 0.6 g/bhphr standard to take into account the variable nature of landfill/digester gas. Deutz commented that a reasonable standard for landfill/digester gas projects is necessary to realize the significant energy recovery and economic benefits of these projects. Deutz commented that commission regulations need to address the specific engine applications that make use of "stranded gas." Deutz stated that stranded gas, often too far from pipelines to be affordable shipped to market, can be used to generate electricity.

To encourage the use of some gases that would otherwise be flared or vented to the atmosphere, the standard permit was revised to include an East Texas NO_x standard to be applied exclusively to units that use as fuel landfill gas, digester gas, or some oil field gases (stranded gas). The NO_x standard of 1.77 pounds per megawatt-hour (lb/MWh) is equivalent to 0.6 grams per horsepower-hour (g/hp-hr) and was established based upon a lean burn engine, since catalytic converters are poisoned by contaminants found in landfill gas. Since this NO_x standard can be met by existing technology, it would be inappropriate to allow these units to continue to be permitted by rule under the less stringent standards in §106.512. Units in the West Texas region using these fuels may comply with the West Texas region standards contained in the standard permit.

Public Citizen recommended a standard permit for landfill gas generators since they have unique emissions profiles and control limits that may need to be different from other generators. Good Company recommended that units using flare gas should be exempt from the standard permit.

The separate NO_x limit applicable only to units that use landfill gas, digester gas, or some oil field gases takes into account the unique emission profiles and control limits of these units. With the changes discussed in the previous response to comment, the commission finds no additional reason to develop a standard permit exclusively for these units. Furthermore, it is these same emission profiles and control limits of these units that require the commission to regulate these units and not exempt from the standard permit.

Applicability of Standard Permit to Ultra-Clean Electric Generating Units or Non-Combustion Generating Units

Plug Power recommended that the commission consider a "zero" or "de minimis" threshold category below which registration for the standard permit is not required or is otherwise provided, based upon ultra-clean technologies, such as solar, wind, and fuel cells or based upon a generation process, such as whether any fuel is combusted. As an alternative, Plug Power recommended that the commission give consideration to a power output threshold approach below which registration is not required or is granted pro forma. International Fuel Cells commented that its PC25 fuel cell has NO_x emissions of 0.0267 lb/MWh and carbon monoxide (CO) emissions of 0.0017 lb/MWh and that in cogeneration applications fuel cells typically approach 85% combined efficiency.

The commission intends the standard permit to apply to all electric generating units that emit air contaminants. Thus, generating units driven by the sun or by the wind are not subject to this standard permit. However, fuel cells that use natural gas or a converter fuel are subject to the standard permit because of their NO_x emissions. Nevertheless, in an effort to encourage the use of ultra-clean technology, such as fuel cells, the commission has revised the standard permit. The registration fee has been waived for units generating less than 1 MW that have NO_x emissions that are less than 10% of the standards. Fuel cells should be able to satisfy this requirement and thus qualify for the fee waiver. In addition, the commission encourages ultra-clean distribution technology to petition the commission for inclusion on the list entitled "De Minimis Facilities or Sources" referenced under 30 TAC §116.119. Sources on this list require no registration prior to construction.

Applicability of Standard Permit to EGUs less than 1.5 MW

NRDC commented that the standard permit should explicitly state that it covers generators from 10 MW to either 10 kW or 0 kW. NRDC commented that the lower end should be 0 kW if the commission reduces the fee and record-keeping burden on very small generators. NRDC commented that in the alternative 10 kW could be used to ease the regulatory burden on the smallest generators which will primarily be used by individuals and small commercial customers. NRDC commented that the standard permit should be made mandatory for units too small to be covered by existing minor NSR. NRDC commented that if this step is not taken, small generators currently exempted from minor NSR permitting will not opt into the standard permit.

The commission has revised the standard permit to apply to all electric generating units regardless of size so that all of these units which meet the standard permit may have a streamlined preconstruction authorization mechanism. As previously discussed, the commission has reduced the registration fee for very small and very clean units.

Good Company commented that generating units less than 100 kW should be exempt from any standard for now and that a standard for those units could be developed over the next few years.

No change was made in response to this comment. Units generating less than 100 kW used exclusively for domestic purposes are permitted by rule under §106.101 which requires no registration. The commission has reduced the fee to $100 for units operating under 1 MW. If these units emit less than 10% of the standards, no fee is required. The intent of the standard permit is to provide a streamlined preconstruction authorization mechanism for all electric generating units.

AEP commented that smaller DG systems of 1.5 MW and less should be kept in a permit by rule registration system and DG systems and units between 1.5 MW and 10 MW should use the proposed standard permit. AEP commented that this will allow the deployment of this technology with relative ease to that sector of the regulated community (homeowners and small commercial) that would be most adversely impacted by a permitting requirement. Waukesha Engine recommended that smaller units be exempt from the CO and NO_x emission limits.

The commission notes that units constructed and operated at a domestic residence for domestic purposes are permitted by rule under §106.101. As previously discussed, the fee has been reduced to $100 for units under 1 MW and eliminated for very clean units less than 1 MW. The commission anticipates that most small commercial entities using the standard permit will register units less than 1 MW.

Authorization Period under Standard Permit

Public Citizen recommended that the commission limit the life of the standard permit and require generators subject to it to update their technologies to BACT levels every ten years. Sure Power commented that license renewal in ten years will create an uncertainty burden since "high availability power supply" facilities normally have life cycles of

20 years or longer. Sure Power commented that an uncertain renewal process could deter development of clean DG in Texas.

Provisions for amending or revoking a standard permit are included in Chapter 116, Subchapter F. Those rules require that standard permits be renewed at least every ten years. Those rules also provide a mechanism, as appropriate, for updating technology. Comment on those rules is beyond the scope of this commission action and, therefore, no change has been made to the standard permit in response to these comments.

Definition of "Modified"

The OAG - Public Agency Representation Section and Waukesha Engine recommended that Section (1)(A) include an appropriate definition of a "modified unit." Global Power requested clarification of what is meant by the word "modified."

The term "modified" is defined in §116.10(9) "Modification of existing facility." This definition applies to this standard permit.

Clarification of When Construction Begins

Cotton Bledsoe asked for clarification whether "dirt work" or setting of a skid for a skid-mounted DG project could begin before commission approval of the application.

To eliminate questions on start of construction and to eliminate the ability to "start construction" on a unit prior to the implementation of a more strict NO_x standard, the standard permit was revised to include a definition of "installed." The NO_x standards are based upon an "installed" date.

Clarification of Term "Site"

Cotton Bledsoe recommended clarification of the word "site". Cotton Bledsoe asked whether a manufacturing facility may put two separate DG skids, one at each building in a manufacturing complex of up to 10 MW each, or whether the facility is considered a single "site" and limited to 10 MW of DG projects total.

For purposes of this standard permit, the term "site" is used as defined in §122.10(29).

Clarification of Applicability of Standard Permit to a Site

Waukesha Engine recommended that paragraph (3)(A) clarify that the standards apply to the DG site as a whole and not to each unit individually to provide owners and operators flexibility in operation. Global Power also endorsed this position.

The standard permit was not changed in response to this comment because the commission is specifically regulating the NO_x emissions from each electric generating unit registered under the standard permit. Although the NO_x standard in the standard permit applies to each electric generating unit, the reference to multiple units at an account only applies to the fee determination.

Stakeholder Involvement in Establishing Emission Limits

Honeywell Power recommended that the emission limits be qualitatively determined using a consensus process that involves all stakeholders and that one aspect of this process should be to broadly evaluate the consequences and value of a variety of generation options. DOE, Cummins, EDI, Public Citizen and Good Company supported a collaborative effort to set the emission limits. AGCC requested that a workshop be held with stakeholders to derive a methodology that appropriately calculates and compares emissions impacts of electrical generation alternatives relative to the grid. Global Power recommended that the commission work with EMA and its members to establish practical NO_x and CO limits. AFRED recommended that the commission establish a working group of stakeholders to evaluate present emissions and potential emission reductions and to develop regulatory options that protect air quality but allow the market for these units to develop.

In addition to the public meeting required by rule, staff hosted a stakeholders meeting at the stakeholder's request on January 23, 2001. The commission thanks all stakeholders who have participated in the standard permit development process thus far. The public comment period for written comments was extended until February 5, 2001 at the request of the stakeholders, and all submitted written and oral comments have provided the basis for the revisions in the issued standard permit. The commission intends to continue to involve stakeholders in any further developments on this issue.

Study to Determine Potential Impact of DG on Texas

Good Company recommended that the commission consider entering into a study of the technology and its potential applications, as well as, available emission reduction technologies applicable to generation units of the size under consideration prior to attempting to develop this standard permit. Good Company requested that the commission adopt the standards Good Company submitted if the commission decided to issue the standard permit before such a study was complete. DOE suggested that the commission conduct a study to determine the potential DG impact on Texas and offered to share the cost of such a study. DOE stated that consideration of technology-specific goals may be necessary before development of broad output-based standards. EMA and Cummins stated that the proposed emission standards are not supported by any assessment of impacts on emissions inventories.

The commission intends to participate in a study in conjunction with the DOE and the PUC to determine the environmental impact and define the market potential of DG (i.e., electric generating units of 10 MW or less). However, the commission believes it is important to proceed with issuing this standard permit prior to the completion of the study because of the very real potential for increased preconstruction authorization applications for electric generating units, especially small units. Upon completion of the study, the commission plans to reevaluate the standard permit to ensure that the standards are set at an appropriate level.

The Nitrogen Oxide Emission Limitations

Hunt Power commented that if the commission methodology of central station unit comparisons is to be fairly applied, appropriate central station technology should be used to make the comparison. Hunt Power used the duty cycle of a power plant as an example of a factor that must be considered when determining appropriate emission limitations. Hunt Power also commented that the standards must recognize the short-run benefit of DG in reducing central station power plant emissions. Hunt Power commented that if the commission deemed a specific emission limit for a central station unit in a given duty cycle, the allowable emission limit for DG in the same duty cycle should be 10% higher than the central station technology based solely on line losses. Hunt Power commented that the commission's standards must recognize the overall contribution that DG technologies make to improve air quality by taking into account the physical power system realities, which require re-dispatch of generating plants. Hunt Power commented that to the extent that an end use customer or DG project developer incorporates these technologies into a single site project, we believe the customer or owner of the site should receive 100% credit for the energy generated by these non-polluting technologies, applied against thermal generating resources that are part of the overall site or project.

The NO_x standards originally proposed were based upon BACT for recently permitted combined cycle central power stations. In response to these comments, the standards required in the standard permit have been revised to reflect BACT for electric generating units in pounds of

NO_x per MW hour adjusted to reflect a simple cycle power plant. In addition, these output-based standards include an adjustment to account for inefficiencies associated with conversion of mechanical to electrical energy. While no specific credits were included for line losses except in the conversion to lb/MWh, a 100% credit was allowed for any combined heat and power added.

AEP commented that the current state of the technology on the DG systems will not meet the stringent standards as outlined in the proposal and the high cost and operational difficulties associated with post-combustion control equipment will make it prohibitive to install DG equipment in the state. AEP commented that the DG systems should be allowed to be permitted at a BACT rate that was in effect 120 months prior to the submission of the application with a reduction in the standard over the next five years. AEP commented that this will allow DG technology to mature and catch up with the traditional combined cycle type of equipment.

BACT is required by the TCAA and 30 TAC §116.602(c) for standard permits. Therefore, the commission does not have the authority to make the suggested change. However, as discussed previously, the standard permit was revised to reflect BACT for simple cycle power plants, as well as the cleanest reciprocating engines.

Austin Energy commented that since the Central Texas region is nearing ozone nonattainment, the emission rates should be weighted toward the clean end of the spectrum of possible emission rates, but that the emission rates should not be so strict that no manufacturer will be able to meet them in a cost-effective manner. Austin Energy commented that it is in the process of building a new facility near Austin that consists of four large peaking-type gas turbines that will have selective catalytic reduction (SCR) emissions control devices added to the units. Austin Energy commented that the emissions target for these units is below 5 ppm NO_x. Austin Energy commented that it has found that it can invest the added cost of the SCR into its new power plant in an economically viable manner. Austin Energy commented that this fact should be considered during the negotiations regarding emission rates for the various forms of DG and cogeneration. Austin Energy commented that the cost of all of the equipment that would nominally be utilized for emergency backup generation only (i.e., the generator and the prime mover) should not be included in the control cost-effectiveness determinations because a facility would have to pay for these generators whether they are DG or not. Austin Energy commented that only the incremental cost of adding the emissions control devices should be used for determining the emission control cost-effectiveness.

The commission appreciates Austin Energy's concern about the air quality of the Central Texas region and agrees that emission controls can be cost-effective for electric generating units. By setting output-based standards and not distinguishing between driver-types, more clean and more efficient units are rewarded and recent gains in air quality from clean central power plants will not be negated. This standard permit does not require emergency generators to use additional controls unless they switch service from emergency-only to peaking applications.

Austin Energy commented that it is concerned that by allowing several small but comparatively high-emitting sources into the air shed, any gains that have been made recently to improving the air quality in Texas through NO_x reductions made at centralized power plants will be negated. Austin Energy commented that this increase would lead to an increase in the emission reduction requirements that would be necessary from the mobile source sector.

The commission is also concerned about the impact of small but comparatively high-emitting sources on the gains made by recently permitted low emitting centralized power plants. The standard permit as issued requires BACT in the East Texas region to address the nonattainment problems in the area.

NRDC supports the proposed standard permit and the commission's efforts to establish user- friendly emissions standards for small electric generators. NRDC commented that the standard permit will close a gap in existing air pollution regulations and encourage the development of small clean electricity generators to address capacity concerns in Texas. NRDC endorsed the aggressive emission limits in the standard permit because use of the standard permit is optional. NRDC commented that the approach for setting standards endorsed in the Federal Clean Air Act requires new units to perform at least as well as the best unit in that technological family, and the result of that approach is to allow the market place to set the rate of tightening in emissions standards. NRDC commented that technological family being regulated here is the customer-owned generation market. However, NRDC commented that no generation technology should be allowed to profit by being dirtier than other technologies and for that reason recommended that the commission explicitly link the standard permit requirements starting in 2007 to the emission rates being achieved by combined cycle natural gas turbines. Environmental Defense commented that it is irresponsible to argue that engine manufacturers should be allowed to emit at rates that are 40 to 70 times higher than existing fleet or new central station power plants that must achieve 93% emission reductions (achieving an emissions rate of approximately 0.1 lb/MWh) and when other much cleaner alternatives are available. In addition, Environmental Defense commented that the commission must consider the cumulative effects from rapid deployment of small generating units in determining the appropriate emission standard under the standard permit given the fact that rapid growth in DG is expected. Environmental Defense commented that a strict emission standard is achievable. Environmental Defense endorsed Capstone's recommended NO_x emission standard schedule of: 0.40 lb/MWh in 2001; 0.19 lb/MWh in 2003; and 0.08 lb/MWh in 2005. Environmental Defense commented that DG should not be subsidized by low-emitting large generators. Environmental Defense commented that it small generators should not be allowed to emit at rates 40 to 70 times higher than large generators when the large generators are spending millions of dollars to reduce emissions and incur the additional cost of acquiring emission offsets. Environmental Defense stated that it would understand the reasonableness of "backing off" the emission standards if it were accompanied by a 1.3 to 1 emission offset requirement.

The commission appreciates NRDC's and Environmental Defense's comments. The standards in the standard permit are based upon BACT for the cleanest type of equipment available. Due to concerns about potential transmission and distribution problems in remote areas of West Texas, the standard for these peaking units operating less than 300 hours per year represents Tier I non-road engine standards proposed by EPA. The East Texas standards reflect BACT to account for the ozone nonattainment issues in this region, but also provide for the use of clean peaking applications. The future year standard will be reevaluated upon completion of the planned DG study. Additionally, because the standard permit applies to units greater than 10 MW and the proposed standards have been revised, the commission has proposed removal of the exemption for electric generating units contained in Chapter 117. Thus, once this exemption is removed from Chapter 117, electric generating units under 10 MW, operating under the standard permit, will be subject to Chapter 117.

Good Company recommended a site-internal emissions trading system that would allow sites to select the most appropriate and cost-effective technology for each application. Good Company stated that sites should receive credits based on the net emission reductions achieved at a site due to DG implementation.

Providing for emission trading at a site or at an account would unnecessarily complicate the standard permit which was designed to be an expedited method of authorizing clean electric generating units. Therefore, the standard permit was not changed in response to this comment. A flexible permit under 30 TAC Chapter 116, Subchapter G provides a mechanism for the flexibility described in the comment.

Environmental Defense commented that the current DFW and Houston/Galveston (HGA) SIP does not account for emissions increases brought about by increased utilization of small generation that is exempt from major source permitting and offset requirements. Environmental Defense commented that the only way to remedy the failure to account for increased emissions from small generating sources is to establish emission rates that ensure cumulative emissions from these sources over the next seven years that will not have a measurable impact on air quality in the affected regions.

As previously stated, the commission has proposed removal of the exemption for small electric generating units registered under this standard permit from Chapter 117 because of the potential impact upon the SIP from units operating under the standard permit. In addition, the results of the planned DG study will be used to evaluate the 2005 East Texas region standard. The standards applicable to the East Texas region drastically cut the limits currently permitted by rule under 30 TAC §106.512 and will require even cleaner technology for future installations.

Environmental Defense commented that effect of the standard permits on the availability of adequate power should not be a factor in deciding on the appropriate emission standards since adequate power is already available. In the alternative, Environmental Defense commented that deployment of energy efficiency measures would solve most electricity sufficiency and reliability problems.

Although adequate power is generally readily available throughout the state, the commission believes this standard permit will be most useful in areas of the state that either do not have adequate power available or inadequate transmission and distribution systems for the power. The standard permit includes strict emission standards to protect the environment, including the requirement for future installations to meet increasingly stricter standards. The inclusion of a credit for CHP use also benefits those who chose to install and operate more efficient units and eliminate the need for additional fossil fueled heat sources.

Public Citizen recommended more stringent standards for nonattainment areas and commented that the state should be required to examine the cumulative impact of these emissions in nonattainment areas. Public Citizen recommended that the commission adopt a bifurcated rule that would allow EGUs to be permitted as proposed under the standard permit but in nonattainment areas require individual permits with offsets. Public Citizen commented that this would assure that the addition of any new source must be aggregated into the SIP caps and that they are "permittable" under the limits. Public Citizen commented that this would assure that the technologies used meet the Lowest Achievable Emission Rate (LAER) standard.

As discussed earlier, by establishing the standards for both the East Texas region and the West Texas region in the standard permit, the commission is able to ensure that BACT in the East Texas region addresses the unique nonattainment issues in that area of the state. Individual New Source Review permits would be required for any project that triggers nonattainment review which would include LAER.

Public Citizen questioned the wisdom of placing diesel units in neighborhoods or in office clusters where citizens would be continuously exposed to carcinogens and encouraged the commission to keep in mind various air quality issues and deadlines that must be met in upcoming years when choosing the standard permit's emission standards. Public Citizen encouraged the commission to evaluate the impact of other pollutants from DG because of the long useful life of some DG units. Public Citizen also stated that pricing of electricity in the future will likely encourage the use of DG and this fact should also be considered when establishing emission limits.

The commission agrees with Public Citizen's concern about diesel units because of the higher emissions of NO_x and other air pollutants. The only standard in the standard permit that would authorize diesel engines which use current technology is the standard for peaking units operating 300 hours or less in the West Texas region. Parts of the West Texas region may have transmission and distribution limitations in a deregulated market, but by limiting the hours of operation, the impact of all pollutants are minimized.

Public Citizen recommended that the commission modify the standard permit to assure that some or all of the emissions from EGUs are controlled under its general authority to adopt regulations necessary to prevent significant deterioration of air quality. Public Citizen recommended that the commission establish a docket to develop appropriate emission levels for EGU pollutants and incorporate the findings of that inquiry into a BACT review.

The standard permit requires BACT and replaces the use of permit by rule 30 TAC §106.512 that has less stringent standards for NO_x. Any BACT determination for permits under review will look at all technology available, not just recently permitted units. In addition, facilities which trigger Prevention of Significant Deterioration permitting would not be eligible to use the standard permit.

Plug Power supported the fact that the proposed standard permit treats different electric generation technologies identically with respect to the air emission standards.

The commission appreciates Plug Power supporting the position that the standards should be the same for all units to encourage the use of the cleanest and most efficient units.

Senator Van de Putte stated that the standard permit inappropriately applied emission standards for one type of technology for the regulation of another and encouraged the commission to apply a broader, integrated solution to the regulation of emissions from the power generation sector. She also stated the proposed standard permit must be revised to allow DG technologies to benefit the Texas environment and economy. Honeywell Power stated that a direct application of combined cycle plant emission standards to the DG industry does not necessarily maintain the current level of air quality. Honeywell Power stated that many factors, as they relate to the operation and use of combined cycle plants and DG, affect air quality. Holt and Holt Power commented that the commission's approach to setting the emission limits has no basis in United States environmental law or regulatory practice. They stated that the commission has set an environmental standard for several categories of equipment based on the peak performance of a different technology in a completely different size category. They stated that the commission should set challenging but attainable emission limits based on the best performance of each DG technology with consideration given to the technical capabilities and economic factors associated with each technology. They requested that there be an opportunity for public review and comment before this rule is finalized. Solar commented that comparing DG technologies to large combined cycle gas turbines (CCGT) is inappropriate because of differences in system efficiency, line losses, and air dispersion characteristics. Solar commented that the standards for DG technologies should be based on technology-based standards (New Source Performance Standards) or case-by-case assessment of technical and economic feasibility (BACT/LAER). Solar commented that lack of DG will harm markets

that are not served adequately by central station power plants. EMA and Cummins stated that the standards are not reflective of sound public policy since they "will effect a *de facto* ban" on small electrical generating units powered by reciprocating internal combustion engines (RICE). EMA and Cummins stated that the NO_x standards should be based on the best available emission control technologies for RICE DG units instead of the standards applicable under the HGA SIP to combined cycle power plants. EMA stated that since the proposed standards effect a de facto ban on RICE, owners and operators of will not refurbish or upgrade existing RICE. EMA stated that the decision not to refurbish existing RICE will adversely affect air quality and energy concerns. AGCC commented that the apparent purpose of the proposed standard permit is to ban all DG except for certain renewables and fuel cells. AGCC stated that a ban on DG results in a situation where very few companies representing the same technology control the multi-billion dollar electricity- generating industry and that such a situation appears to violate the spirit (if not the letter) of Section 18 of the Texas Constitution, which states: "Perpetuities and monopolies are contrary to the genius of a free government, and shall never be allowed." AGCC stated that such a situation results in higher electricity and natural gas prices for ratepayers, harms Texas' agricultural industry, and degrades the environment. AGCC also stated that case-by-case full permit hearings create a hardship for DG projects of 1 MW or less because those requirements may eliminate the economic feasibility of those projects. ETG stated that the proposed emission standards will have the effect of limiting competition by eliminating market entrance of smaller competitors and power projects but with no concomitant benefit to air quality since the economic lives of older technologies and equipment will be extended. ETG requested that the commission not take any action that sets standards beyond the reasonable economic capabilities of those who build and supply generating equipment. The OAG - Public Agency Representation Section commented that the commission should reexamine the emission standards to ensure that these standards are achievable using technology that is available now.

The commission has revised the standard permit in response to these comments. The standard permit contains different standards to account for different technologies available and the mode of operation of the units. The original draft used natural gas-fired combined cycle power plants as the basis for the standards. However, in response to comments, the commission divided the state into two regions and allowed different technologies to be used in each. In the West Texas region, nonattainment is not a major concern so the standards allow for the cleanest reciprocating engines as well as turbines, micro-turbines, and fuel cells. These standards do not ban any clean equipment and even clean diesels meeting the EPA Tier 1 non-road engine standards can be used for peaking in West Texas. In the East Texas region, where concern for ozone formation is greater, the standards should allow for authorization of fuel cells, micro- turbines, clean turbines using catalytic combustors or flue gas cleanup, and the very cleanest reciprocating engines using catalytic converters. The commission also recognizes that the cleanest technology available will be needed to maintain the current level of air quality and to improve it in nonattainment and near-nonattainment areas. The revised standards are output-based to encourage the use of the most efficient and cleanest technology available and to encourage smaller units located at or near the user to avoid the line losses associated with only a few central power plants. The less stringent standards should encourage the use of small units where appropriate and do not represent a ban on any technology that is clean. The TCAA authorizes the commission to control the quality of the state's air, issuing permits that meet or exceed BACT. The commission considered this standard permit in an open meeting at which time the public had the opportunity to comment on the standard permit.

DOE also stated that consideration of technology-specific goals may be necessary before development of broad output-based standards.

The standard permit contains emission limits that allow for authorization of a variety of clean electric generating units. The commission plans to use the results of a planned study with the DOE to determine the environmental impact and market penetration of DG units in Texas to determine the appropriate outlying standards for DG technology.

AGCC also commented on the importance of considering how reduction of one pollutant may increase emissions of another pollutant.

Information reviewed on the engines that can meet the NO_x standards in the standard permit indicates that these engines are efficient combustion sources so that increases in pollutants due to the NO_x standards are anticipated to be minimal, if at all.

ACEEE commented that comparing DG technologies to baseload generating technologies such as CCGT is inappropriate. ACEEE proposed that the commission consider using state-of-the-art peaking units as the comparison technology for DG systems. Sure Power commented that the comparison of DG only to new combined cycle generation neglects other emissions attributable to the system as a whole (i.e., DG emissions should be compared to grid emissions plus the emissions from use of uninterruptible power supplies plus the emissions from the use of backup diesel units). Sure Power commented that in markets requiring high-availability power, DG emissions should be compared against the grid plus diesel generators used to assure reliability. Catalytica commented that the commission's decision to set emission limits based on the best emission level achievable from large combined cycle units does not take into account that most DG units will be simple cycle nor that small units cannot achieve the efficiencies of large combined cycle systems. Catalytica commented that no units in the size range covered by the proposed permit will be able to achieve the levels required after January 1, 2005. Catalytica commented that the commission could establish emission limits based on the best performance available from a gas turbine and allow credit for emission reductions resulting from heat recovery. Catalytica commented that by its emission levels the standard permit seems to be mandating heat recovery, and that if that is the case, the commission should develop a standard permit for non-heat recovery applications. Catalytica commented that it would like the proposed standard permit to give credit for use of combustion control technology over NO_x control technology applied to a boiler because emissions at start-up from the former are less than the latter. DTE commented that adoption of the standard permit will prevent implementation of DG in Texas while suppressing total market opportunities for DG. DTE commented that this result will harm end- users requiring personalized solutions that the electric grid cannot provide, and society in general. AGCC stated the proposed standard permit will result in electricity capacity shortfalls and price increases, increased emissions of global warming gases, and reduced competition in the electricity- generation sector. Good Company requested that the commission examine the costs and benefits of the proposed standard permit. Sure Power commented that the stringent emission limitations will drive customers to use the traditional grid plus diesel backup, since the diesels are permitted by rule.

As previously discussed in response to the standards proposed, the commission has modified the standard permit to represent BACT for more than just combined cycle central station plants. The standards in the issued standard permit will allow for the cleanest reciprocating engines as well as turbines, micro-turbines and fuel cells. This should allow the use of clean equipment, give an incentive for using CHP without setting standards that would require it, and provide economic incentive for reliability power to be generated at the point of use as opposed to relying on central plant power with emergency backup.

USCHPA stated that DG units should be given credit for abated transmission and distribution (T & D) line losses equal to the average T & D losses in Texas because DG reduces the amount of electricity that central station plants must transmit. ACEEE proposed that the commission develop a system for providing small generators with credit for avoiding transmission losses. ACEEE recommended that emission rates for on-site generation be at least 9.0% higher than the emission rates of state-of-the-art central combined cycle gas generators. Good Company commented that the commission should at a minimum allow a fair credit for on-site generation to account for line losses and enhanced power quality and ensure that emissions are measured as total power avoided rather than net power produced on site. Good Company recommended that peaking power applications be given higher line loss and power quality adjustments because peaking power is used when line losses are greatest. Good Company recommended a 30% credit. ALSTOM commented that no credit is given for avoided transmission losses from central generation by using DG despite the fact that in periods of high demand transmission losses may reach 30%. Good Company requested that the commission recognize the variety of needs which DG meets as it develops the standard permit. Good Company commented that the emissions from DG applications should, at a minimum, be compared to the emissions of either peaking units or the electrical generation system average, rather than the baseload combined cycle gas turbine plant. Good Company commented that the commission should determine a fair credit that will account for the avoided line losses and enhanced power that DG affords since increased DG generation means decreased central station emissions. Austin Energy estimated that typical line losses within its service area (the Austin Metro area) are between 8.0% and 10% on a hot day.

The revised standards in the standard permit issued are no longer exclusively based on recently permitted combined cycle power plants. Dividing the state into two regions and setting separate standards in each region allowed for more technologies and eliminated the need to meet the efficiency of a combined cycle unit. This relaxation of the standards to reflect simple cycle turbine and even reciprocating engines provides enough flexibility to adequately account for the 10% line losses avoided. The commission does not believe that it is appropriate to credit the highest possible line losses of 30% to allow equipment that cannot meet the BACT standards to be competitive.

USCHPA suggested that the allowable emission limits be adjusted to allow for multiple DG technologies, including simple-cycle gas turbines and controlled gas engines. USCHPA stated that the only available technology that meets the requirements in the proposal is the fuel cell but that fuel cells, at a cost of $1,500 to $3,000 per kilowatt-hour (KWh) installed, are cost-effective only for a small number of "high-value industries." ALSTOM stated that DG will only succeed as a "mix of technologies" so that consumers may have maximum choice in how their power is generated. ALSTOM stated that the mix would include reciprocating engines, micro-turbines, wind, solar, small to medium-sized gas turbines, fuel cells, and other technologies as they become available. ALSTOM commented that a standard for turbines and one for reciprocating engines are necessary for DG to successfully grow in Texas. ALSTOM stated that it seems impractical to compare emissions, on a lb/MWh basis, from a small DG unit to that of a combined cycle gas turbine where efficiency is relatively high and exhaust cleanup, though expensive, is a smaller proportion of total cost. AGCC commented that "force-fitting" the state implementation plan for Houston and Galveston on the remainder of Texas, the majority of which is in attainment, is "counterproductive for the greater good of Texas" and consumers from other states who rely on natural gas from Texas. AGCC commented that mandating BACT would preclude more logical Reasonably Available Control Technologies (RACT) which could undermine legitimate environmental objectives. AGCC commented that mandating combined-cycle turbine "merchant plants" would decrease competition and increase water and natural gas consumption (thereby increasing emissions). AGCC commented that combined-cycle emission reductions may be significantly overstated since emissions from those units may vary significantly as a function of inlet air temperature.

As previously discussed in responses to other comments on the standards, the commission has revised the standards based upon East and West Texas regions and upon the operating schedule of the units. The original draft used natural gas-fired combined cycle power plants as the basis for the standards, but by dividing the state into two separate regions, the standard permit issued allows different technologies to be used. In the West Texas region nonattainment is not a major concern, so the standards allow for the cleanest reciprocating engines as well as turbines, micro-turbines and fuel cells. Even clean diesels meeting the EPA Tier 1 non-road engine standards can be used for peaking. In the East Texas region, the standards should allow for authorization of fuel cells, micro-turbines, clean turbines using catalytic combustors or flue gas cleanup, and the very cleanest reciprocating engines using catalytic converters. This mix of technologies should give the users the flexibility to choose the most appropriate equipment for the location.

AGCC commented that an ideal credit formula should be based upon actual overall emissions reduced since the emissions that accompany overall British thermal unit (Btu) consumption are of primary importance. AGCC commented that for DG, credit should be based upon a given DG system's emissions relative to the grid, and for CHP, credit should also compensate for emission differences between heat recovery and use of an on-site furnace or boiler. AGCC provided an alternative formula.

The commission appreciates AGCC's comments on CHP credits, and tried to give adequate credit for CHP installations without over complicating the calculations required. To simplify the calculations and demonstrations required, the revisions in the standard permit credit 100% of the useful heat recovered and no longer require a standardized system.

Waukesha-Pearce urged the commission to carefully study the reduction systems it is advocating with respect to initial cost, operational cost, and total impact on air quality. Waukesha-Pearce expressed concern that the commission is mandating large reductions too quickly with the proposed standard permit and the proposed levels in §117.206(C)(9). Waukesha-Pearce stated that the proposed emission limits create a situation where the cost of controls equals or exceeds the cost of the engine. AGCC commented that the trade-offs between minimizing criteria emissions, minimizing adverse economic impacts, and maximizing conservation of finite resources must be comprehensively addressed to minimize unintended consequences of the standard permit emission limits. AGCC also commented that least-cost/integrated resource planning are being ignored. AGCC explained that most commercially-available DG technologies are less expensive than most combined-cycle power plants when the cost of transmission and distribution infrastructure is included in the cost of combined-cycle power plants. AGCC stated that ignoring such factors usually results in higher costs to consumers, fewer consumer choices, and deterioration of the environment. EMA and Cummins stated that the proposed emission standards are not cost-effective. Cummins stated that the proposed standard permit is not reasonable. Global Power commented that the decision to base the proposed emission limits on emission limits achievable by recently permitted large combined-cycle power plants is misguided and impractical and provided emission, cost, and anecdotal evidence in support of its proposition. Global Power opposed emission limits that would require widespread use of SCR technology to achieve them because of the

potential problems associated with SCR use. Global Power stated that the proposed emission limits would create a severe economic hardship for businesses in Texas because the standard permit, in effect, prohibits DG and, therefore, DG cannot be used to supplement the inadequacies of the electric grid transmission and distribution system. Global Power recommended that the standard permit should reflect the emissions capabilities of small gas turbines and reciprocating engines without post-combustion treatment except in nonattainment areas, where non-selective catalytic reducers (NSCR) would be required in the exhausts of natural gas-fueled rich burn engines and turbines that utilize non-dry low NO_x combustion systems. Global Power would be in favor of emission limits for diesel engines in attainment areas that require the use of commercially-viable SCR technology, while diesel engines in nonattainment areas would be required to obtain a regular NSR permit.

As previously discussed in responses to comments about the standards, the issued standard permit has been revised to include different standards based upon the area of the state and operation of the unit. The commission believes that these new standards reflect BACT for what is available for clean technology today in most cases without additional expensive controls.

Good Company recommended credit for any emission reductions or increase of on-site efficiencies attributed to DG units at a site. For example, an owner or operator should be credited for replacement of two industrial boilers by a lesser emitting DG unit. Encorp commented that permitting should be on a "weighted environmental impact" basis and dependent on available options.

The commission believes these issues should be addressed in a case-by-case review permit, such as a flexible permit, rather than the standard permit issued. Therefore, no change to the standard permit was proposed.

AGCC commented that water usage issues have not been considered. AGCC stated that combined-cycle power plant cooling water consumption equates to about 5.71 acre-feet per megawatt- year but that DG units do not. AGCC commented that the standard permit encourages reliance on combined-cycle power plants and that reliance on those units negatively impacts the agriculture industry, especially in the panhandle of Texas, where combined-cycle plants and agriculture sources compete for a limited amount of water. AGCC commented that insufficient water for agriculture sources in the panhandle will result in detriment to the state and the nation. DTE commented that DG benefits include reduced use of land and water resources associated with construction of new central station power plants and expansion of transmission and distribution facilities. DTE also commented that since DG is located near the end-user, DG does not have significant line losses resulting from transmission of electricity over long distances. Solar commented that operation of a 25 ppm or 15 ppm gas turbine during an emergency is better than operation of liquid fuel-based emergency unit and that the emission standards should take this into account.

As revised, the standard permit should encourage the use of smaller, clean generating units near the end-user where there is a limited power supply or distribution system and would, therefore, reduce the need for additional central power stations that require cooling towers that use large quantities of water to condense the steam back into water. The NO_x standards that were established based upon BACT will ensure that the cleanest units are used.

Good Company encouraged the commission to recognize that small-scale generation, when and if it becomes a significant economic alternative, will not be simply an alternative for large-scale, centrally-generated electric power, but that it holds promise for providing power quality and reliability characteristics not available from the larger power grid. Good Company commented that the commission should consider the impact of the standard permit on the economy. Good Company recommended that the commission recognize three classes of on-site applications (emergency, peaking, and primary power) and that standards be set based upon the best available technology assessment of the applicable technology for each. Good Company recommended that the commission recognize the technical and economic feasibility of a variety of equipment in different size ranges. Good Company commented that the standards should not be based upon the assumption that fuel cells are the best available technology.

The standard permit, as revised, includes standards for large and small units as well as incentives for the use of small units and units that operate a limited number of hours. To encourage efficiency, standards were established in pounds of emissions per unit output, but were not established separately for different types of technology. The standards will allow for very clean reciprocating engines as well as turbines, micro-turbines, and fuel cells.

Good Company commented that a separate standard permit that includes a less stringent standard for units used less than 720 hours could reduce the need for either the use of older, out-dated central station and "must run" plants, or the need to start up diesel backup generator sets. Good Company commented that the commission should consider the standard emission levels in comparison to the most outmoded generation rather than the new utility-scale generation. Good Company commented that by limiting the use of these machines to after 10 a.m., the commission could limit the contribution of any NO_x emissions to ground level ozone formation, as well.

The standard permit has been revised to allow units in the West Texas region to operate up to 300 hours per year at a higher standard which could reduce the needs mentioned. This should allow diesel engines meeting EPA's Tier I diesel off-road standards to be used for peaking. The standards in the East Texas region are more stringent to recognize the nonattainment concerns for this region. Since the commission is required to apply at least BACT, it is difficult to set standards based on outmoded generation rather than current technology.

Southern Union recommended that sites located in nonattainment areas, with total DG capacity of less than 300 kW and emissions less than 5.912 lb/MWh, continue to be permitted by rule under §106.512. Southern Union explained that under this scenario, total NO_x emissions would be approximately 7.8 tons per year (assuming continuous operation). Global Power suggested that units with a nameplate rating of 150 kW or less, with a limit of three such units per site, have relaxed emission standards. ACEEE recommended that the regulations for on-site generation set forth in the standard permit be loosened.

No change has been made in response to this comment. Without proper controls, a proliferation of small units could negatively impact the commission's obligation to demonstrate attainment with ozone standards. As previously stated, the standard permit was revised so that more types of facilities could meet it. In addition, the commission wants to encourage the use of emerging ultra-clean technologies, such as fuel cells, for small generation units. Finally, very clean small units may petition the executive director to be listed on the list entitled "De Minimis Facilities or Sources" and avoid the need to register under this standard permit, if approved and added to the list.

Environmental Defense stated that the standard for West Texas should be set in the first period to allow new units to utilize internal combustion engine (ICE) technology but be fueled and operated in a manner that produces lower emissions. Environmental Defense recommended a 2001 - 2002 NO_x standard of 1 lb/MWh for those units since an ICE engine fueled by natural gas can achieve a standard of 1 lb/MWh without SCR post-combustion control. Environmental Defense recommended

a 2003 - 2004 NO_x standard of 0.3 lb/MWh since Caterpillar has publicly stated that it expects to achieve a standard of 0.3 lb/MWh very soon with lean burn natural gas ICEs.

The commission is issuing the standard permit which includes separate standards applicable to an East Texas region and a West Texas region. The West Texas standards represent BACT for natural gas-fired lean burn and rich burn internal combustion engines. The standards recommended by Environmental Defense would not allow lean burn engines to use the standard permit without adding SCR, which the commission has not determined to be needed in the West Texas region. The West Texas standards will be reevaluated at the completion of the planned DG study and may be adjusted, if needed.

Environmental Defense commented that if the East Texas NO_x standards of 0.19 pounds per megawatt-hour (lb/MWh) and 0.08 lb/MWh for 2003 and 2005 are maintained then micro-turbine technology will benefit from increased production and concomitant decreasing production costs. Environmental Defense reasoned that micro-turbine technology will then be economic for use in West Texas, as well as East Texas, by 2005. For that reason, Environmental Defense recommended that for the time being, the West Texas target for 2005 should remain 0.08 lb/MWh.

The standard permit has an initial East Texas region standard for units (10 MW or less) operating more than 300 hours per year of 0.47 lb/MWh to be reduced to 0.14 lb/MWh in 2005. Units (10 MW or less) operating 300 hours or less per year must comply with a standard of 1.65 lb/MWh to be reduced to 0.47 lb/MWh in 2005. The commission will reevaluate the 2005 standard after completion of the planned DG study. The standards in East Texas represent BACT for the ozone nonattainment areas in East Texas. The commission agrees that as clean technology, such as micro-turbines, becomes more commercially available, there will be more options for the owners or operators of these electric generating units. This can be considered when, and if, new standards for West Texas are proposed.

NRDC commented that a number of commenters claim that because the proposed emission rates cannot be achieved by all generation technologies that the standards are too strict. NRDC commented that technology forcing regulations by their very nature should only be achievable by the best technologies, and that there is clearly a set of small generators that can meet the standards proposed by the commission as long as the standards are adjusted for phased-in efficiency. NRDC commented that Capstone, in their comments, suggested adjusting the commission proposed standards to reflect gradual improvements in efficiency. NRDC supported Capstone's suggested NO_x emission rates of 0.40 lb/MWh today, 0.19 lb/MWh in 2003, and 0.08 lb/MWh in 2005.

The commission appreciates NRDC's comments and support for the concept that standards apply to all technologies so long as they are achievable. The standard permit was revised to reflect this concept. The standard permit has an initial East Texas region standard for units (10 MW or less) operating more than 300 hours per year of 0.47 lb/MWh to be reduced to 0.14 lb/MWh in 2005. Units (10 MW or less) operating 300 hours or less per year must comply with a standard of 1.65 lb/MWh to be reduced to 0.47 lb/MWh in 2005. The standard permit contains standards that represent BACT for various electric generating unit technologies. The East Texas region standards will be reevaluated upon completion of the planned DG study.

Honeywell Power commented that practical emission limits should be set that are within the DG industry's "reach" both technically and economically, and that these limits will result in cleaner ambient air and economic benefits. Honeywell Power recommended the following NO_x emission limits: 2001, 2.0 lb/MWh; 2002, 1.0 lb/MWh; 2003, 1.0 lb/MWh; 2004, 0.3 lb/MWh; 2005, 0.3 lb/MWh. Honeywell Power stated that their recommended emission limits are achievable by most manufacturers in the given time period and are significantly lower than the aggregated existing fleet. Honeywell Power stated that they have no technology that can meet the proposed emission limitations. Capstone recommended the following NO_x emission limits over time: 0.4 lb/MWh; 0.19 lb/MWh; 0.08 lb/MWh. Capstone stated that commission assumed too high an efficiency for CCGT on which the commission based its standards. Capstone's recommendation assumes a more realistic efficiency (30% - 35%) for these units. Capstone commented that the emission standards should be stepped down as the efficiency of CCGTs goes up. Capstone commented that the standards should reflect that reduced line losses attributed to DG. Solar recommended the following NO_x emission levels for natural gas-fueled gas turbines across all duty cycles: 1.06 lb/MWh until 2004 and 0.68 lb/MWh from 2005 to 2010. Solar commented that the proposed standards would require add-on controls to achieve and make such projects too expensive to construct.

The standard permit was revised in response to these comments. The standards were adjusted to represent BACT for more than just the most efficient combined-cycle turbines and are similar to the standards proposed by the commenters. The state was divided into two regions with different standards for units under 10 MW because of the nonattainment issues in the East Texas region. The West Texas region standards for units less than or equal to 10 MW are 21 lb/MWh for units operating less than or equal to 300 hours per year and 3.11 lb/MWh for all other units. The standard permit has an initial East Texas region standard for units (10 MW or less) operating more than 300 hours per year of 0.47 lb/MWh to be reduced to 0.14 lb/MWh in 2005. Units (10 MW or less) operating 300 hours or less per year must comply with a standard of 1.65 lb/MWh to be reduced to 0.47 lb/MWh in 2005. The initial standards in the standard permit are achievable by the cleanest reciprocating engines and turbines without expensive controls as well as micro-turbines and fuel cells. The standard permit now contains emission limits that do not require add-on controls.

EMA and Cummins stated that the proposed emission requirements are not technologically feasible for RICE. EMA stated that the proposed interim standard is an order of magnitude more stringent than what can be achieved by the most advanced lean-burn spark-ignited (SI) RICE. EMA also stated that the proposed standard is an order of magnitude more stringent than the expected federal NO_x limit for heavy-duty diesel on-highway engines expected to become final in 2007.

The standard permit was revised in response to these comments. The proposed standards were based upon what had been permitted for combined-cycle central power plants and was not achievable by most of the smaller engines. However, the initial standards in the standard permit, as revised, represent BACT that the cleanest RICE and turbines can meet today, as well as micro- turbines and fuel cells.

DOE suggested that the commission consider an interim ruling targeting single digit NO_x with future reductions that match research and development goals for various DG technologies. DOE stated that commercial offerings do not exist which will guarantee the proposed 2005 standard can be met. Encorp commented that a determination should be made of the expected distribution and size of DG units in the state in an effort to determine the impact of DG.

The commission plans to participate in a study with the DOE to determine the environmental impact, market potential, and technology available for small electric generating units. The results of this study will be used to reevaluate the 2005 East Texas region standard.

Cummins stated that the standard permit should take into account that NO_x and particulate matter (PM) emission levels from diesel reciprocating engines in heavy-duty on highway applications will have been reduced by 90% by 2002 and that expected near-term standards would require another 90% reduction of these emissions or 99% reduction from unregulated levels. Cummins stated that emission reductions should be staged over time as the cost-effectiveness of technology advances.

The standards in the West Texas region allow for the use of diesel engines meeting the Tier 1 non-road engine standards for 300 hours or less. If the planned DG study demonstrates the market potential for additional diesel use and that the technology will continue to improve, revisions to the West Texas region standards may be considered. Please note that emergency backup generators powered by diesel engines can still be authorized under §106.511, Portable and Emergency Engines and Turbines.

Global Power stated that the proposed emission limits are not viable for any small electric generating units using proven technology that is currently available or under development. Global Power disagreed with the agency's intention, presented at the January 23, 2001 stakeholder meeting, to retain the proposed emission standards for years 2003 and 2005. Global Power said that to do so will discourage, if not eliminate, the raising of capital to develop the DG market since companies will not put resources into a market that has unattractive economics and "impassable" environmental regulations.

As previously discussed, the standard permit was revised in response to these comments with a single step-down for the East Texas region in 2005. The initial standard reflects BACT for units available today. The East Texas region 2005 standard will be reevaluated once the planned DG study is completed.

EMA endorsed the alternative permitting standards that Good Company submitted during the January 23, 2001 stakeholder meeting. ALSTOM recommended a standard of 0.4 lb/MWh for today's turbines (in simple, open cycle) and a standard of 0.22 lb/MWh for 2005. ALSTOM commented that the standard permit's 2005 standard of 0.08 lb/MWh is cost prohibitive. ALSTOM commented that relaxing the long-term proposed standards to 9 ppm may encourage the development of small DG in all areas of the state. ALSTOM explained that a relaxed standard should decrease demand for existing plant generation and accelerate the improvement of air quality since modern gas turbines can meet 9 ppm which is an order of magnitude more clean than existing plants in some areas of the state. AGCC stated that the commission should not mandate unaffordable emission reduction technologies since RACT for reciprocating engines can provide economically manageable NO_x emission of 0.5 to 1 lb/MWh, thereby reducing NO_x emissions somewhere between one-third and one-sixth the emissions of the grid average. AGCC commented that overall emission reductions from DG are further increased when rejected heat is recovered to displace less clean combustion processes. Waukesha Engine recommended less stringent CO and NO_x emission standards in paragraph (3)(C) and (D) according to the following: Rich-burn SI RICE: 1.86 lb/MWh CO, 0.62 lb/MWh NO_x; Lean-burn SI RICE: 0.93 lb/MWh CO, 0.93 lb/MWh NO_x. Southern Union requested that the commission reevaluate the proposed emission limits and provide justification that existing, readily available combustion units can meet the limits without an inordinate amount of post-combustion controls. Southern Union requested that the proposed standard permit be revised to reflect the additional time provided for in the version of the SIP rule adopted by the commission (i.e., the first step-down extends until December 31, 2006 rather than December 31, 2004).

The commission has made changes to the standard permit in response to these comments. The state has been divided into two regions to address the need for more stringent requirements in the East Texas region because of the ozone nonattainment problem and inclusion of near nonattainment areas in much of that region. The West Texas region standards for units less than or equal to 10 MW are 21 lb/MWh for units operating less than or equal to 300 hours per year and 3.11 lb/MWh for all other units. The standard permit has an initial East Texas region standard for units (10 MW or less) operating more than 300 hours per year of 0.47 lb/MWh to be reduced to 0.14 lb/MWh in 2005. Units (10 MW or less) operating 300 hours or less per year must comply with a standard of 1.65 lb/MWh to be reduced to 0.47 lb/MWh in 2005. The commission decided that a single-step down four years from now is more appropriate than the two step-down approach over four years because the two step-down approach does not provide manufacturers time to develop, test, and market products. The East Texas region 2005 standard will be reevaluated upon completion of the planned DG study. As discussed previously, different standards are based upon region, date of installation, and hours of operation. Standards, based upon hours of operation, have also been included for units greater than 10 MW.

Southern Union recommended NO_x emission limits of 2.0 g/hp-hr for internal combustion gas-fired engines and 3.0 g/hp-hr for turbines rated at 500 horsepower (hp) or more for sources located in attainment or unclassified areas, since the commission's March 2000 "Revised Draft of BACT for Gas Turbines" states that sources meeting these limits could be permitted by rule under 30 TAC §106.512. Encorp recommended that NO_x and carbon dioxide (CO_2) emission limits should be based on specific information about current best available technology for DG units. Encorp recommended that emission limits should be based on the overall electrical and thermal efficiency of the unit. Encorp commented that emission limits should be in units of tons per year. Encorp commented that emission limits should be based on comparisons between the various commercially available DG units and not between DG units and large combined- cycle turbine central plants.

As discussed previously, the emission standards in the issued standard permit have been revised, although not to the extent suggested by these comments. Permits by Rule in Chapter 106 do not necessarily represent BACT. Permit by rule, §106.512 has not been revised since 1992. This standard permit represents BACT, as required by 30 TAC §116.602(c), with consideration given to the region of the state and operating mode. Establishing the standard in lb/MWh encourages the cleanest and most efficient units regardless of the technology.

Catalytica suggested that paragraph (3)(C) and (D) include the averaging period to be used to determine compliance. Catalytica suggested a three-hour averaging period.

The standard permit has not been revised in response to this comment. The commission believes that there is not enough data available to justify including a three-hour averaging period. A one-hour standard is consistent with NSR permitting on a pound per hour basis.

DTE commented that the proposed NO_x emission standards for DG can only be met with today's emerging fuel cell and renewable energy (wind and solar) based DG technologies. DTE commented that even if an end-use customer were to use an emerging micro- or mini- gas turbine technology with waste heat recovery, the resulting NO_x emissions, when corrected for the waste heat recovered, would be too high to meet the January 1, 2003 standard. DTE commented that the commission should consider deploying the strict standard for DG NO_x only within ozone nonattainment areas.

The standard permit has been revised in response to these comments. As discussed previously in response to other comments, the standard permit issued has been revised to represent BACT that will include more technologies than just fuel cells and micro-turbines, and to include different standards for the West Texas and East Texas regions.

DTE commented that the time frame for deployment does not provide enough time for technology development to meet the standard. Therefore, DTE recommended modifying the time line for implementation to allow combustion-based technology time to advance to a point where it can meet the outlying standards. Solar commented that the timing proposed in the "stair-step" approach is inappropriate because it does not allow time for technology development. Solar recommended a five-year or ten-year window at each emission level. Solar also commented that project delays may trigger a different emission level than that for which the equipment was designed.

In response to this comment, the standard permit contains a single step-down in 2005 for the East Texas region. The commission will reevaluate this standard upon completion of the planned DG study.

Public Citizen supported the multi-stage process proposed by the commission and supported establishing interim standards and providing for a later review of technology. Public Citizen recommended conducting a reevaluation of the technology in October 2002 after the implementation of the Tier 2 standards.

The commission appreciates the support of Public Citizen. As previously discussed, the standard permit has been revised to retain the step-down feature for the East Texas region, but extended to 2005 to have a single step-down. Upon completion of the planned DG study, the commission will reevaluate this standard, as well as whether the standards in East Texas require adjustment.

Public Citizen commented that the emission reductions and technologies proposed by engine and turbine manufacturers are far too low given the federal Tier 2 and Tier 3 emission levels that will soon be required.

The commission appreciates the effort of the engine and turbine manufacturers in providing information about emissions from their products, but agrees with Public Citizen that the emission standards provided by manufacturers do not represent BACT for electric generators. However, the initial standard has been revised to allow for use of the standard permit by clean RICE which represent BACT.

Public Citizen recommended the following NO_x standards for base-load applications in East Texas: under 560 kW: a 2001 standard of 1.2 lb/MWh and a 2003 standard of 0.23 lb/MWh; between 560 kW and 2 MW: a 2001 standard of 1.1 lb/MWh and a 2003 standard of 0.23 lb/MWh for; between 2 MW and 10 MW: a 2001 standard of 0.23 lb/MWh and a 2003 standard of 0.23 lb/MWh. Public Citizen recommended the following NO_x standards for peaking applications in East Texas: under 560 kW: a 2001 standard of 2.3 lb/MWh and a 2003 standard of 2.3 lb/MWh; between 560 kW and 2 MW: a 2001 standard of 2.3 lb/MWh and a 2003 standard of 2.3 lb/MWh; between 2 MW and 10 MW: a 2001 standard of 1.5 lb/MWh and a 2003 standard of 1.5 lb/MWh. Public Citizen recommended a West Texas 2001 NO_x standard equivalent to Tier 2 for units generating under 560 kW and a 2003 standard equivalent to Tier 3; a 2001 West Texas NO_x standard equivalent to Tier 2 for units generating between 560 kW and 2 MW and a 2003 standard equivalent to Tier 3; and a 2001 West Texas standard equivalent to low NO_x for units generating between 2 MW and 10 MW and a 2003 standard equivalent to low NO_x. Public Citizen commented that its 2001 standard represents best practices today and that its 2003 standards are commercially achievable somewhere in the nation. Public Citizen supported the position taken by Environmental Defense and NRDC for 2006 but recommended that the commission review the technology in October 2002. Public Citizen commented that its break point at 2 MW reflects the fact that few diesel units are sold below 2 MW while turbines prevail due to cost and efficiency factors. Finally, Public Citizen recommended that the commission review emissions for generators under 37 kW because they are unregulated for the most part and need to be studied for the 2002 review. Good Company recommended the following NO_x emission standards for nonattainment areas: Good Company recommended a 2001 NO_x standard of 1.2 lb/MWh for a base-load unit generating under 560 kW and a 2003 standard of 1.2 lb/MWh and a 2006 standard of 0.6 lb/MWh; a 2001 NO_x standard of 1.1 lb/MWh for a base-load unit generating between 560 kW and 6 MW and a 2003 standard of 1.1 lb/MWh and a 2006 standard of 0.47 lb/MWh; and a 2001 NO_x standard of 0.6 lb/MWh for a base-load unit generating between 6 MW and 10 MW and a 2003 standard of 0.47 lb/MWh and a 2006 standard of 0.23 lb/MWh. Good Company recommended a 2001 NO_x standard of 7.2 lb/MWh for a peaking unit generating under 560 kW and a 2003 standard of 7.2 lb/MWh and a 2006 standard of 2.5 lb/MWh; a 2001 NO_x standard of 6.2 lb/MWh for a peaking unit generating between 560 kW and 6 MW and a 2003 standard of 6.2 lb/MWh and a 2006 standard of 2.2 lb/MWh; and a 2001 NO_x standard of 4.4 lb/MWh for a peaking unit generating between 6 MW and 10 MW and a 2003 standard of 4.4 lb/MWh and a 2006 standard of 1.5 lb/MWh. Good Company recommended that units generating under 37 kW be exempt from the standard permit. Good Company recommended the following NO_x emission standards for attainment areas: Good Company recommended a 2001 NO_x standard of 21 lb/MWh for units generating under 10 MW and a 2003 standard of 21 lb/MWh and a 2006 standard of 14 lb/MWh. Good Company recommended that units generating under 37 kW be exempt from the standard permit because most of these units will be used for residential and small business applications. Good Company recommended that the commission adopt EPA's non-road mobile engine standard for the areas of the state that are in attainment.

The commission agrees that the emission standards originally proposed should be revised but did not agree entirely with the standards proposed by Public Citizen and Good Company because they were too complex and contained too many options. Rather the commission has issued the standard permit to include definitions from SB 7 for an East Texas region and a West Texas region, as requested. The East Texas region includes all of the nonattainment areas, except the El Paso area, and is the same area already identified as needing special consideration due to the ozone "near-nonattainment" for several other major metropolitan areas. Different standards have been included based upon the region, date of installation, and hours of operation. There are no special standards for very small units, but very clean small units may be listed as a de-minimis source. Standards have also been added for units greater than 10 MW based upon hours of operation to encourage streamlined permitting of clean units. The standards in West Texas represent BACT for clean generators and allow for relaxed standards for peaking unit operating 300 hours or less. The East Texas standards for units operating more than 300 hours represent BACT which is comparable to recently permitted central station power generation plants to protect the ozone nonattainment areas of East Texas. The commission notes that the standard permit represents a substantial reduction in emissions permitted by rule under §106.512.

Carbon Monoxide Requirement and Other Pollutants

Capstone recommended that unburned hydrocarbons, rather than CO, be regulated because the primary environmental concern is the unburned hydrocarbon emissions. Cotton Bledsoe asked whether the waste gas credit applied to CO emissions. EMA stated that the proposed CO standard would require engines to incorporate catalytic oxidation aftertreatment. Solar recommended that the CO standard be changed to 1.3 lb/MWh because it represents the upper limit of the range for which manufacturers will guarantee CO but that actual emissions are often much lower. Sure Power commented that the CO emission limit of 0.9 lb/MWh seems very restrictive and could result in significant added cost of additional catalytic reduction to both gas reciprocating engines and gas turbine systems. Sure Power agreed that

CO emissions should be as low as practicable and requested that the commission reconsider where the CO number should be established.

The standard permit has been revised to remove the CO emission limit. The commission evaluated the data available for CO and unburned hydrocarbons emissions and determined that since output-based standards require high efficiency, the CO standard was not necessary.

DOE encouraged discussion of emission trade-offs before setting an emission limit. In support of this suggestion, DOE stated that often times regulation of one pollutant increases the emission of non- regulated pollutants. DOE implied that this phenomena should be accounted for in a cost/benefit calculation. AGCC also commented on the importance of considering how reduction of one pollutant may increase emissions of another pollutant.

No change has been made in response to this comment. The commission does not believe that the NO_x limits will contribute to large increases in other air contaminants because the standards reward efficient operation of a unit.

Combined Heat and Power (CHP)

NRDC supported the commission's treatment of CHP. USCHPA commended the commission for recognizing the inherent efficiency improvements and emission reductions that CHP systems afford. ACEEE supported the commission's efforts to encourage the adoption of CHP systems. Solar supported the effort to encourage the adoption of CHP systems and the decision to credit recovered heat equally with useable electricity.

The commission appreciates the support for CHP. The CHP credit is designed to encourage users to install and use CHP to improve the efficiency of these generating units where there is a valid need for the recovered heat.

AGCC assumed that the intention of the heat recovery credit is to provide 0.23 pounds of NO_x and/or 0.9 pounds of CO for every 3.4 million Btu recovered and, therefore, suggested that the second sentence in paragraph (3)(E) be revised to so reflect. However, AGCC commented that the second sentence in paragraph (3)(E) and its suggested revision do not address the variability and relationships between overall efficiency and heat recovery of CHP. AGCC also commented that the credit for CHP should also reflect that DG CHP will reduce NO_x and CO emissions from traditional commercial and industrial combustion processes (e.g., furnaces, boilers, etc.). Sure Power commented that the proposed standard permit provides inadequate credit for CHP applications. For example, in the case where waste heat is used to drive an absorption chiller, this heat should be credited with the average heat rate of the generators in the grid as a whole, rather than just 3.4 million Btu per delivered MWh, as in the proposed standard permit.

By way of clarification, the commission intends the CHP credit to work in the following manner. If, for example, an owner of a 10 MW unit in compliance with the standard permit recovers and applies 3.4 million Btu of heat for some useful purpose, the unit may emit NO_x in an hourly amount equal to that of an 11 MW unit. Thus, suppose that a 10 MW unit is subject to a NO_x emission standard of 0.47 lb/MWh. The hourly NO_x rate for that unit is 4.7 pounds of NO_x per hour. If 3.4 million Btu of heat is recovered from that unit, the permissible NO_x rate for that unit is 5.17 pounds of NO_x per hour.

However, the standard permit has been revised in response to this comment. Since the CHP credit does not take into account the variability of the relationship between overall efficiency and heat recovery of CHP, the commission removed the requirement that the unit maintain a minimum efficiency of 55%. However, the commission did not change the CHP credit itself. The commission believes the credit is appropriate and that it clearly and simply acknowledges and encourages reduced NO_x emissions concomitant with use of heat recovery. The straightforward credit also keeps the recordkeeping requirements to a minimum. Attempting to assign a credit based on the NO_x emissions of the unit replaced by use of heat recovery would make the standard permit complex.

ACGG stated that the commission would better serve the public by awarding tradable emissions reductions credits for promoting CHP systems.

The standard permit as a streamlined preconstruction authorization mechanism is not an appropriate avenue for implementing a tradable emissions reduction credit program, nor does it preclude participation in an existing emission reduction credit trading program. Therefore, the standard permit was not changed in response to this comment.

AGCC commented that the commission should mandate CHP as BACT rather than combined- cycle turbines.

The standard permit has been changed since the commission agrees that applying combined- cycle turbines standards to all electric generating units is not appropriate. However, mandating CHP as BACT would be inappropriate since many owners and operators have no practical use for recovered heat. Therefore, the standard permit was not changed in response to this latter comment.

AGCC commented that paragraph (3)(E)(ii) and (iii) lacks a time parameter and suggested the time parameter be yearly averages.

The standard permit has been revised to remove paragraph (3)(E)(ii) (i.e., 55% minimum efficiency for units taking CHP credit) from the standard permit. However, paragraph (3)(E)(iii) (i.e., 20% heat recovery of total energy output) has been retained. The requirement that the heat recovered must equal at least 20% of the total energy output of the CHP is a requirement that must be satisfied at any given time. Otherwise, the recordkeeping requirements of the standard permit become unnecessarily complex.

Austin Energy commented that the efficiency requirements need to be increased by 10% since central station power plants are approaching 50 - 55% efficiency rates. Austin Energy commented that cogeneration should only receive credit for heat recovered in excess of the efficiency goal (useful energy out/fuel in).

The standard permit was not changed in response to this comment because of the commission's decision not to apply central station power plant emission limits to all electric generating units initially. In addition, the commission believes that any application of heat recovery is beneficial because it represents efficient unit operation and energy conservation.

ALSTOM stated that standard CHP packages do not exist because many factors, such as size of the equipment, steam conditioning requirements, process requirements, and existing plant requirements must be considered when designing such a package. Catalytica commented that heat recovery systems do not lend themselves to a standardized design. Catalytica requested that paragraph (3)(E)(i) be deleted because systems in the 1 - 10 MW size range are not integrated with the heat recovery system. AEP commented that paragraph (3)(E)(i) should be changed to allow a project developer to design and integrate equipment from more than one vendor. AEP commented that this will allow equipment to be used from manufacturers that do not integrate their own DG systems with heat recovery equipment. Good Company commented that the proposed requirement that CHP systems be sold as a standard unit is not feasible and should not be a requirement of the standard permit.

The commission agrees with these comments and has removed the requirement that to obtain credit for CHP the unit must be sold as an integrated standardized package.

Waste Gas Credit

AEP commented that the proposal to allow credits to be generated and used for the use of gas that would otherwise be vented or flared is a very good way to promote the use of waste gases. Environmental Defense supported giving additional credit to generators that use waste gas or renewable fuels and those that install their facilities in a CHP application. Public Citizen supported giving credit for the reuse of waste heat. Solar supported the concept of waste gas to energy projects and stated that these projects are size and technology specific and do not belong in a permit-by-rule arena.

The commission appreciates the commenter's support for the waste gas credit.

Solar commented that for gas turbines, the proposed emission levels are technically unachievable on landfill gas applications. Solar commented that if the waste gas recovery language remains in the rule, the 25% increase in allowable emissions when the standard is 0.08 lb/MWh will not encourage DG implementation for this or any application. Hunt Power commented that the 25% credit for use of flare gas is insufficient and encouraged the commission to develop a methodology which will encourage the beneficial use of what is today a wasted energy resource, by fairly comparing the "before" and "after" air emissions from the useful combustion of flare gas. DTE commented that the waste gas provisions are overly restrictive and eliminate the use of waste gas as a fuel for purposes of DG. Cotton Bledsoe asked for confirmation that this provision is intended to utilize a 25% larger hypothetical unit in calculating total allowable emissions. Honeywell Power recommended that the commission provide a more generous incentive for the use of flare gas in DG sets, otherwise manufacturers will not have the motivation to manufacture DG sets that use flare gas as a fuel. In the alternative, Honeywell Power recommended that the commission implement a plan that encourages the use of flare gas based on a showing of the emission reductions that can be achieved using flare gas. Capstone recommended that users of waste gas be provided a 100% credit for their use. Capstone stated that the proposed 25% credit may discourage the use of waste gases for power generation and result in continued flaring of these gases. AGCC stated that a 25% credit for gas that would otherwise be wasted seems restrictive to the point of being counterproductive. EMA supported extending meaningful allowances (i.e., 400%) against the permitting standards for DG units operating on landfill and waste gases. EPA commented that the proposed standards cannot be achieved by LFGTE projects that use the latest and lowest NO_x engines, even if the credit for the use of flared gas is applied to the project, because landfill gas poisons the catalyst and has different flow, composition, and Btu characteristics than natural gas. EPA stated that new LFGTE internal combustion engines in common use by industry emit at or below 2.0 lb/MWh and reduce emissions of methane, a greenhouse gas, and volatile organic compounds. Because of the environmental benefits of LFGTE projects and the recent PUC mandate for renewable energy technologies, EPA encouraged the commission to evaluate the impact that the standard permit would have on the development of LFGTE projects, notwithstanding that LFGTE projects may apply for a regular NSR permit. ALSTOM recommended a 100% credit for the use of flare or waste gas to recognize that any low emissions technology application using the gas is an acceptable improvement over venting or flaring of the gas. Waukesha Engine recommended that paragraph (3)(F) incorporate emission standards commensurate with the engine-out capability of lean-burn SI RICE. Global Power commented that the "waste" gas credit is insufficient. Global Power commented that DG units using "waste" gas should be permitted based on the best available commercially viable technology that does not use SCR-type post-combustion clean-up device. EDI commented that an issued standard permit, rather than granting a 25% credit to units that use "waste" gas as a fuel, should instead establish a different set of emission limits for these units. EDI commented that the emission limits should be based on current BACT emission standards in West Texas and LAER emission standards in East Texas, as justified by taking into account the emissions from flaring or venting and from the other form of electrical generation offset by the operation of the small electric generating unit. EDI recommended the following emission limits for these units: in the West Texas region, NO_x emissions shall not exceed 5.0 lb/MWh and CO emissions shall not exceed 6.0 lb/MWh; in the East Texas region, NO_x emissions shall not exceed 2.0 lb/MWh and CO emissions shall not exceed 6.2 lb/MWh. Environmental Defense commented that the commission should follow two principles in establishing the adjustments for use of waste gas: 1) the tighter the overall emission limits under the standard permit, the more flexibility that can be accorded to these applications; and 2) the method of calculating adjustments and verifying applications should be kept simple. Public Citizen thought that the 25% credit is too inexact. Public Citizen commented that most co-generated waste heat will be used to displace some operation with calculable emissions, such as a boiler, heating unit, or air conditioner. Public Citizen commented that the credit should be based on the emissions of the displaced equipment multiplied by the hours of operation of the DG unit, especially in nonattainment areas.

In response to all of these comments, the commission has changed the standard permit so that it now contains a specific East Texas region NO_x standard of 1.77 lb/MWh for units that use as fuel landfill gas, digester gas, or oil field gases containing less than 1.5 grains hydrogen sulfide or 30 grains total sulfur compounds. The commission acknowledges that engines currently using landfill gas cannot achieve the NO_x standard in the proposed standard permit because of limitations in current technology, and that the 25% credit is not sufficient to bridge the current technological gap. The commission also recognizes the useful benefit in generating electricity with a fuel that is usually flared or vented to the atmosphere. Consistent with the goal of a streamlined, simple authorization mechanism, the commission believes that applying a specific standard for these units rather than a formula based on various factors is more appropriate. The standard for these units should allow for the cleanest lean burn engines. As discussed above, the CO requirement has been removed from the standard permit. Units in the West Texas region using these fuels may comply with the West Texas regions standards contained in the standard permit.

Limitations on Sulfur in Fuel

Cotton Bledsoe stated that a ten grain standard is a very low standard and may prevent many waste gas applications of DG.

The commission agrees that in certain gas fields it is appropriate to allow for a higher sulfur content. The standard permit was revised to allow gases that contain less than 1.5 grains of hydrogen sulfide or 30 grains of total sulfur to be used as fuel. The commission believes that the 10 grain sulfur limit for natural gas fuel is more than generous in most areas of Texas.

Consistent Nationwide Standards for EGUs

Honeywell Power stated that coordination of efforts on a nationwide level is paramount for successfully providing generation options to Texas' ratepayers that are environmentally friendly. Honeywell Power recommended some form of coordination with California on the issue of DG emissions. Good Company encouraged the commission to pursue development of the standard permit in conjunction with other state (e.g., California) and national efforts currently underway. EMA encouraged the commission to follow other ongoing issues and efforts

related to DG around the nation. EMA cited to efforts on the part of the DOE in this area, the California state legislature, and the Ozone Transport commission.

The commission has been in contact with California Air Resources Board (CARB) personnel, EPA personnel, and DOE personnel as this standard permit has been drafted. The commission plans to participate with DOE and the PUC on a study of technology and market potential for small electric generating units. The California South Coast Air Quality Management District standards were used to help establish BACT for reciprocating engines.

Future Regulatory Treatment of Electric Generating Units

Honeywell Power recommended that the commission phase out existing DG and shaft power units over a period of three to five years and that "in-kind" replacement of these units should be prohibited. Honeywell Power suggested that an exemption from the phaseout be provided to owners and operators who cannot economically justify replacement of the equipment. Honeywell Power stated that such a phaseout would significantly improve air quality.

By statutory authority, NSR air permits only apply to new or modified facilities, though owners or operators of existing facilities may voluntarily operate their units under the standard permit. Requiring existing units to be replaced would require rulemaking that is beyond the scope of this standard permit.

Certification and Recertification Requirements

ALSTOM stated that the proposed certification approach is reasonable for the purpose of guaranteeing emissions at commissioning and for continuous operation for a three-year period. ALSTOM applauded the apparent aim of the certification approach to shift certification responsibility from the operator to the manufacturer. ALSTOM stated that the 10% sample rate for recertification is reasonable because sales of small gas turbines for this purpose will likely number in the tens or hundreds, rather than thousands. Austin Energy commented that the certification requirement in paragraph (3)(B) makes sense if a manufacturer is providing the entire prime mover/generator/emissions control device as a packaged unit. Austin Energy commented that there should be certification provisions made for an entity that desires to add emissions control devices to existing or new prime movers or for units configured on site from equipment provided by different manufacturers. Capstone commented that recertification based on testing of 10% of the DG fleet would be burdensome if DG thrives. Therefore, Capstone recommended the following: 1.0% of the installed base should be tested. If more than 25% fail to meet the standard, then 10% of the base should be tested. If 25% of this sample fail, then the entire fleet should be tested. Failing units would be required to be retrofitted and recertified. Cummins stated that the certification and recertification plan is not sound standard practice for high volume, mass-produced equipment. Global Power commented that the manufacturer certification requirement cannot be met if post-combustion devices are added to the exhaust stream because manufacturers of DG-size reciprocating engines and turbines do not manufacture post-combustion devices nor market integrated systems.

The standard permit has been revised so that manufacturers or owners may certify units. The commission wanted owners and operators of existing units an opportunity to use the standard permit. The commission also removed the 10% recertification sample rate by manufacturers and, instead, will require recertification of units by owners or operators every 16,000 hours of operation but not less frequently than every 3 years. Recertification may be accomplished by following a maintenance schedule that a manufacturer certifies will ensure continued compliance with the required NO_x standard or by third party testing of the unit using appropriate EPA reference methods. The requirement that manufacturers test 10% of the fleet was not consistent with most air pollution control regulatory requirements which place the onus of testing on the owner or operator of the unit.

AGCC stated that the recertification requirements create a hardship for DG projects of 1 MW or less because those requirements may eliminate the economic feasibility of those projects. AGCC also recommended that the commission approve the use of hand-held NO_x and CO meters instead of EPA reference methods and/or compliance assurance monitoring (CAM).

The standard permit has not been revised in response to these comments. The commission anticipates that most owners or operators will recertify by simply operating the unit consistent with the manufacturer's maintenance schedule. This should keep costs to recertify to a minimum. The standard permit was not changed to allow for recertification using a portable analyzer because the EPA reference methods are considered a more reliable method for specifically identifying the quantity of an air contaminant. However, the standard permit does allow CARB methods to also be used for certification. Finally, the standard permit does not specifically require CAM. However, owners or operators of sites required to operate under a federal operating permit and concerned about the applicability of CAM are directed to 30 TAC §122.702 for applicability information.

Waukesha Engine recommended that paragraph (3)(B) clarify who is required to certify the emissions from generating units and to affix the specified label.

The standard permit was revised in response to this comment. Paragraph (4)(A) provides that either the manufacturer or the owner may certify the unit. The person certifying the unit should display that certification on the unit's nameplate or on a label attached to the unit.

Plug Power recommended that the commission enforce the compliance at the manufacturing or distribution facilities, and not at the individual residential customer.

Units constructed and operated at a domestic residence for domestic use are permitted by rule under §106.101 and not subject to this standard permit. Therefore, the standard permit has not been revised in response to this comment. Section 106.101 does not require certification.

Plug Power recommended that the commission use the PUC-proposed approach of having an independent third party certify that the DG commercial model meets the emission standards. Plug Power commented that, ideally, the PUC certification of compliance with the technical interconnection requirements and the commission certification of compliance with the emission standards would be accomplished by the same independent third party and through the same document applied for, and issued jointly by, the commission and PUC.

As previously discussed, a manufacturer or an owner may certify compliance while an owner or a third party may recertify a unit. A dual commission/PUC DG certification program is not in place at this time. If, however, it becomes apparent that such a certification process would be useful because of the number of DG units being constructed, the commission is open to studying the feasibility of such a program should the PUC be interested.

Catalytica commented that if the intent of paragraph (3)(B) is to commit the equipment supplier to stand behind the emission claim, the appropriate term would be "guarantee." Catalytica also commented that if the intent is to have a certification process where the supplier demonstrates the emission level, the certification process must be spelled out somewhere in advance of the use of the permit.

Catalytica's interpretation of proposed paragraph (3)(B) is correct; however, the commission believes there is no appreciable benefit to

using the word "guarantee" as opposed to the word "certify" so the standard permit was not changed in response to this comment. The standard permit does not provide for certification by a supplier; only a manufacturer or an owner or operator may certify the unit.

Catalytica asked whether undergoing EPA's environmental technology verification (ETV) program or California's precertification program would constitute certification under the standard permit. Catalytica asked what specifically needs to be certified.

As the standard permit is issued, only EPA's reference methods, CARB's methods, or an equivalent testing method, upon a showing by a petitioner of its equivalency, may be used to certify a unit. A manufacturer or owner or operator is certifying that the NO_x emissions from the electric generating unit (i.e., the combustion source driving the generator) meet the applicable pound per megawatt-hour NO_x emission limit in the standard permit.

Public Citizen recommended that the commission assure that the referenced EPA test protocols match those proposed for real-world Texas DG use and not just those appropriate for emergency generators.

The standard permit was not changed in response to this comment since EPA reference methods, when properly used, are a long-standing, reliable method for determining NO_x emissions from a stationary source, regardless of the stationary source being tested. For this reason, the commission will accept certifications using EPA reference methods. The commission will also accept CARB methods because they closely track EPA reference methods.

Plug Power recommended that the commission consider registering models of electric generation technologies, not individual units or groups of units.

Manufacturers choosing to certify their units will certify that the emissions from the unit meet the standards established in the standard permit. If the manufacturer certifies a model meets the required standards and has test data to validate this certification, the commission will accept this certification. Owners or operators authorizing units not certified by a manufacturer must certify the unit using the test methods previously discussed.

Cotton Bledsoe asked whether "accompanying papers" from a manufacturer or manufacturer's web site as to emission rates satisfy the nameplate requirement.

The standard permit was not changed in response to this comment. The standard permit allows the certification of NO_x emissions to be displayed on the nameplate or on a label attached to the unit. The commission believes this will enable commission enforcement personnel to more quickly determine if the unit is certified to meet the required standard. Therefore, accompanying papers will not satisfy the nameplate requirement.

Concern about Existing Fleet of Electric Generating Units and NSR Permitting of EGUs

NRDC commented that the standard permit takes the first step in controlling the emissions from small electricity generators but that it does not address the already installed base of generators, nor prohibit units from seeking a traditional site-specific minor NSR permit at potentially higher emission rates. NRDC called on the commission to continue its efforts as soon as final action on the standard permit is taken to close these gaps.

Regulating the currently installed base of EGUs goes beyond the scope of this standard permit. The standard permit only applies to new or modified units installed and operated after the effective date of this standard permit. Requiring existing units to upgrade would require rulemaking, although owners or operators may voluntarily register existing units under this standard permit.

By statute and rule, the standard permit must reflect BACT for the units authorized under it. The commission believes that the issued standard permit reflects BACT for a variety of units of different sizes and operating characteristics. Therefore, persons applying for a regular NSR permit at emission levels higher than in the standard permit will be required to show why the BACT standards in the standard permit should not apply to their EGU.

Impact of the Proposed Standard Permit on the Agricultural and Oil/Gas Industries

ATMOS commented that the proposed standard permit would result in a severe hardship on the agricultural industry and economy of West Texas because engines, rather than electric grid, are often used to power irrigation equipment in this region. DTE commented that the standard permit will negatively impact Texas' economy if it applies to existing reciprocating and gas turbine engines currently used for water pumping/irrigation and oil and natural gas recovery.

In response to these comments and comments received on §106.512, the amendment to §106.512 expected to be adopted by the commission concurrently with issuance of this standard permit allows for engines or turbines used exclusively to provide power to electric pumps used for irrigating crops to be permitted by rule. As previously noted, the standard permit only applies to new or modified engines or turbines. The majority of engines or turbines used in oil and natural gas recovery are not used for generating electricity and should continue to be permitted by rule under §106.512.

TRD-200103005
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: May 29, 2001

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Notice of Opportunity to Comment on Default Orders 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 Default Orders (DOs). The TNRCC staff proposes a DO when the staff has sent an Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the TNRCC pursuant to Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 9, 2001**. The TNRCC will consider any written comments received and the TNRCC may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that a proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's jurisdiction, or the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed DOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle,

Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Comments about the DO should be sent to the attorney designated for the DO at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 9, 2001**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, comments on the DOs should be submitted to the TNRCC in **writing**.

(1) COMPANY: Abel Lopez, Jr. dba Savey 1; DOCKET NUMBER: 1999-0279-PST-E; TNRCC ID NUMBER: 0031361; LOCATION: 2713 Mustang Drive, Grapevine, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of refined petroleum products; RULES VIOLATED: §334.7, by failing to provide a written notice to the executive director that the underground storage tanks (USTs) were out of service; §334.54, by failing to properly upgrade or permanently remove from service the USTs which were temporarily out of service in excess of 12 months; PENALTY: $10,625; STAFF ATTORNEY: Elisa Roberts, Litigation Division, MC R-4, (817) 588-5877; REGIONAL OFFICE: Arlington Regional Office, 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

(2) COMPANY: Derek T. Williams; DOCKET NUMBER: 2000-1187-OSI-E; TNRCC ID NUMBER: OS4948; LOCATION: 250 Oak Lane, Vidor, Orange County, Texas; TYPE OF FACILITY: on-site sewage facility; RULES VIOLATED: §285.7(h) and §285.91(4), by failing to submit three maintenance reports, one total suspended solids sample, and one biochemical oxygen demand sample for each contract; §285.7(h) and §285.91(4), by failing to include fecal coliform or chlorine residual testing information for each contract in the three maintenance reports that were submitted; PENALTY: $313; STAFF ATTORNEY: Joshua M. Olszewski, Litigation Division, MC 175, (512) 239-3645; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Fwy., Beaumont, Texas 77703-1892, (409) 892-2119.

(3) COMPANY: Dupree-Pruett Company, Inc. dba One Stop Convenience Stores; DOCKET NUMBER: 2000-0617-PST-E; TNRCC ID NUMBER: 0052819; LOCATION: 1414 E. Blanco, Boerne, Kendall County, Texas; TYPE OF FACILITY: underground storage tanks (UST); RULES VIOLATED: §334.48(c), by failing to conduct effective or automatic manual inventory control procedures for each UST system; §334.50(b)(1), by failing to provide proper release detection requirements for each UST system's tanks and piping by not testing line leak detectors once per year and not testing non-pressurized piping tightness once every three years; §334.10(b)(1)(A), by failing to develop, maintain, and have readily available for inspection all UST records required including records documenting compliance with release detection and inventory control requirements prior to December 20, 1999 inspection, and records which documented the UST system's compliance with the corrosion protection requirements; §37.815, by failing to maintain a demonstration of financial assurance and responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from the UST operations; PENALTY: $6,300; STAFF ATTORNEY: Reynaldo De Los Santos, Litigation Division, MCR-13, (210) 403-4016; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Rd., San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: Mark Locke dba Champion Water Services dba Dayton Oaks Estates Public Water Supply; DOCKET NUMBER: 2000-0655-PWS-E; TNRCC ID NUMBER: 1460136; LOCATION: County Roads 2339 and 2341, Liberty, Liberty County, Texas; TYPE OF FACILITY: public water supply system; RULES VIOLATED: §290.106(c)(5) and §290.117(e)(2) and (g), by failing to conduct reduced tap monitoring for lead and copper and to provide public notice of the lead and copper sampling violations; §290.51(a)(3) and THSC, §341.041, by failing to pay public health service fees; §290.46(d)(2), by failing to maintain the required chlorine residual at all times and throughout all parts of the public water supply; §290.46(r), by failing to maintain a minimum water pressure of 35 pounds per square inch at a flow rate of 1.5 gallons per minute at each service outlet or connection; §290.118(b) and THSC, §341.031(a) and §341.0315(c), by failing to provide water that meets the Commission's "Drinking Water Standards" for iron and manganese; §290.46(v), by failing to install electrical wiring within a securely mounted conduit; §290.46(m), by failing to initiate a program to facilitate cleanliness and improve the general appearance of all of the system's plant facilities by cutting the grass and removing debris at the well site; PENALTY: $1,938; STAFF ATTORNEY: James Biggins, Litigation Division, MC R-13, (210) 403-4017; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Ave., Ste. H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: WeeBe Industries, Inc.; DOCKET NUMBER: 2000-0776-AIR-E; TNRCC ID NUMBER: TA-0611-H; LOCATION: 3700 Flory Street, Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: architectural metal work manufacturing business; RULES VIOLATED: §115.426(a)(1)(B) and THSC, §382.085(b), by failing to maintain records of the utilization of Volatile Organic Compound (VOC) compliant coatings and solvents during an inspection on August 19, 1999; §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to obtain a permit prior to beginning operations during an inspection on August 19, 1999; §115.426(a)(1)(B) and THSC, §382.085(b), by failing to maintain records of the utilization of VOC compliant coatings and solvents during an inspection on December 22, 1999; §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to obtain a permit prior to beginning operations during an inspection on December 22, 1999; PENALTY: $20,000; STAFF ATTORNEY: Gitanjali Yadav, Litigation Division, MC 175, (512) 239-2029; REGIONAL OFFICE: Arlington Regional Office, 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

TRD-200103008
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: May 29, 2001

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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 **July 9, 2001**. 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 July 9, 2001**. 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: Alliant Energy Desdemona, L.P.; DOCKET NUMBER: 2000-1093-AIR-E; IDENTIFIER: Air Account Number EA-0085-H; LOCATION: Desdemona, Eastland County, Texas; TYPE OF FACILITY: natural gas compression; RULE VIOLATED: 30 TAC §122.146(1) and the Code, §382.085(b), by failing to certify compliance with the Title V General Operation Permit Number O-00323; and 30 TAC §106.512(6)(B), §116.110(a), and the Code, §382.085(b), by failing to extend exhaust stacks for engines E-5 and E-7; PENALTY: $7,875; ENFORCEMENT COORDINATOR: George Ortiz, (915) 698-9674; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(2) COMPANY: Blue Dolphin Energy Company; DOCKET NUMBER: 2001-0017-AIR-E; IDENTIFIER: Air Account Number BL-0421-R; LOCATION: Freeport, Brazoria County, Texas; TYPE OF FACILITY: oil and gas production; RULE VIOLATED: 30 TAC §122.146(2) and the Code, §382.085(b), by failing to submit annual compliance certifications; and 30 TAC §122.145(2)(B) and the Code, §382.085(b), by failing to submit deviation reports; PENALTY: $3,600; ENFORCEMENT COORDINATOR: Kevin Keyser, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: The City of Coleman; DOCKET NUMBER: 2000-1092-AIR-E; IDENTIFIER: Air Account Number CO-0003-M; LOCATION: Coleman, Coleman County, Texas; TYPE OF FACILITY: electrical generation; RULE VIOLATED: 30 TAC §122.146(1) and the Code, §382.085(b), by failing to certify compliance with the Title V General Operating Permit Number O-00102; PENALTY: $4,000; ENFORCEMENT COORDINATOR: George Ortiz, (915) 698-9674; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(4) COMPANY: City of Crystal City; DOCKET NUMBER: 2000-1078-MWD-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10098-001; LOCATION: Crystal City, Zavala County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and §325.4, and TPDES Permit Number 10098-001, by failing to employ a class B certified wastewater treatment facility operator; 30 TAC §305.125(1) and §319.4 - 319.12, and TPDES Permit Number 10098-001, by failing to perform pH and dissolved oxygen analyses on effluent samples and routinely perform minimum process control testing; 30 TAC §§305.125(1), 312.1, and 312.13, and TPDES Permit Number 10098-001, by failing to remove stock-piled sludge and clean sludge drying beds; and 30 TAC §305.125(1) and §312.142(a), and TPDES Permit Number 10098-001, by failing to register to transport municipal sludge prior to initiating transportation of sewage sludge; PENALTY: $15,000; ENFORCEMENT COORDINATOR: Malcolm Ferris, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: CX Transportation, A Division of TIC United Corporation; DOCKET NUMBER: 2000-1390-MLM-E; IDENTIFIER: Air Account Number CS-0048-P; LOCATION: New Braunfels, Comal County, Texas; TYPE OF FACILITY: transportation terminal for bulk lime and cement handling; RULE VIOLATED: 30 TAC §106.144, §116.110(a), and the Code, §382.085(b) and §382.0518(a), by failing to treat the vehicle work areas to achieve maximum control of dust emissions; 30 TAC §335.4 and the Code, §26.121, by allowing the discharge of industrial waste onto the ground; and 30 TAC §101.4 and the Code, §382.085(a) and (b), by failing to prevent the discharge of air contaminants; PENALTY: $5,625; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(6) COMPANY: Dean-Chem, Inc.; DOCKET NUMBER: 2000-1265-AIR-E; IDENTIFIER: Air Account Number HX-2466-F; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: small hard chrome electroplating shop; RULE VIOLATED: 30 TAC §116.110(a) and the Code, §382.085(b) and §382.0518(a), by failing to obtain a permit; and 30 TAC §113.190, 40 Code of Federal Regulations (CFR) Part 63 Subpart N, and the Code, §382.085(b), by failing to come into compliance with the National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks; PENALTY: $6,000; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: The City of Ector; DOCKET NUMBER: 2001-0084-PWS-E; IDENTIFIER: Public Water Supply (PWS) Number 0740007; LOCATION: Ector, Fannin County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to provide documentation of sanitary control easements; and 30 TAC §290.45(b)(1)(D)(i), by failing to meet water system capacity requirements; PENALTY: $500; ENFORCEMENT COORDINATOR: Judy Fox, (817) 588-5800; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010- 6499, (817) 588-5800.

(8) COMPANY: Mr. Eddie Johnson dba Eddie's Paint & Body Shop; DOCKET NUMBER: 2001-0125-AIR-E; IDENTIFIER: Air Account Number AC-0093-I; LOCATION: Lufkin, Angelina County, Texas; TYPE OF FACILITY: automotive body shop; RULE VIOLATED: 30 TAC §116.110(a) and the Code, §382.085(b) and §382.0518(a), by failing to obtain a permit or meet the conditions of a permit by rule; PENALTY: $800; ENFORCEMENT COORDINATOR: John Barry, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(9) COMPANY: Elmo Water Supply Corporation; DOCKET NUMBER: 2000-1344-PWS-E; IDENTIFIER: PWS Number 1290013; LOCATION: Elmo, Kaufman County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(D)(iii) and (iv), and (f)(4), by failing to provide a pressure tank capacity of 20 gallons per connection or an elevated storage tank capacity of 100 gallons per connection, provide the pump station with two or more pumps that have a total capacity of two gallons per minute (gpm) per connection, and provide a maximum authorized daily purchase rate; PENALTY: $1,375; ENFORCEMENT COORDINATOR: Wendy Cooper, (817) 588-5800; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010- 6499, (817) 588-5800.

(10) COMPANY: Mr. Bobby Lee dba Environmental Box Cleaning and Storage Services; DOCKET NUMBER: 2000-1275-IHW-E; IDENTIFIER: Solid Waste Registration Number 83646; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: container cleaning and servicing; RULE VIOLATED: 30 TAC §§335.94(a), 335.2(a), 335.43(a), and 40 CFR §270.1(c), by failing to obtain a permit for storing hazardous wastes; 30 TAC §335.69(a)(1)(B), §335.112(a)(9), and 40 CFR §262.34(a)(1)(ii) and §265.193(a)(1),

by failing to have secondary containment for a wastewater holding tank; and 30 TAC §335.9(a)(1), by failing to maintain records of hazardous wastes generated and shipped off-site; PENALTY: $6,400; ENFORCEMENT COORDINATOR: Faye Liu, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Tuong H. Nguyen dba Express Way Food Store; DOCKET NUMBER: 2001- 0028-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Facility ID Number 0064954; LOCATION: Mesquite, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.242(3)(J) and the Code, §382.085(b), by failing to maintain the Stage II vapor recovery system; 30 TAC §115.245(2) and the Code, §382.085(b), by failing to conduct pressure decay testing annually; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475, by failing to test a line leak detector; and 30 TAC §334.21, by failing to pay the underground storage tank (UST) fees; PENALTY: $5,625; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

(12) COMPANY: FFP Marketing Company, Inc.; DOCKET NUMBER: 2001-0193-AIR-E; IDENTIFIER: Air Account Number EE-1961-R; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: gasoline dispensing station; RULE VIOLATED: 30 TAC §114.100(a) and the Code, §382.085(b), by failing to comply with the 2.7% by weight oxygenated fuel content requirement; PENALTY: $750; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(13) COMPANY: Grand Ranch Treatment Company; DOCKET NUMBER: 2001-0269-MWD- E; IDENTIFIER: TPDES Permit Number 13846-001; LOCATION: Joshua, Johnson County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (5), §319.1, TPDES Permit Number 13846-001, and the Code, §26.121, by failing to comply with the permitted daily average limit of 15 milligrams per liter (mg/L) for total suspended solids (TSS), submit the discharge monitoring reports, comply with permitted single grab sample limit of 60 mg/L for TSS, permitted daily average load limit of 3.8 pounds per day (lbs/day) for TSS, permitted daily average limit of 200 fecal coliform bacteria colonies, and permitted seven day average limit of 400 fecal coliform bacteria colonies; PENALTY: $5,400; ENFORCEMENT COORDINATOR: Gary Shipp, (806) 796-7092; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(14) COMPANY: Harris County Precinct No. 1 - Main Camp; DOCKET NUMBER: 2001- 0030-PWS-E; IDENTIFIER: Air Account Number BL-0421-R; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.117(e)(2) and the Code, §341.0315, by failing to conduct annual reduced lead and copper tap monitoring; PENALTY: $313; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Hart and Cooley, Inc.; DOCKET NUMBER: 2000-1444-AIR-E; IDENTIFIER: Air Account Number EE-2271-T; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: fabricated metal product manufacturing; RULE VIOLATED: 30 TAC §122.121, §122.130(b)(1), and the Code, §382.054 and §382.085(b), by failing to submit an initial abbreviated Federal Operating Permit Application; and 30 TAC §116.110(a) and the Code, §382.0518(a) and §382.085(b), by failing to obtain a permit or satisfy the conditions of a permit by rule for modifications; PENALTY: $4,000; ENFORCEMENT COORDINATOR: Rebecca Cervantes, (915) 834-4949; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(16) COMPANY: Holly Huff Water Supply Corporation; DOCKET NUMBER: 2000-1457- PWS-E; IDENTIFIER: PWS Number 1210004; LOCATION: Jasper, Jasper County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.121(a), by failing to maintain a copy of the chemical and microbiological monitoring plan; 30 TAC §290.46(m) and §290.46(v), by failing to have an adequate maintenance program; 30 TAC §290.43(c)(4), by failing to provide a working water level indicator; 30 TAC §290.45(b)(1)(D)(i) and (v), by failing to provide a total rated well capacity of 0.6 gpm per connection and provide an emergency power supply or interconnection to another public water system; and 30 TAC §290.41(c)(1)(F), by failing to secure and record sanitary well easements; PENALTY: $1,488; ENFORCEMENT COORDINATOR: Laura Clark, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(17) COMPANY: Hope Center Youth and Family Services; DOCKET NUMBER: 2000-0941- MWD-E; IDENTIFIER: TPDES Permit Number 11943-001; LOCATION: Groveton, Trinity County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), (5), and (11)(B) and (C), §319.7(a), (c), and (d), and TPDES Permit Number 11943-001, by failing to ensure that all systems of collection, treatment, and disposal are properly operated and maintained; submit effluent reports; report, in writing, any effluent violation; record and maintain records of calibration for the pH meter; meet minimum permit effluent limits; meet the minimum dissolved oxygen (DO) permit limit of four mg/L and the minimum chlorine residual permit limit of one mg/L; properly record results of chlorine residuals; have an effluent flow measuring device; and properly report results of chlorine residual analysis; PENALTY: $5,625; ENFORCEMENT COORDINATOR: Susan Kelly, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(18) COMPANY: Mr. Javier Tapia dba J.T. Dairy; DOCKET NUMBER: 2001-0328-AGR-E; IDENTIFIER: Enforcement Identification Number 16089; LOCATION: San Angelo, Tom Green County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §321.31(a) and the Code, §26.121, by failing to prevent the discharge of waste and wastewater; and 30 TAC §321.33(e), by failing to locate, construct, and manage waste control facilities; PENALTY: $4,800; ENFORCEMENT COORDINATOR: Mark Newman, (915) 655-9479; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(19) COMPANY: Knightco Company dba Superior Lubricants; DOCKET NUMBER: 2001- 0182-PST-E; IDENTIFIER: PST Facility Identification Number 0033904; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: gasoline service station; RULE VIOLATED: 30 TAC §115.245(2) and the Code, §382.085(b), by failing to perform an annual pressure decay test; PENALTY: $1,000; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

(20) COMPANY: KO Steel Foundry and Machine Company, A Division of TIC United Corporation; DOCKET NUMBER: 2001-0073-AIR-E; IDENTIFIER: Air Account Number BG-0112-O; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: foundry; RULE VIOLATED: 30 TAC §101.10 and the Code, §382.085(b), by failing to submit an emissions inventory questionnaire; PENALTY: $1,000; ENFORCEMENT COORDINATOR:

Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490- 3096.

(21) COMPANY: Lake Livingston Water and Sewer Service Corporation; DOCKET NUMBER: 2000-1399-PWS-E; IDENTIFIER: PWS Numbers 2040009 and 1870137; LOCATION: Shepherd, San Jacinto County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.43(d)(3) and (e), and §290.46(m), by failing to provide the pressure tank with a device for determining the air-water-volume ratio, maintain the intruder-resistant fence, and the general appearance of the tanks; 30 TAC §290.45(b)(1)(C)(i), (ii), (iii), and (iv), by failing to provide a well capacity of 0.6 gpm per connection, provide a total storage capacity of 200 gallons per connection, provide two or more service pumps having a total capacity of two gpm per connection, and a pressure tank capacity of 20 gallons per connection; and 30 TAC §290.46(u) and (v), and the Code, §76.1004(a), by failing to plug or repair to a non-deteriorated condition the out-of-service well and install wiring at well numbers one and two in securely mounted conduit; PENALTY: $2,063; ENFORCEMENT COORDINATOR: Laura Clark, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(22) COMPANY: Lasco Bathware, Inc.; DOCKET NUMBER: 2000-1446-AIR-E; IDENTIFIER: Air Account Number DB-0976-P; LOCATION: Lancaster, Dallas County, Texas; TYPE OF FACILITY: fiberglass bathware; RULE VIOLATED: 30 TAC §116.116(a) and the Code, §382.085(b), by failing to properly install the filters in the fiberglass area; 30 TAC §101.6(a)(1)(A) and the Code, §382.085(b), by failing to determine whether an upset is a reportable quantity; and 30 TAC §116.115(c), Permit Number 9519, and the Code, §382.085(b), by failing to maintain the facility operation within the maximum allowable emission rate table limit; PENALTY: $35,000; ENFORCEMENT COORDINATOR: Wendy Cooper, (817) 588-5800; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588- 5800.

(23) COMPANY: City of Lexington; DOCKET NUMBER: 2001-0292-MWD-E; IDENTIFIER: TPDES Permit Number 10016-001 and Environmental Protection Agency Identification Number TX0054429; LOCATION: Lexington, Lee County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10016-001, and the Code, §26.121, by failing to comply with permit limits for five-day biochemical oxygen demand (BOD), pH, and TSS; PENALTY: $1,200; ENFORCEMENT COORDINATOR: Jaime Garza, (915) 425-6010; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(24) COMPANY: Roy Martini dba Roy Martini Special Services; DOCKET NUMBER: 2001- 0102-MSW-E; IDENTIFIER: Unauthorized Facility Number 45514010; LOCATION: Robstown, Nueces County, Texas; TYPE OF FACILITY: municipal solid waste; RULE VIOLATED: 30 TAC §330.4, §330.5, and the Code, §26.121, by failing to obtain authorization or a permit prior to accepting municipal solid waste; 30 TAC §328.57(c)(1) and (3), by failing to obtain a scrap tire transporter registration and transport scrap tires to an authorized tire facility; and 30 TAC §328.60(a), by failing to obtain a scrap tire storage facility registration prior to transporting more than 500 scrap tires; PENALTY: $3,200; ENFORCEMENT COORDINATOR: Carol McGrath, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(25) COMPANY: Matheson Tri-Gas, Inc.; DOCKET NUMBER: 2001-0048-AIR-E; IDENTIFIER: Air Account Number HG-1436-O; LOCATION: La Porte, Harris County, Texas; TYPE OF FACILITY: transfilling, various gas mixture manufacturing, and residual gas treatment RULE VIOLATED: 30 TAC §116.110(a)(1) and (4), and the Code, §382.085(b), by failing to obtain a permit for storage, transfilling, and disposal of chemicals and satisfy the conditions for facilities permitted by rule; PENALTY: $4,800; ENFORCEMENT COORDINATOR: Trina Lewison, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(26) COMPANY: McKinney Crushing Company, Incorporated; DOCKET NUMBER: 2000- 1164-AIR-E; IDENTIFIER: Air Account Number 90-0168-O; LOCATION: Terrell, Kaufman County, Texas; TYPE OF FACILITY: rock crusher; RULE VIOLATED: 30 TAC §116.115(b) and (c), Permit Number 168L, and the Code, §382.085(b), by failing to operate and maintain spray arms on the crusher and water stockpiles and roads of the plant as necessary to achieve maximum control of the dust; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Carl Schnitz, (512) 239-1892; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

(27) COMPANY: Paul H. Krebs dba Roving Meadows Utilities Wastewater Treatment Facilities; DOCKET NUMBER: 2001-0013-MWD-E; IDENTIFIER: TPDES Permit Number 12691-001; LOCATION: Baytown, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 12691-001, and the Code, §26.121, by failing to comply with the permitted daily average concentration limit of 15.0 mg/L, single grab limit of 60.0 mg/L, and the daily average loading limit of 2.8 pounds per day for TSS, correctly calculate and report TSS and BOD daily average concentration and daily average loading values; PENALTY: $4,375; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767- 3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(28) COMPANY: Bennard Rowland dba Rowland Dusters; DOCKET NUMBER: 2000-0834- PST-E; IDENTIFIER: PST Facility Identification Number 15260; LOCATION: Lasara, Willacy County, Texas; TYPE OF FACILITY: crop dusting; RULE VIOLATED: 30 TAC §334.6 and §334.55(a) and (e), by failing to provide notification of construction activities prior to initiating the permanent abandonment of USTs in-place, have qualified personnel conduct the construction activities, and empty the USTs of residue or residual vapors, and conduct a site assessment; 30 TAC §334.10(b)(1)(A), by failing to develop and maintain all records; 30 TAC §334.49(a) and the Code, §26.3475, by failing to equip the UST system with corrosion protection; 30 TAC §334.50(a)(1)(A) and the Code, §26.3475, by failing to provide a release detection method; 30 TAC §334.51(b)(2) and the Code, §26.3475, by failing to equip the UST system with tight-fill fitting, spill containment, and overfill protection equipment; and 30 TAC §334.93(a)(2) and (b)(1), by failing to demonstrate financial responsibility for taking corrective action; PENALTY: $9,600; ENFORCEMENT COORDINATOR: Sandra Hernandez, (915) 425-6010; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (915) 425-6010.

(29) COMPANY: SANIN, Inc.; DOCKET NUMBER: 1999-1407-PST-E; IDENTIFIER: PST Facility Identification Number 0029667; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: underground storage tank; RULE VIOLATED: 30 TAC §334.50(a)(1)(A) and the Code, §26.3475, by failing to provide a method of release detection; 30 TAC §334.49(a)(2) and (3), and the Code, §26.3475, by failing to operate a corrosion protection system and maintain corrosion protection records; and 30 TAC §334.93, by failing to demonstrate, at the time of inspection, the necessary financial responsibility for taking corrective action; PENALTY: $8,500; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(30) COMPANY: The Sherwin-Williams Company; DOCKET NUMBER: 2001-0010-AIR-E; IDENTIFIER: Air Account Number DB-0728-N; LOCATION: Garland, Dallas County, Texas; TYPE OF FACILITY: paint manufacturing; RULE VIOLATED: 30 TAC §122.130(c)(2), §122.121, and the Code, §382.054 and §382.085(b), by failing to submit a Title V operating permit application and continuing to operate; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Bill Davis, (512) 239-6793; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

(31) COMPANY: Southern Montgomery County Municipal Utility District; DOCKET NUMBER: 2000-1124-MWD-E; IDENTIFIER: TPDES Permit Number 11001-001; LOCATION: Spring, Montgomery County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §§305.125(1), 319.7(a), 325.2(a), TPDES Permit Number 11001-001, and the Code, §26.121, by failing to prevent the unauthorized discharge of raw sewage, identify the individual who collected samples and made measurements, and prevent an uncertified individual from operating the facility; and 30 TAC §319.302(c) and the Code, §26.039(e), by failing to notify the local media of a sewage spill; PENALTY: $13,200; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(32) COMPANY: Starward Realty and Development, Inc. dba Sunchase Subdivision Water Supply; DOCKET NUMBER: 2000-0767-PWS-E; IDENTIFIER: PWS Number 1230083; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.120(h)(4), by failing to conduct a corrosion control study; and 30 TAC §291.76 and the Code, §5.235(n), by failing to pay the regulatory assessment fees; PENALTY: $313; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(33) COMPANY: Stoney Point Agricorp, Inc.; DOCKET NUMBER: 2000-1229-AGR-E; IDENTIFIER: TPDES Permit Number 003681-000 (expired); LOCATION: Covington, Hill County, Texas; TYPE OF FACILITY: cattle feedlot; RULE VIOLATED: 30 TAC §321.34(e), §321.33(f), and the Code, §26.121(c), by failing to submit an application for renewal and continuing to operate; PENALTY: $0; ENFORCEMENT COORDINATOR: James Jackson, (254) 751-0335; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(34) COMPANY: Structural Metals, Inc.; DOCKET NUMBER: 2000-1048-AIR-E; IDENTIFIER: Air Account Number GL-0028-H and Air Permit Number 37740; LOCATION: Seguin, Guadalupe County, Texas; TYPE OF FACILITY: electric arc furnace; RULE VIOLATED: 30 TAC §122.121 and the Code, §382.054, by failing to stop operation of a unit having major emissions of sulfur dioxide; 30 TAC §116.115(b)(2)(G), Permit Number 8248, and the Code, §382.085(b), by failing to limit sulfur dioxide emissions from the electric arc furnace; 30 TAC §113.615(2) and the Code, §382.085(b), by failing to obtain permit authorization to emit large quantities of sulfur dioxide; and 30 TAC §122.136(b) and the Code, §382.085(b), by failing to correct the federal operating permit application within 60 days of discovering that the facility is a major source of sulfur dioxide emissions; PENALTY: $12,000; ENFORCEMENT COORDINATOR: Malcolm Ferris, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(35) COMPANY: The Texas Department of Criminal Justice; DOCKET NUMBER: 2000-1162- MWD-E; IDENTIFIER: TPDES Permit Number 10829-001; LOCATION: Angleton, Brazoria County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10829-001, and the Code, §26.121, by failing to comply with the ammonia-nitrogen daily average permit limit and the DO minimum limit; PENALTY: $850; ENFORCEMENT COORDINATOR: Carl Schnitz, (512) 239-1892; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(36) COMPANY: United Rentals, Inc.; DOCKET NUMBER: 2001-0192-AIR-E; IDENTIFIER: Air Account Number EE-1203-U; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: equipment rental and leasing; RULE VIOLATED: 30 TAC §114.100(a) and the Code, §382.085(b), by failing to comply with the 2.7% by weight oxygenate content requirement during the control period; PENALTY: $1,000; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901- 1206, (915) 834-4949.

TRD-200103001
Paul Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: May 29, 2001

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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 (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 9, 2001**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Comments about the AOs should be sent to the attorney designated for the AO at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 9, 2001**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys 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: City of Little Elm; DOCKET NUMBER: 2000-0023-MWD-E; TNRCC ID NUMBER: TX0053783, 11600-001; LOCATION: 2600 feet east of the intersection of Farm-to- Market Road (FM) 720 and Hart Road, approximately 1000 feet south of FM 720 in Denton County, Texas; TYPE OF FACILITY: municipal wastewater treatment plant; RULES VIOLATED: TWC, §26.121, NPDES

Permit Number TX0053783, and WQ Permit Number 11600-001, by exceeding the biochemical oxygen demand limits, and exceeding the total suspended solids effluent limits; PENALTY: $11,250; STAFF ATTORNEY: Laurel Lindsey, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: Arlington Regional Office, 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

(2) COMPANY: Elhamad Enterprises, Inc. dba Jr's Mini Mart; DOCKET NUMBER: 1999- 1236-PST-E; TNRCC ID NUMBER: 0034001; LOCATION: 2600 E. Belknap, Forth Worth, Tarrant County, Texas; TYPE OF FACILITY: underground petroleum storage tank facility (UST); RULES VIOLATED: §115.222(5) and Texas Health and Safety Code (THSC), §382.085(b), by failing to have a pressure vacuum relief valve at the top of each vent pipe; §334.48(c), by failing to perform inventory control procedures for the UST system; §334.50(a)(1)(A), (d)(1)(B)(ii) and (iii)(1), by failing to provide a method of leak detection, failing to provide records indicating inventory control is being reconciled each month, and failing to provide documentation indicating that volume measurements are recorded each day; §334.51(b)(2)(B) and (C), by failing to provide a spill container/catchment basin at each UST fill tube and install an automatic shut off valve or other device at each UST; §334.93(a) and (b), by failing to provide documentation of corrective action and third party liability insurance; PENALTY: $19,500; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Arlington Regional Office, 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

(3) COMPANY: Joe Hamilton dba Keg Korner; DOCKET NUMBER: 1999-0443-PST-E; TNRCC ID NUMBER: 71627; LOCATION: intersection of FM 1476 and FM 1496, Proctor, Comanche County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: §334.7(a)(1) and TWC, §26.346(a), by failing to register with the Commission, on authorized forms, underground storage tanks (UST); §§334.401(a), 334.414, and 334.55(a)(3), by failing to have the permanent removal from service of a UST conducted by a qualified person possessing the required license or certification; by failing to utilize a contractor registered with the Commission for the permanent removal; by failing to utilize a licensed installer or on-site supervisor for the permanent removal; and by failing to complete the permanent removal from service of a UST system in a manner designed to minimize the risks to human health and safety or the environment; §334.55(a)(6) and (e), by failing to conduct a site assessment in response to the permanent removal from service of a UST system; §334.55(b)(4)(A), by failing to transport a tank from the removal site within 24 hours of removal; §334.21, by failing to pay the required annual UST registration fees; PENALTY: $13,500; STAFF ATTORNEY: Elisa Roberts, Litigation Division, MC R-4, (817) 588-5877; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Blvd., Abilene, Texas 79602-7833, (915) 698-9674.

(4) COMPANY: Steves & Sons, Incorporated; DOCKET NUMBER: 1999-0699-AIR-E; TNRCC ID NUMBER: BG-0214-F; LOCATION: 203 Humble Avenue, San Antonio, Bexar County, Texas; TYPE OF FACILITY: wood door manufacturing operation plant; RULES VIOLATED: §101.4 and THSC, §382.085(a) and (b), by failing to maintain abatement equipment thereby causing a nuisance condition, specifically, accidentally allowed sawdust emissions in such concentration and of such duration as to interfere with the normal use and enjoyment of animal life, vegetation, or property; §101.4 and THSC. §382.085(a) and (b), by failing to maintain abatement equipment thereby causing a nuisance condition, specifically, when an employee mistakenly opened the hopper of the sawdust collection system, which allowed sawdust to spill to the floor and disperse offsite during cleanup in such concentration and of such duration as to interfere with the normal use and enjoyment of animal life, vegetation, or property; PENALTY: $4,375; STAFF ATTORNEY: Joshua M. Olszewski, Litigation Division, MC 175, (512) 239-3400; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Rd., San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-200103009
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: May 29, 2001

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Notice of Public Hearing

The Texas Natural Resource Conservation Commission will conduct a public hearing to receive comments concerning amendments to 30 TAC Chapter 115, Subchapters B, D, E, and F concerning Control of Air Pollution from Volatile Organic Compounds (VOC) and a revision to the state implementation plan (SIP) under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Subchapter B, Chapter 2001; and 40 Code of Federal Regulations, §51.102 of the United States Environmental Protection Agency regulations concerning SIPs. These subchapters will be submitted as a revision to the SIP.

The rule amendments are a staff initiative needed to implement regulatory reform so that the rules are free of technical and typographical errors and are more clear and easy to read. The amendments are also needed to add clarifications consistent with rule interpretations made by the commission's Air Rule Interpretation Team into the rules. The new recordkeeping requirement is needed so that staff can determine compliance with an exemption for certain operations in Gregg, Nueces, and Victoria Counties.

A public hearing on the proposal will be held July 3, 2001, at 10:00 a.m. in Room 2210 of Texas Natural Resource Conservation Commission, Building F, 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 Ms. Angela Slupe, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087; or by fax at (512) 239-4808. All comments must be received on July 9, 2001, and should reference Rule Log No. 2001-005-115-AI. Comments received by 5:00 p.m. on that date will be considered by the commission before any final action on the proposal. For further information, please contact Ms. Jill Burditt at (512) 239-0560.

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-200102965
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: May 24, 2001

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Notice of Public Hearings

The Texas Natural Resource Conservation Commission (commission) will conduct public hearings to receive testimony regarding revisions to 30 TAC Chapters 101, 114 and 117, and to the state implementation plan (SIP) under the requirements of the Texas Health and Safety Code, §382.017; Texas Government Code, Subchapter B, Chapter 2001; and 40 Code of Federal Regulations, §51.102, of the United States Environmental Protection Agency (EPA) regulations concerning SIPs. The revisions concern the attainment demonstration for the Houston/Galveston (HGA) ozone nonattainment area.

The proposed SIP revision for the HGA ozone nonattainment area contains transportation conformity budgets, rate-of-progress tables, control strategies (including reduction of emissions resulting from permitting of facilities which are exempted under Texas Health and Safety Code §382.0518(g)), and the layout of the mid-course review process. The multi-part mid-course review process includes a thorough evaluation of all modeling, inventory data, and other tools used to develop the attainment demonstration, as well as an ongoing assessment of scientific studies, new technologies, and ideas to incorporate into the plan. The proposed changes to Chapter 114 and the SIP would: 1) change the idling restriction rules clarifying that the operator of a rented or leased vehicle is responsible for compliance with the requirements of Chapter 114 in situations where the operator of a leased or rented vehicle is not employed by the owner of the vehicle; and 2) limit implementation of the low emission diesel fuel control strategy for on-road fuel and non-road fuel to the four-county Dallas/Fort Worth nonattainment area, the eight-county HGA nonattainment area, the three-county Beaumont/Port Arthur nonattainment area, and the 95-county central and eastern Texas region to be able to demonstrate and maintain attainment with the ozone national ambient air quality standard. The proposed amendments and new section would modify the existing May 1, 2002 program compliance dates so that they occur in 2005 and would allow for alternative emission reduction plans.

The proposed changes to Chapter 117 and the SIP would: 1) decrease the nitrogen oxide (NO_x) emission reductions required from electric utilities; 2) amend the schedule for the Emission Specifications for Attainment Demonstration for non-utility facilities with NO_x emissions; 3) provide for a possible alternative strategy to be implemented that will reduce the maximum amount of NO_x emission reductions required from point sources; 4) clarify the utility rules emission inventory baseline; 5) clarify the calculation of the maximum heat rate for cogeneration units; 6) add an emission specification for the attainment demonstration for stationary gas turbines and duct burners at minor sources of NO_x in HGA; 7) add flexibility to the HGA system cap requirements by allowing trading among owners under the system cap trading program on a daily or 30-day rolling average basis; 8) add flexibility for reciprocating engines fired by landfill gas; 9) add requirements to achieve the intended emission reductions of the program; 10) require stationary diesel and dual-fuel fired engines to meet new emission specifications in the HGA area; and 11) delete the exemption for certain small electric generating units.

The proposed changes to Chapter 101 and the SIP would: 1) state that level of activity for allowance determination applies to facilities and remove the requirement that level of activity relates directly to economic output or emission rate; 2) specify that only an owner or operator may certify emission reductions as emission credits; 3) allow additional time for requests for deviations from allowance allocation methods; 4) allow an additional 30 days for balancing compliance accounts; 5) allow owners or operators receiving allowances to sell allowances permanently; 6) remove the requirement that a mobile emission reduction credit be surplus when it is used; 7) disallow temporary shutdowns as sources of credits; 8) require executive director approval prior to use of emission credits; 9) correct obsolete rule citations; 10) require the executive director to conduct audits of the cap and trade program and make annual reports on the program available to the public and the EPA; 11) revise the discrete emission reduction credit discount schedule as it relates to the cap and trade program; and 12) amend the reduction and compliance schedule for non-utility facilities with NO_x emissions.

Public hearings on these proposed revisions will be held at the following times and locations: June 13, 2001, 6:00 p.m., Galveston City Council Chambers, Room 200, 823 Rosenberg, Galveston; June 14, 2001, 10:00 a.m., Rosenberg Civic and Convention Center, Room C, 3825 Highway 36 South, Rosenberg; June 14, 2001, 6:00 p.m., Houston City Hall Council Chambers, 2nd Floor, 901 Bagby, Houston; and June 15, 2001, 10:00 a.m., Texas Natural Resource Conservation Commission, Building E, Room 201S, 12100 North I-35, Austin; and July 2, 2001, 6:00 p.m., Houston City Hall Council Chambers, 2nd Floor, 901 Bagby, Houston. Notices for the June 13 - 15 hearings were published in the Fort Worth Star-Telegram, Houston Chronicle, Longview News-Journal, and San Antonio Express-News on May 11, 2001 and in the Austin American Statesman and Beaumont Enterprise on May 12, 2001.

The hearings are structured for the receipt of oral or written comments by interested persons. Registration will begin one hour prior to each hearing. Individuals may present oral statements when called upon in order of registration. A four-minute time limit will be established at each hearing to assure that enough time is allowed for every interested person to speak. Open discussion will not occur during the hearings; however, agency staff members will be available to discuss the proposal one hour before the hearings, and will answer questions before and after the hearings.

Written comments may be submitted to Heather Evans, Office of Environmental Policy, Analysis, and Assessment, MC 206, P.O. Box 13087, Austin, Texas 78711-3087; faxed to (512) 239- 4808; or emailed to *siprules@tnrcc.state.tx.us*. The public comment period will close at 5:00 p.m. on July 2, 2001, although written comments submitted at the July 2, 2001 hearing will be accepted. On May 10, 2001, the commission proposed changes to Chapters 114, 117, and to the SIP which were made available on the commission's web site and which were the subject of newspaper notices as listed above. Subsequently, on May 30, 2001 the commission proposed changes to Chapters 101, 117 and the SIP. The latest versions of all of the proposed rules in Chapters 101, 114 and 117 and the SIP revision were placed on the commission's web site on May 30, 2001 and are available at *http://www.tnrcc.state.tx.us/oprd/sips/houston.html*.

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

TRD-200103034
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: May 30, 2001

Notice of Water Quality Applications

The following notices were issued during the period of May 14, 2001 through May 23, 2001.

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, Mail Code 105, PO Box 13087, Austin Texas 78711-3087,

WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

CITY OF BECKVILLE has applied for a renewal of TPDES Permit No. 10718-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 140,000 gallons per day. The facility is located approximately 0.6 mile southeast of the intersection of State Highway 149 and Farm-to-Market Road 124, adjacent to Wall Branch, south of the City of Beckville in Panola County, Texas.

CITY OF CADDO MILLS has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit No. TX0024970 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 10425-001. The draft permit 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 0.7 mile south of the intersection of State Highway 60 and Farm to Market Road 36 in Hunt County, Texas.

CAPITOL AREA BOY SCOUTS COUNCIL, INC., BOY SCOUTS OF AMERICA has applied for a new permit, Proposed Permit No. 14187-001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 23,795 gallons per day via subsurface drainfields with a minimum area of 85,334 square feet. This notice corrects the requested flow stated in the Notice of Receipt of Application and Intent to Obtain a Water Quality Permit. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are on a 541-acre tract located along Farm-to-Market Road 1441 nearly 3.5 miles east of its intersection with State Highway 95, between U.S. Highway 290 and State Highway 71, approximately 5 miles north of Bastrop along State Highway 95 in Bastrop County, Texas.

CITY OF COPPERAS COVE has applied for a major amendment to TPDES Permit No. 10045- 005 to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 3,050,000 gallons per day to an annual average flow not to exceed 4,000,000 gallons per day. The facility is located north of the City of Copperas Cove adjacent to the west side of Farm-to-Market Road 116 at a point approximately 1.8 miles north of the intersection of Farm-to- Market Road 116 and Farm-to-Market Road 1113 in Coryell County, Texas.

CITY OF CUMBY, has applied for a renewal of TNRCC Permit No. 13792-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 120,000 gallons per day. The facility is located approximately 2000 feet east of the intersection of Interstate Highway 30 and Farm-to-Market Road 275 on the east side of the City of Cumby along the south side of the Louisiana and Arkansas Railroad in Hopkins County, Texas.

EXCEL CORPORATION which operates a slaughter house, beef packing plant, and rendering facility has applied for a major amendment to Permit No. 01350 to authorize an increase in the irrigation area from 1,445 acres to 2,865 acres. The current permit authorizes the disposal of process wastewater, utility wastewater, and domestic wastewater at an application rate not to exceed 4.2 acre feet/acre/year via irrigation of 1,445 acres and the disposal of brine and pickling wastewater at a daily average flow not to exceed 21,000 gallons per day via evaporation. This permit will not authorize a discharge of pollutants into waters in the State. The facility is located immediately south of U.S. Highway 60 and the Santa Fe Railroad, approximately 3.3 miles southwest of the City of Friona, Parmer County, Texas.

CITY OF FARWELL has applied for a major amendment to Permit No. 10661-001, to authorize an increase in the daily average flow from 147,000 gallons per day to 185,000 gallons per day and to increase the acreage irrigated from 33 acres to 34 acres of agricultural non-public access land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 1/4 mile east of the City of Farwell and immediately north of the Panhandle and Santa Fe Railroad in Parmer County, Texas.

CITY OF GEORGETOWN has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new permit, Proposed Permit No. 14232-001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day via surface irrigation of 100 acres of golf course. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 5.8 miles west of Interstate Highway 35 and 1.05 miles north of State Highway 29 in Williamson County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 17 has applied for a major amendment to TNRCC Permit No. 11917-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 450,000 gallons per day to a daily average flow not to exceed 700,000 gallons per day. The facility is located on the south bank of South Mayde Creek approximately 4000 feet east of the intersection of Elrod and Morton Roads in Harris County, Texas.

HUNTSMAN PETROCHEMICAL CORPORATION which operates a pertochemical manufacturing plant, has applied for a renewal of TNRCC Permit No. 00584 which authorizes the discharge of process wastewater , cooling tower blowdown, broiler blowdown, demineralizer blowdown, sanitary wastewater and storm water at a daily average flow not to exceed 617,000 gallons per day via outfall 001: and storm water on an intermittent and flow variable basis via outfall 002. The facility is located approximately five miles east of the Cit of Conroe: approximately 0.25 miles south of Farm-to-Market Road 1485: and approximately 0.5 miles west of the City of Cut-N-Shoot, Montgomery County, Texas.

JIM NED CONSOLIDATED INDEPENDENT SCHOOL DISTRICT has applied for a renewal of Permit No. 11908-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 5,000 gallons per day via evaporation with two (2) 0.35 acre ponds. The facility and disposal site are located north of the intersection of Avenue E and Fourth Street in Lawn in Taylor County, Texas.

CITY OF LA COSTE has applied for a renewal of TPDES Permit No. 10889-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located at the easterly city limits of the City of La Coste, approximately 0.5 mile east-southeast of the intersection of Farm-to-Market Road 471 and Farm-to- Market Road 2790, 0.30 mile due south of the Southern Pacific Railroad in Medina County, Texas.

MAHARD EGG FARMS, INC. has applied to the TNRCC for a new permit, Proposed Permit No. 04043 to authorize the disposal of process wastewater at a daily average flow not to exceed 4000 gallons per day via evaporation and irrigation etc. of 80 acres. The applicant proposes to operate an egg farm. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal area are located approximately 1.6 miles north of the intersection of County Road 90N and Texas Farm-to-Market Road 2379, on the east side of County Road 90N, Wilbarger County, Texas. The plant site and disposal area are located in the drainage basin of , in Segment No. 0206, of the Red River Above Pease River.

CITY OF NACOGDOCHES has applied for a renewal of TNRCC Permit No. 10342-004, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 12,880,000 gallons

per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 12,880,000 gallons per day. The applicant has also applied to the TNRCC for approval of a substantial modification to its pretreatment program under the TPDES program. The facility is located on the east side of Bayou La Nana between Farm-to-Market Road 1275 and Farm-to-Market Road 2863 in Nacogdoches County, Texas.

CITY OF OMAHA has applied for a renewal of TNRCC Permit No. 10239-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located approximately 2,800 feet southwest of the intersection of U.S. Highways 67 and 259 in Morris County, Texas.

RIO GRANDE VALLEY SUGAR GROWERS, INC. has applied for a renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit No. TX0032905 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 01752. The draft permit authorizes the discharge of process wastewater, domestic wastewater, and stormwater at a daily average flow not to exceed 0.289 gallons per day via Outfall 001 and the disposal of partially treated wastewater via irrigation of 2000 acres. The applicant operates a raw sugar and molasses production facility. The plant site is located three miles west of the community of Santa Rosa on State Highway 107 in Hidalgo County, Texas.

CITY OF SAN ANGELO has applied for renewal of an existing filter backwash water permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit No. TX0002178 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 10641-001. The draft permit authorizes the discharge of filter backwash water at a daily average flow not to exceed 400,000 gallons per day. The plant site is located at Avenue I and Metcalf Street in the City of San Angelo in Tom Green County, Texas.

SAN YGNACIO MUNICIPAL UTILITY DISTRICT has applied for a renewal of Permit No. 13383-001 to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 0.194 million gallons per day via irrigation of 72 acres of pastureland. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal site are located approximately 2.2 miles north-northeast of the intersection of U.S. Highway 83 and Farm-to-Market Road 3169 at San Ygnacio in Zapata County, Texas.

STEAG POWER which proposes to operate the Brazos Valley Electric Generating Facility, a combined cycle electric power generating station, has applied for a major amendment to TPDES Permit No. 04258 to authorize an increase in the discharge of low volume wastewater, process area storm water, and previously monitored effluent (cooling tower blowdown) from a daily average flow not to exceed 700,000 gallons per day to a daily average flow not to exceed 10,000,000 gallons per day via Outfall 001; to authorize the increase of effluent limitations for total dissolved solids, chlorides, and sulfates at Outfall 001; and to relocate Outfall 001. The applicant has also requested additional amendments requests were not addressed in the Notice of Receipt of Application and Intent to Obtain a Water Quality Permit which include the relocation of total suspended solids and oil and grease monitoring requirements and limitations from Outfall 001 to internal Outfalls 201 and 301, and the removal of metal cleaning wastes and associated limitations at Outfall 201 which will now be disposed off-site. The current permit authorizes the discharge of low volume wastewater, process area storm water, and previously monitored effluent from Outfalls 101 and 201 (cooling tower blowdown and metal cleaning waste) at a daily average flow not to exceed 700,000 gallons per day via Outfall 001, and storm water on an intermittent and flow variable basis via Outfall 002. The facility is located at the intersection of Rabbs Prairie Road, Smithers Lake Road, and Lockwood Road, approximately two miles southwest of the City of Thompsons, Fort Bend County, Texas.

CITY OF TOLAR has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14233-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located approximately 1/5 mile west of Farm-to-Market Road 201 and 1/4 mile south of U.S. Highway 377 on the south side of Squaw Creek in the City of Tolar in Hood County, Texas. The treated effluent is discharged to Squaw Creek; thence to Squaw Creek Reservoir; thence to Squaw Creek; thence to the Paluxy River/North Paluxy River in Segment No. 1229 of the Brazos River Basin.

UPPER TRINITY REGIONAL WATER DISTRICT has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 10698-002, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. This application was submitted to the TNRCC on September 27, 2000. The facility is located on the south side of the Little Elm Creek branch of Lewisville Lake, approximately 3,000 feet northwest of the intersection of U.S. Highway 380 and Navo Road in Denton County, Texas.

WOODRIDGE LIMITED PARTNERSHIP has applied for a renewal of TPDES Permit No. 13474-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 4,000 gallons per day. The facility is located approximately 1600 feet southeast of the intersection of Farm-to-Market Road 134 and State Highway 43 in Harrison County, Texas.

CITY OF YANTIS has applied for a renewal of TPDES Permit No. 12187-001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 42,000 gallons per day. The facility is located approximately one mile south of the intersection of Farm-to- Market Road 17 and State Highway 154 in Wood County, Texas.

Concentrated Animal Feeding Operation

Written comments and requests for a public meeting may be submitted to the Office of the Chief Clerk, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

ROBERT STEINBERGER Tex-Stein Dairy has applied for TPDES Registration No. 03674 to authorize the applicant to construct a new retention control structure at an existing dairy facility. The facility will expand from a current maximum capacity of 995 head to 1500 head in Archer County, Texas. No discharge of pollutants into the waters in the state is authorized by this registration except under chronic or catastrophic rainfall conditions. The existing facility is located 0.9 miles south of the intersection of U.S. Highway 281 and State Highway 25, on the west side of U.S. Highway 281 in Archer County, Texas.

TRD-200103029
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: May 30, 2001

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Notice of Water Rights Application

Capitol Aggregates, Ltd., P. O. Box 6230, Austin, Texas, 78762, applicant, has submitted Application No. 4025E to amend Water Use Permit No. 3732, as amended, pursuant to Texas Water Code (TWC)

§11.122, and Texas Natural Resource Conservation Commission Rules 30 TAC §§295.1, et seq. Water Use Permit No. 3732, as amended, authorizes the permittee to divert and use not to exceed 4,504 acre-feet of water per annum (with consumptive use of 600 acre-feet per annum) for mining (sand and gravel washing) purposes at a maximum rate of 17.47 cfs (7,840 gpm) from the perimeter of two reservoirs that capture underflow of the Medina River, a tributary of the San Antonio River, San Antonio River Basin in Bexar County. Special Conditions apply as follows: the diversion of 3,304 acre-feet per annum is authorized only when the flow of the Medina River immediately downstream of the most downstream reservoir is at least 20 cfs, the diversion of the remaining 1,200 acre-feet of water is not restricted; permittee shall return at least 87 percent of the diverted water to settling ponds in the project area; and, prior to diversion of water authorized herein, permittee shall contact the South Texas Watermaster.

Permittee seeks to amend Water Use Permit No. 3732, as amended, by adding a diversion point at the Montgomery Road Plant, being Latitude 29.332 degrees N and Longitude 98.754 degrees W, with no changes in water use or diversion rate and removing an existing diversion point at the Pue Road Plant, being Latitude 29.334 degrees N and Longitude 98.699 degrees W.

The application was received on December 27, 2000. The Executive Director reviewed the application and determined it to be administratively complete on April 23, 2001. Pursuant to TAC 295.158, notice will be sent to the five water right holders with diversion points in the Medina River Watershed between the existing and proposed additional diversion point. Should the requested amendment be granted, it will be subject to administrative requirements of the South Texas Watermaster.

Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, by Tuesday, June 19, 2001. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TNRCC may grant a contested case hearing on this application if a written hearing request is filed by Tuesday, June 19, 2001. The Executive Director may approve the application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

TRD-200103030
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: May 30, 2001

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Natural Resource Conservation Commission on May 10, 2001. Executive Director of the Texas Natural Resource Conservation Commission, Petitioner v. William Ince; Respondent; SOAH Docket Number 582-01-2067; TNRCC Docket Number 2000-0101-MSW-E. In the matter to be considered by the Texas Natural Resource Conservation Commission on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 North Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TNRCC, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Doug Kitts, Chief Clerk's Office, (512) 239-3317.

TRD-200102912
Douglas A. Kitts
Agenda Coordinator
Texas Natural Resource Conservation Commission
Filed: May 24, 2001

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Public Hearing Notice

In accordance with the requirements of Texas Government Code, Chapter 2001, Subchapter B, the Texas Natural Resource Conservation Commission (TNRCC or commission) will conduct a public hearing to receive testimony concerning the proposed amendment of 30 TAC Chapter 39, §39.551, Application for Wastewater Discharge Permit, Including Application for the Disposal of Sewage Sludge or Water Treatment Sludge.

The proposed amendment would amend Chapter 39 notice requirements for applicants seeking to discharge storm water and certain non-storm water from municipal separate storm sewer systems under an individual Texas Pollutant Discharge Elimination System permit.

A public hearing on this proposal will be held in Austin on June 25, 2001 at 10:00 a.m., in Building F, Room 3202A at the commission's central office located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Comments may be submitted to Patricia Durón, MC 205, Texas Natural Resource Conservation Commission, Office of Environmental Policy, Analysis, and Assessment, P.O. Box 13087, Austin, Texas 78711-3087, or by fax to (512) 239-4808. All comments should reference Rule Log Number 2000-040-039-AD. Comments must be received by **5:00 p.m.,**

July 9, 2001. For further information, please contact Debi Dyer, Policy and Regulations Division, (512) 239-3972.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

TRD-200102968
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: May 24, 2001

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Texas Department of Protective and Regulatory Services

Request for Proposal - Training and Technical Assistance Services to At-Risk Youth (STAR) Program

The Texas Department of Protective and Regulatory Services (PRS), Division of Prevention and Early Intervention, is soliciting proposals for a service contract to provide training and technical assistance for Services to At-Risk Youth (STAR) program contractors. The Texas Department of Protective and Regulatory Services, hereafter referred to as PRS or the Department, anticipates funding only one contract as a result of this solicitation. The Request for Proposal (RFP) will be released on or about June 5, 2001. The RFP will be posted on the State Internet Site at www.marketplace.state.tx.us on the date of its release.

Brief Description of Services: Services solicited under this RFP include: working closely with PRS staff and STAR contractors to develop training that best meets the needs of STAR contractors; providing training to STAR contractor program delivery staff to increase counseling, clinical, and direct care skills; providing training to STAR contractor administrative staff to increase administrative and program management skills; providing on-site specialized technical assistance and resource materials to individual STAR contractors to ensure compliance with STAR program guidelines and the STAR automated system; maintaining a help desk and automation guide for STAR contractors to ensure appropriate use of the STAR automated system; quarterly publishing and distributing a newsletter to all STAR contractors to provide information that is pertinent to youth- serving agencies; facilitating a one-day annual meeting for STAR contractors; and maintaining a STAR program Internet web site.

The goal of this procurement is to provide technical assistance and training to enhance the skills of administrative, program management, clinical, and other direct care contract staff and PRS staff.

Eligible Applicants: Eligible offerors include private nonprofit and for-profit corporations, cities, counties, partnerships, and individuals. Historically Underutilized Businesses (HUBs), Minority Business and Women's Enterprises, and Small Businesses are encouraged to submit proposals.

Limitations: Total funding of approximately $271,010 is available for September 1, 2001, through August 31, 2002. The funding allocated for the contract resulting from this RFP is dependent on Legislative appropriation. Funding is not guaranteed at the maximum level, or at any level. PRS reserves the right to reject any and all offers received in response to this RFP and to cancel this RFP if it is deemed in the best interest of PRS. PRS also reserves the right to re-procure this service. If no acceptable responses are received, or no contract is entered into as a result of this procurement, PRS intends to procure by non-competitive means in accordance with the law, but without further notice to potential vendors.

Deadline for Proposals, Term of Contract, and Amount of Award: Proposals will be due July 16, 2001, at 2:00 p.m. The effective dates of contracts awarded under this RFP will be September 1, 2001, through August 31, 2002, at a maximum amount of $271,010 for the period. If contracts are renewed, funding will be reviewed annually with prescribed maximum funding levels each year.

Contact Person: Potential offerors may obtain a copy of the RFP on or about June 5, 2001. It is preferred that requests for the RFP be submitted in writing (by mail or fax) to: Jacqueline Gomez, Mail Code E-541; c/o Marilyn Eaton; Texas Department of Protective and Regulatory Services; P.O. Box 149030; Austin, Texas 78714-9030; Fax: (512) 438-2031.

TRD-200102934
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Filed: May 24, 2001

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Public Utility Commission of Texas

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On May 15, 2001, NorthPoint Communications, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60164. Applicant intends to relinquish its SPCOA.

The Application: Application of NorthPoint Communications, Inc. to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 23872.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 no later than June 13, 2001. You may contact the commission's Customer Protection Division at (512) 936-7120. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23872.

TRD-200102982
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 25, 2001

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On May 24, 2001, The Telephone Reconnection, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60139. Applicant intends to relinquish its SPCOA.

The Application: Application of The Telephone Reconnection, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 24161.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 no later than June 13, 2001. You may contact the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24161.

TRD-200102992
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 25, 2001

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Notice of Application for Approval of Depreciation Rate Change

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on May 18, 2001, for approval of an increased depreciation rate of 13.4% for digital switching equipment pursuant to §§52.252 and 53.056 of the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998 & Supplement 2001) (PURA). A summary of the application follows.

Docket Title and Number: Application of Border to Border Communications, Inc. for Increase in Depreciation Rate for Digital Switching Equipment. Docket Number 24127.

The Application: Border to Border Communications, Inc. filed with the Public Utility Commission of Texas (commission) an application for approval of a 13.4% depreciation rate increase on digital switching equipment, effective January 1, 2001.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division 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 or use Relay Texas (toll-free) 1-800-735-2989.

TRD-200103024
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 30, 2001

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on May 23, 2001, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Cypress Communications Operating Company, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 24158 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, and long distance services.

Applicant's requested SPCOA geographic area includes the area of Texas currently served by Southwestern Bell Telephone Company.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 no later than June 13, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200102990
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 25, 2001

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on May 23, 2001, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of GiantLoop Telecom, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 24159 before the Public Utility Commission of Texas.

Applicant intends to provide dedicated and private line fiber optic telecommunications transmission capacity to business customers.

Applicant's requested SPCOA geographic area includes the area of Texas currently served by Southwestern Bell Telephone Company and Verizon Southwest.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 no later than June 13, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200102991
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 25, 2001

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on May 24, 2001, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Steller Communications, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 24163 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, ISDN, HDSL, SDSL, RADSL, VDSL, Optical Services, T1-Private

Line, Switch 56 KBPS, Frame Relay, Fractional T1, long distance, and wireless services.

Applicant's requested SPCOA geographic area includes the area of Texas served by Southwestern Bell Telephone Company and Verizon Southwest in 11 north central Texas counties.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 no later than June 13, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200102993
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 25, 2001

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Notice of Application for Waiver of Reporting Requirements in P.U.C. Substantive Rule §26.465(g)(2)(B)

Notice is given to the public of the filing with the Public Utility Commission of Texas (P.U.C. or commission) of an application on May 23, 2001, for waiver of the requirements of P.U.C. Substantive Rule §26.465(g)(2)(B), regarding access line counting.

Docket Title and Number: Application of Leaco Rural Telephone Cooperative, Inc. (Leaco) for Waiver of Reporting Requirements Imposed by P.U.C. Substantive Rule §26.465(g)(2)(B), Docket Number 24151.

The Application: P.U.C. Substantive Rule §26.465(g)(2)(B) requires certificated telecommunications providers to file with the commission quarterly reports showing the number of access lines within each municipality served by the provider. Applicant reports that it provides service to fifteen access lines exclusively in Texas. According to applicant, the Texas access lines serve residents of Loving County, a county with a declining population and only one town, Mentone, which is not incorporated nor in the service area served by the applicant. Applicant is seeking a good cause exception pursuant to P.U.C. Substantive Rule §26.3, in the belief that the expenditure in time, effort and cost to comply with P.U.C. Substantive Rule §26.465(g)(2)(B) is unduly burdensome and disproportionate in view of the absence of municipal access lines in the applicant's service area in Texas.

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 Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments should reference Docket Number 24151.

TRD-200103000
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 29, 2001

♦ ♦ ♦

Public Notice of Amendment to Interconnection Agreement

On May 22, 2001, Southwestern Bell Telephone Company and Time Warner Telecom of Texas, LP, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 24147. 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 ten 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 24147. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by June 21, 2001, 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, P.O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24147.

TRD-200102989
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 25, 2001

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Public Notice of Amendment to Interconnection Agreement

On May 24, 2001, Southwestern Bell Telephone Company and Mpower Communications Corporation, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 24165. 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 ten 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 24165. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by June 22, 2001, 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, P.O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24165.

TRD-200103017

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: May 29, 2001

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Public Notice of Intent to File Pursuant to P.U.C. Substantive Rule §26.215

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission), of a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.215.

Docket Title and Number. Verizon Southwest's Application for Approval of LRIC Study for CentraNet Numbers Not in Use Pursuant to P.U.C. Substantive Rule §26.215 on or about June 4, 2001, Docket Number 24173.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 24173. Written comments or recommendations should be filed no later than 45 days after the date of sufficiency and should be filed at the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200103019

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: May 29, 2001

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Public Notice of Interconnection Agreement

On May 24, 2001, Coleman County Telephone Cooperative, Inc. and Dobson Cellular Systems, Inc., collectively referred to as applicants, filed a joint application for approval of interconnection agreement and amendment to interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 24164. 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 ten 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 24164. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by June 22, 2001, 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, P.O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24164.

TRD-200103016
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 29, 2001

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Public Notice of Interconnection Agreement

On May 25, 2001, SBC Advanced Solutions, Inc. and DSLnet Communications, LLC, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 24169. 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 ten 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 24169. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by June 22, 2001, 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, P.O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24169.

TRD-200103018
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 29, 2001

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Public Notice of Interconnection Agreement and Amendment Thereto

On May 21, 2001, TCI Telephony Services of Texas, Inc. and Southwestern Bell Telephone Company, collectively referred to as applicants, filed a joint application for approval of an interconnection agreement and amendment thereto under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2001) (PURA). The joint application has been designated Docket Number 24141. 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 ten 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 24141. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by June 21, 2001, 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, P.O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 24141.

TRD-200102988
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 25, 2001

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Public Notice of Workshop-Rulemaking to Address the Provision of Advanced Services By Electing Companies, COA or SPCOA Holders in Rural Service Areas

The Public Utility Commission of Texas (commission) will hold a workshop regarding the provision of advanced services by electing companies, certificate of operating authority (COA) or service provider certificate of operating authority (SPCOA) holders on Tuesday, June 19, 2001, at 9:30 a.m. in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 21175, *Rulemaking to Address the Provision of Advanced Services by Electing Companies, COA or SPCOA Holders in Rural Service Areas*, has been established for this proceeding. No later than June 15, 2001 a staff draft will be made available under this project number in the commission's Central Records Division, located on the ground floor of the William B. Travis Building and on the commission's website at www.puc.state.tx.us/rules/rulemake/21175/21175.cfm.

Questions concerning the workshop or this notice should be referred to Don Ballard, Chief Attorney, Policy Development Division, at (512) 936-7255. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200103015
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: May 29, 2001

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Stephen F. Austin State University

Notice of Availability of Consulting Services Contract

This request for consulting services is filed under the provisions of the Government Code, Chapter 2254.

PURPOSE: Stephen F. Austin State University is seeking consulting services to provide inspection and budget forecasting for all educational and support facility roofs for a period of five years, beginning September 1, 2001 and ending August 31, 2006. Proposed inspection and documentation will provide the following: 1. physical inspection of all campus facility roofs 2. documentation of observed conditions with emphasis on known roof problems, reported leak conditions and preventative maintenance 3. summary of conditions requiring manufacturer warranty notification 4. summary of conditions requiring roof related repair 5. summary of roofs projected for replacement for the fiscal years 2002 through 2006 6. final reports to be presented in CPU Windows 95/98 environment, including building history of roof type, age, construction, flashing type, square footage, insulation, material manufacturer, etc., current conditions, budget forecast of repairs and replacements, roof plans, excel spread sheet, photographs and warranties. Additional roof inspections shall be provided during repair or construction as required by the University, with the price to be negotiated depending on specific requirements for each job.

ELIGIBLE APPLICANTS: All governmental, public, nonprofit private, or for-profit private entities that can demonstrate the expertise necessary to carry out the required consultant services are encouraged to submit proposals.

PROPOSAL FORMAT: Interested parties must submit proposal with the following information: experience, qualifications, cost for inspection services to be provided the first year; subsequent years to be negotiated annually, the name, address, and phone number of the individual assigned to the account, and the vendor identification number/tax identification number of the applicant.

SELECTION CRITERIA: Evaluation will be made by the Director of Purchasing and the Associate Director of Facilities Services based upon evidence of the applicant's knowledge and experience in performing the specified services and costs.

DEADLINES: Proposal must be received in the office of Diana Boubel, Director of Purchasing, PO Box 13030, 2124 Wilson Drive, Nacogdoches, Texas 75962 by June 12, 2001, 5:00 p.m. A decision will be made at the regularly scheduled Board of Regents meeting July, 2001. Contract to be effective September 1, 2001 through August 31, 2006 up to an estimated amount not to exceed $80,000. Please contact Diana Boubel at (936) 468-2206 or John Rulfs at (936) 468-4341 for more information.

TRD-200103006

R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: May 29, 2001

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The Supreme Court of Texas

Notice of Supreme Court of Texas Advisory Council Meeting

Pursuant to Supreme Court of Texas Misc. Docket Order No. 99-9167, the Supreme Court Rules Advisory Committee publishes notice of the following meeting open to the public. The Supreme Court Rules Advisory Committee will meet **June 15, 2001 at 9:00 a.m. and June 16, 2001 at 8:30 a.m. at the State Bar Building, Room 101, 1414 Colorado, Austin Texas, 78701**

The agenda for the meeting includes: (1) call to order; (2) discussion relating to previous advisory committee proposals submitted to the Supreme Court, including discussion of the status of proposals submitted to the Supreme Court relating to changes in the Texas Rules of Civil Procedure, Texas Rules of Appellate Procedure, and the Texas Parental Notification Rules; (3) reports related to proposals to amend, change, or modify the Texas Rules of Civil Procedure and the Texas Rules of Appellate Procedure relating to issues involving the finality of judgments; Texas Rule of Appellate Procedure 47 relating to the issuance and use of appellate opinions; Texas Rule of Appellate Procedure 9 on the types of U.S. mail service which may serve as service of appellate process, that portion of the Parental Notification rules relating to the manner of implementing appeals, and Texas Rule of Civil Procedure 103 relating to the service of citation and process; and (4) other business, including review of public comments or other proposals to amend, change, or modify the rules and procedures for the courts of the state of Texas.

Additional information related to this meeting may be obtained from Chris Griesel, Rules Attorney, at (512) 463-6645 or by e-mail at chris.griesel@courts.state.tx.us. Comments on any rule change proposal, including a rule proposal made at this meeting, may be submitted to: Rules Attorney, Supreme Court of Texas, P.O. Box 12248, Austin , Texas 78711 or by email to chris.griesel@courts.state.tx.us .

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services or others who may need additional assistance are requested contact Chris Griesel at (512) 463-6645 at least two (2) working days before the meeting so that the appropriate arrangements may be made.

TRD-200103040
John T. Adams
Clerk
The Supreme Court of Texas
Filed: May 30, 2001

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Texas A&M University, Board of Regents

Request for Proposal

Texas A&M University System seeks proposals from consulting firms to assist in the assessment, review and policy development of the health needs of communities throughout Texas.

Information can be obtained by contacting Rex Janne, Director of Purchasing Services, Texas A&M University, P.O. Box 30013, College Station, Texas 77842-0013 or e-mail at r-janne@tamu.edu.

Selection criteria will include competence, experience, knowledge, qualification and reasonableness of price. Historically Underutilized Businesses are encouraged to participate in this request for proposal. All things being equal, a preference will be given to a consultant firm whose principal place of business is within the State of Texas. Proposals must be received on or before 2:00 p.m., June 21, 2001.

TRD-200103004
Vickie Burt Spillers
Executive Secretary to the Board
Texas A&M University, Board of Regents
Filed: May 29, 2001

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How to Use the Texas Register

Information Available: The 13 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 26 (2001) is cited as follows: 26 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "26 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 26 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC)*** is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 19, April 13, July 13, and October 12, 2001). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).

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