

# TEXAS REGISTER

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Texas Register, ISSN 0362-4781, is published semi-weekly 100 times a year except July 7, November 10, November 28, and December 29, 1995. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78701. Subscription costs: one year - printed, \$95 and electronic, \$90; six-month printed, \$75 and electronic, \$70. Single copies of most issues are available at \$7 per copy. Material in the Texas Register is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person without permission of the Texas Register Director, provided no such republication shall bear the legend Texas Register or "Official" without the written permission of the director. The Texas Register is published under the Government Code, Title 10, Chapter 2002. Second class postage is paid at Austin, Texas.

POSTMASTER: Please send form 3579 changes to the Texas Register, P.O. Box 13824, Austin, TX 78711-3824.

How to Use the Texas Register

Information Available: The 11 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Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.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.

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.

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 20 (1995) is cited as follows: 20 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 "20 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 20 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.

Texas Administrative Code

The Texas Administrative Code (TAC) is the official 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. West Publishing Company, the official publisher of the TAC, publishes on an annual basis

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 Official TAC also is available on WESTLAW, West's computerized legal research service, in the TX-ADC database.

To purchase printed volumes of the TAC or to inquire about WESTLAW access to the TAC call West: 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 21, April 15, July 12, and October 11, 1994). In its second issue each month the Texas Register contains a cumulative Table of TAC Titles Affected for the preceding month. 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
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The Table of TAC Titles Affected is cumulative for each volume of the Texas Register (calendar year).

Update by FAX: An up-to-date Table of TAC Titles Affected is available by FAX upon request. Please specify the state agency and the TAC number(s) you wish to update. This service is free to Texas Register subscribers. Please have your subscription number ready when you make your request. For non-subscribers there will be a fee of \$2.00 per page (VISA, MasterCard). (512) 463-5561.

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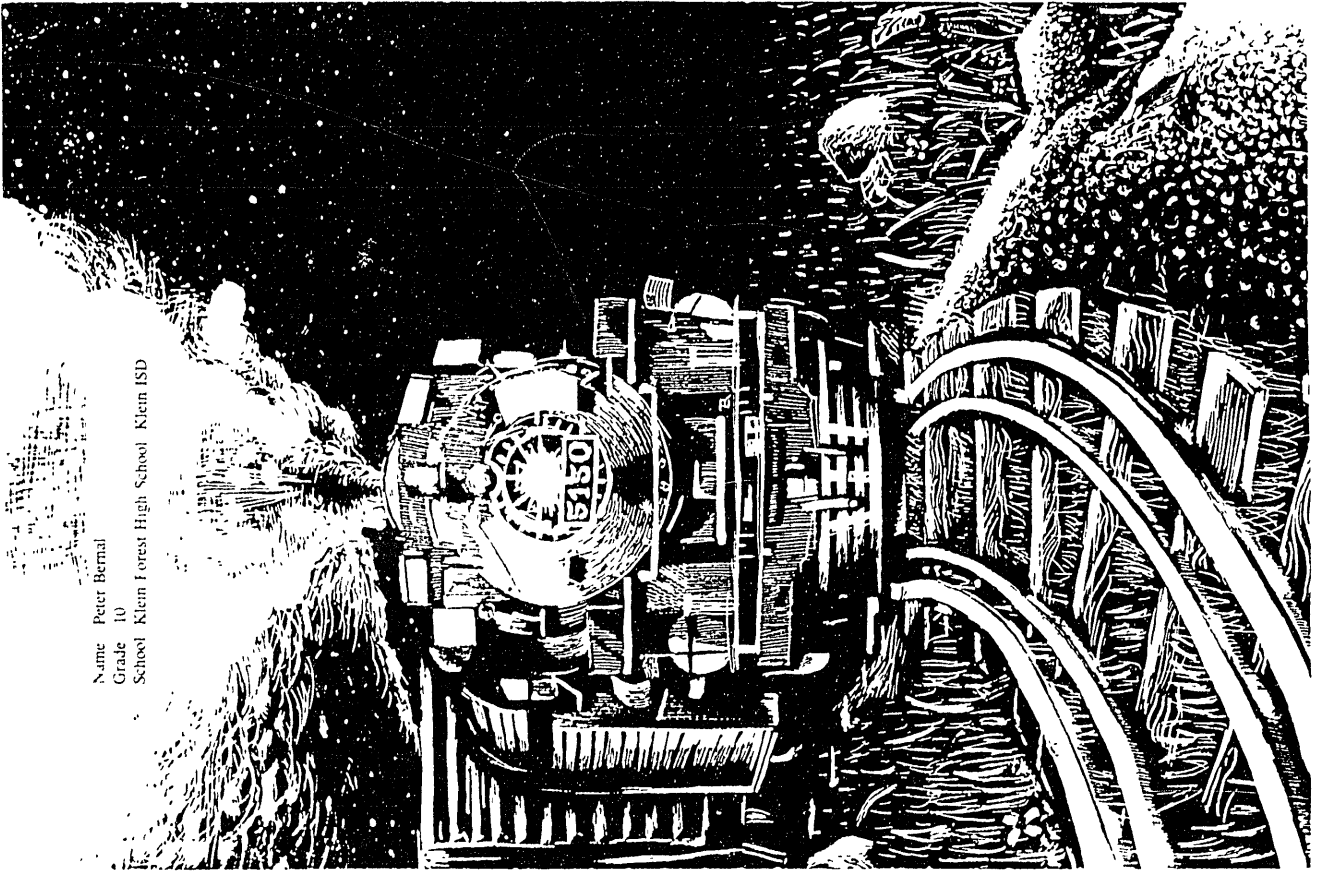
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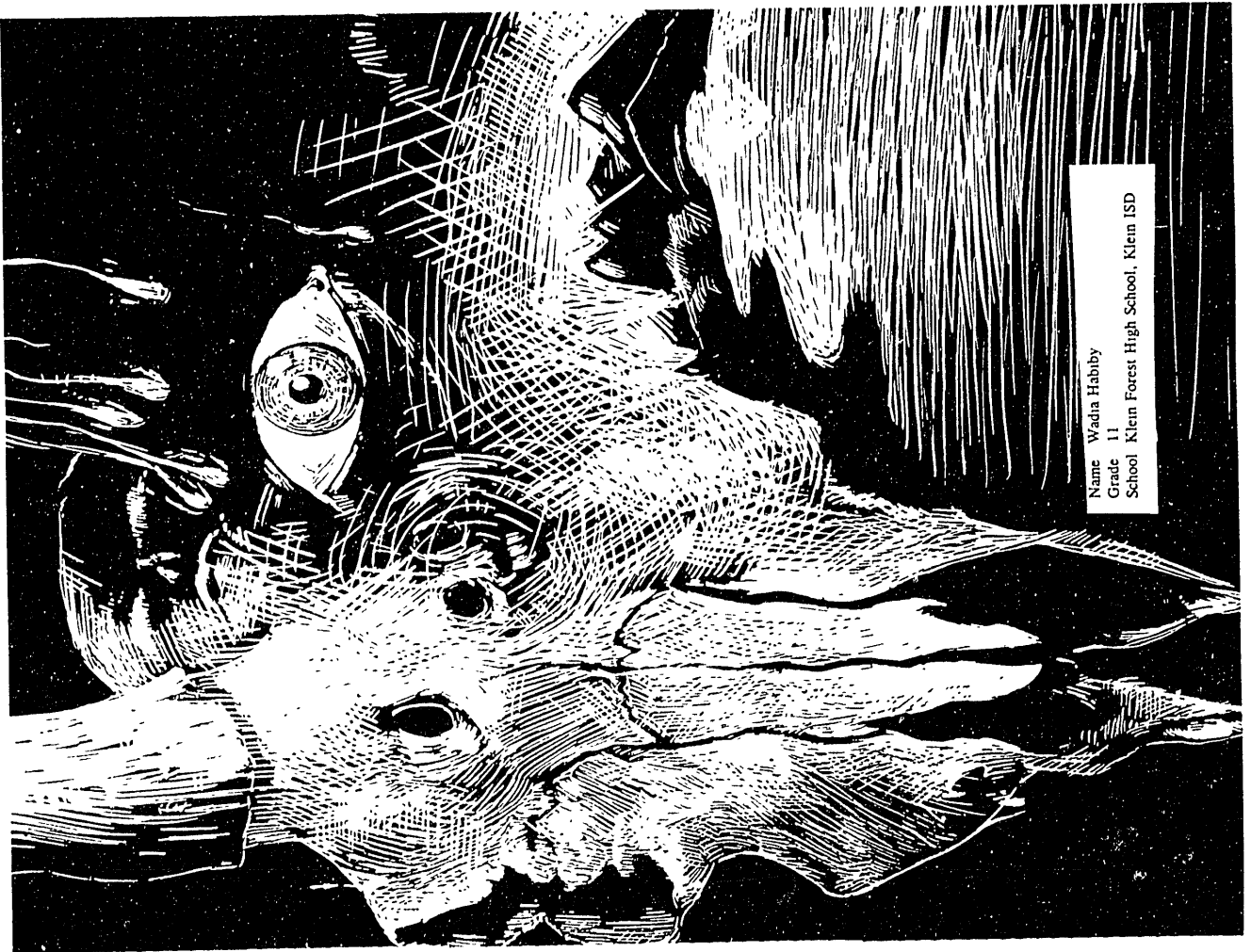
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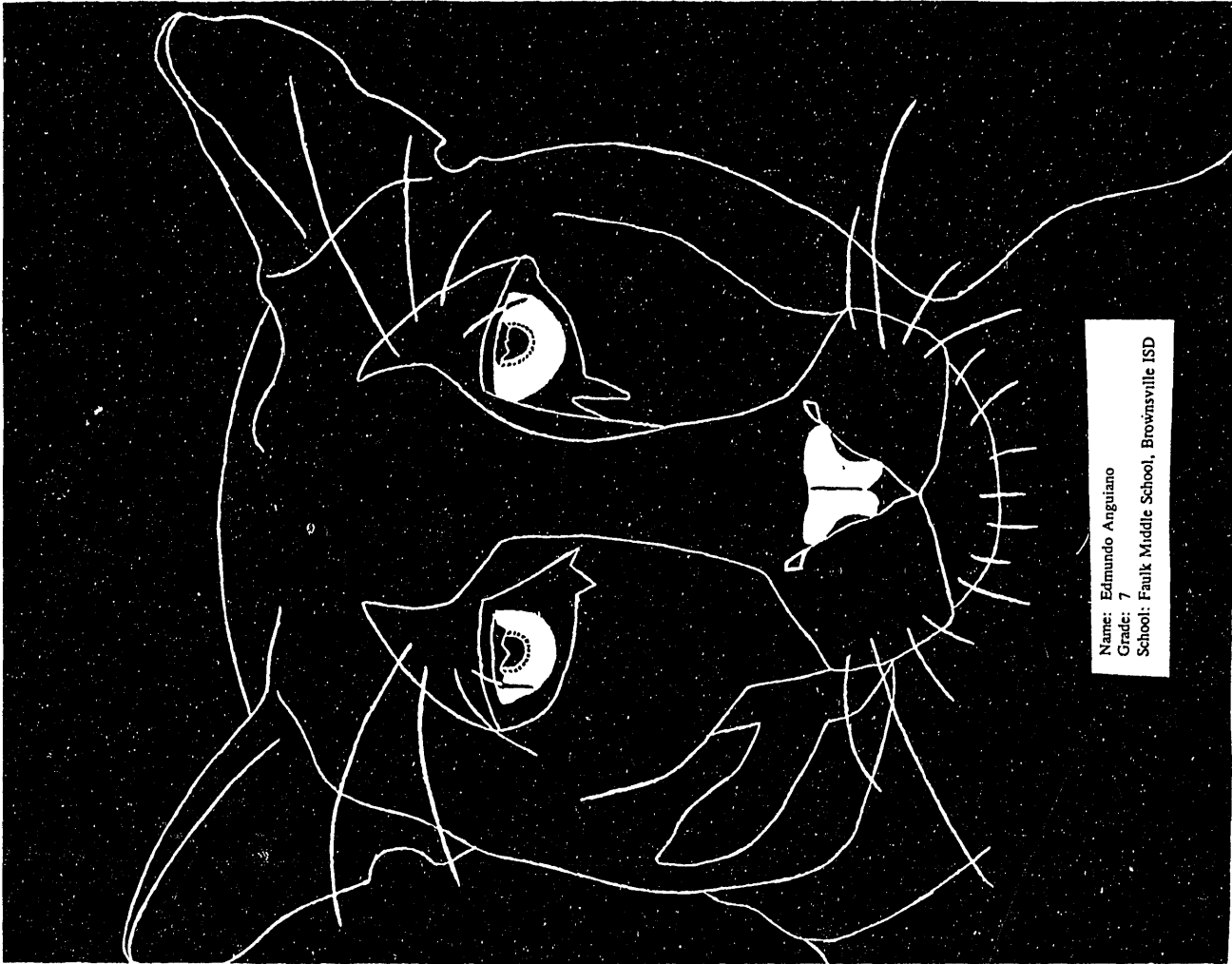
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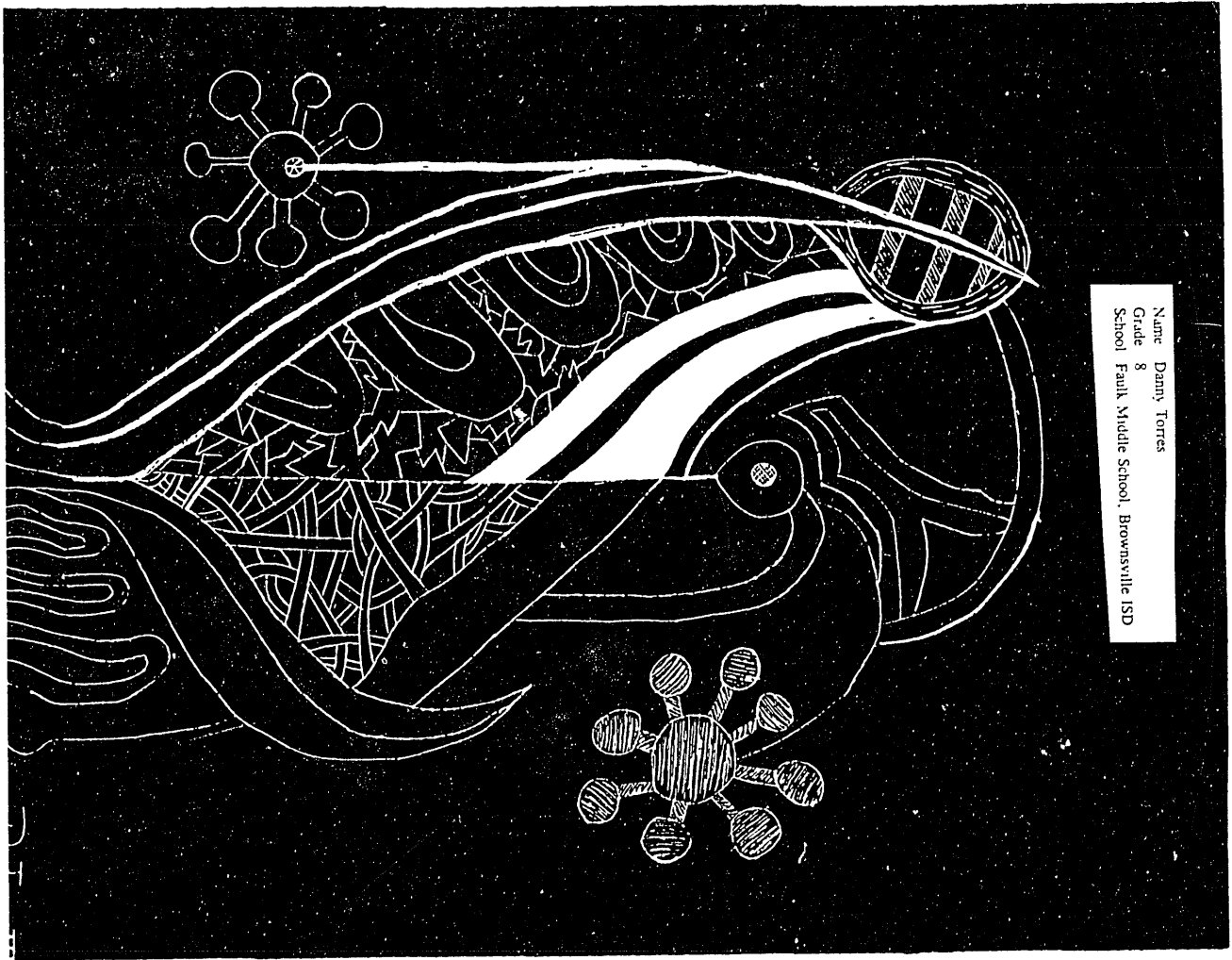
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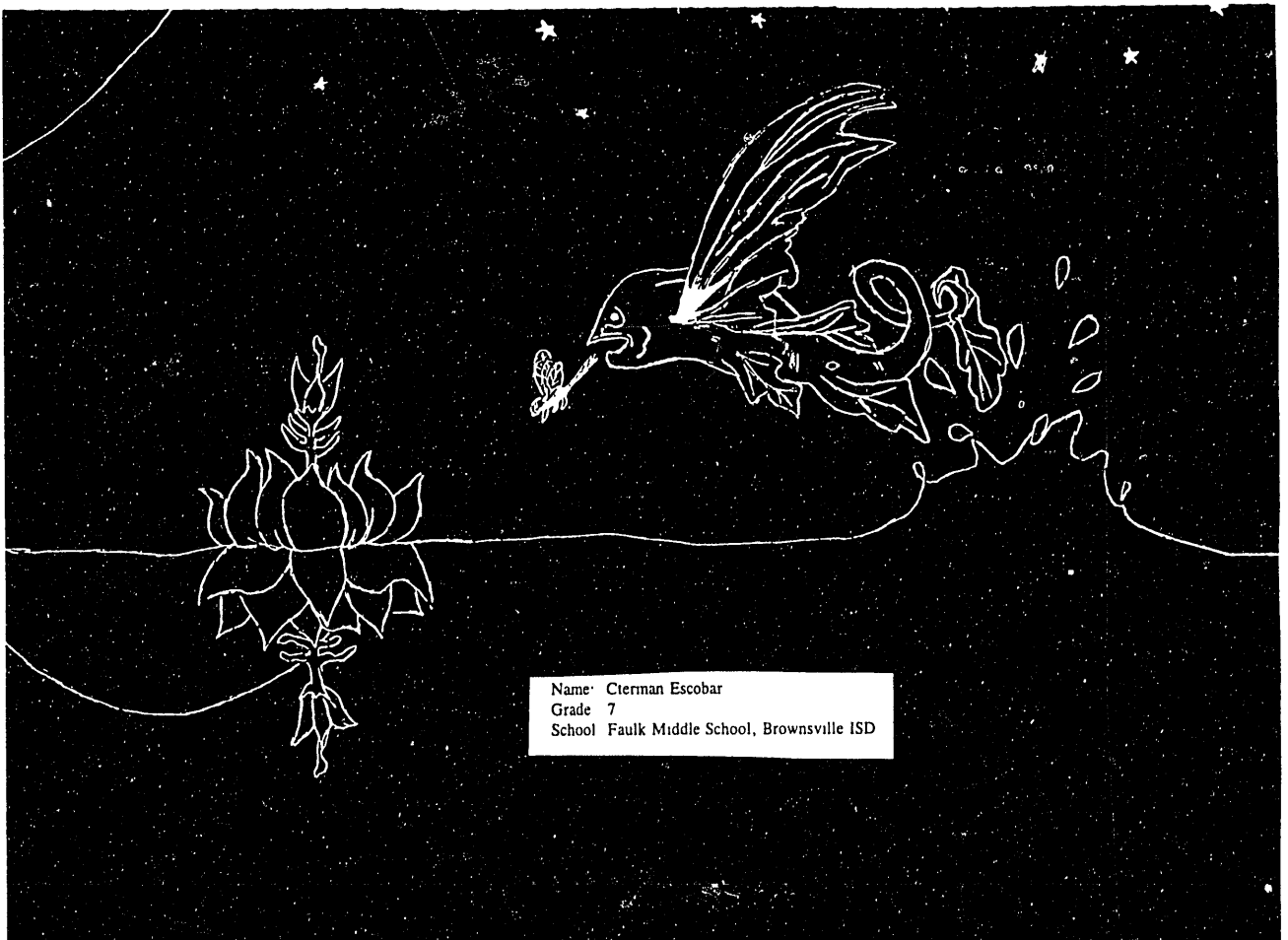
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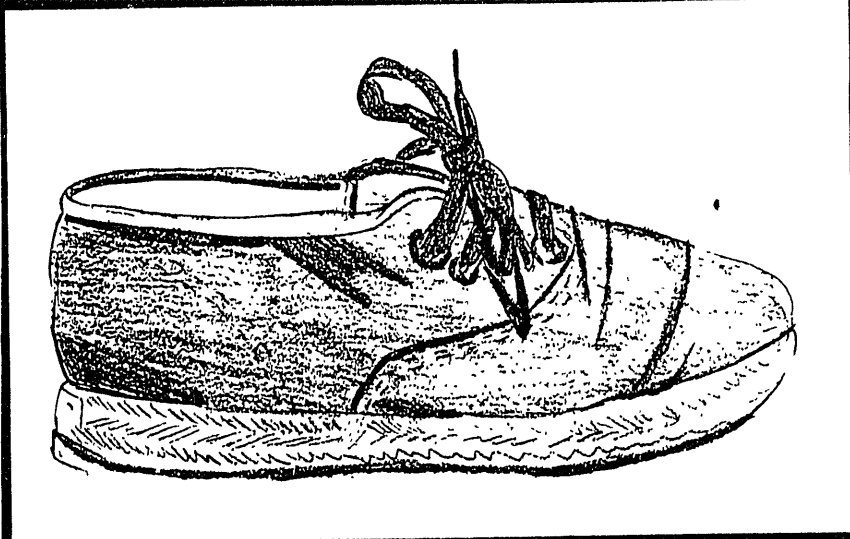


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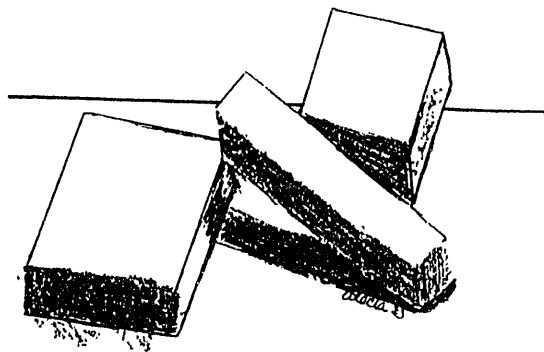


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*Alecia Grace*



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# 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 record 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. To request copies of opinions, phone (512) 462-0011. To inquire about pending requests for opinions, phone (512) 463-2110.

## Letter Opinions

**LO-95-46 (ID# 34680).** Request from Honorable Gonzalo Barrientos, Chair Committee of the Whole on Legislative and Congressional Redistricting, Texas State Senate, P.O. Box 12068 Austin, Texas 78711, concerning whether Article III, Section 3, of the Texas Constitution requires state senators to redraw lots to determine the lengths of their terms after a federal court order changing district boundaries is entered.

**Summary of Opinion.** Texas Constitution, Article III, §3 does not require a new election of state senators and a subsequent redrawing of lots to determine the lengths of their terms in an instance in which a state or federal court of competent jurisdiction issues a redistricting order; such an order is not an "apportionment" for purposes of §3. The passage of legislation changing two senatorial districts would constitute an apportionment for purposes of Article III, §3, thus necessitating a new election of state senators and a redrawing of lots by senators to determine the lengths of their terms.

TRD-9510874

**LO-95-47 (ID# 34818).** Request from Honorable Gonzalo Barrientos, Chair Committee of the Whole on Legislative and Congressional Redistricting, P.O. Box 12068 Austin, Texas 78711-2068, concerning whether a school administrator may actively recruit members for teacher organizations and associations

**Summary of Opinion.** Education Code, §21.407(a) prohibits a school district employee from directly or indirectly requiring or coercing any teacher to join any organization or association.

TRD-9510875

**LO-95-48 (ID# 33904).** Request from Honorable John Whitmire, Chair Criminal Justice Committee, Texas State Senate P.O. Box 12068 Austin, Texas 78711, concerning whether a municipal police officer may simultaneously hold the position of city council member in a different city.

**Summary of Opinion.** A municipal police officer of the City of Houston is not as a matter of law prohibited from serving simultaneously as an elected member of the city council of Magnolia.

TRD-9510876

## Opinions

**DM-359 (RQ-787).** Request from Mr. Ray Farabee, Vice Chancellor and General Counsel, The University of Texas System, 201 West Seventh Street, Austin, Texas 78701-2981, concerning Eligibility of certain individuals, enrolled as students at the University of Texas at Austin, to claim exemption from payment of various fees and charges.

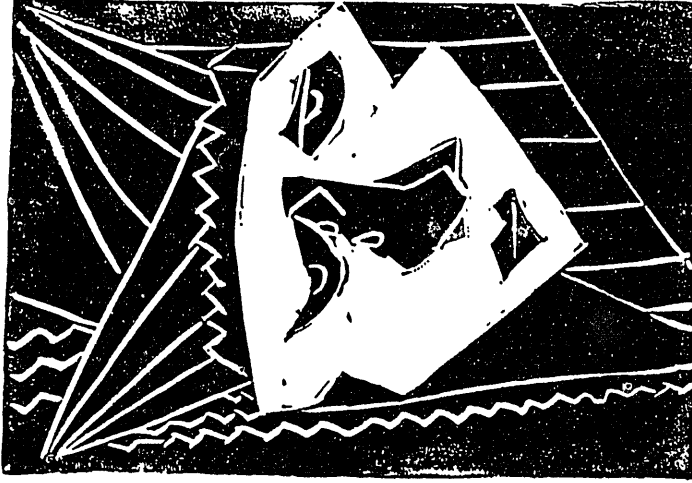
**Summary of Opinion.** All persons honorably discharged from the armed forces of the United States since January 31, 1955, who served on active duty for more than 180 days, exclusive of training, are entitled to exemption from the payment of all fees and charges imposed upon students by The University of Texas at Austin, except (1) property deposit fees; (2) charges related to lodging, board, and clothing; (3) voluntary student services fees as described in section 54.513(a)(3) of the Education Code; and (4) compulsory student services fees as described in and limited by section 54.513(a)(2) and (j) of the Education Code.

TRD-9510877

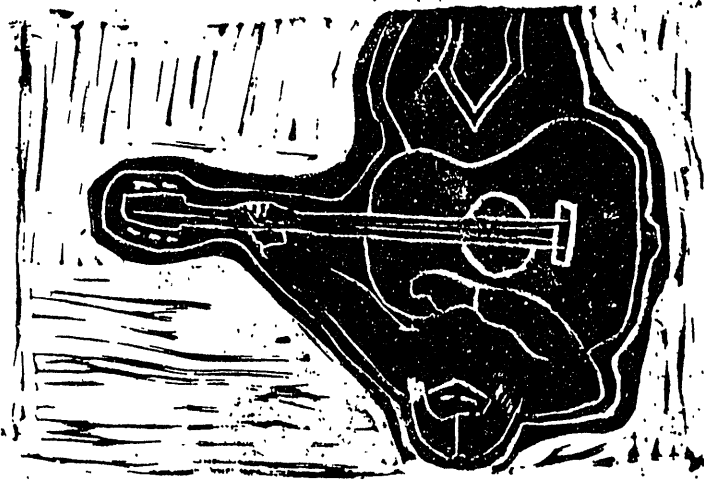
**DM-361 (RQ-747).** Request from Mr. Doyne Bailey, Administrator, Texas Alcoholic Beverage Commission, P.O. Box 13127 Austin, Texas 78711-3127, concerning whether a requirement in the Alcoholic Beverage Code that an applicant for a liquor license or permit have been a resident of Texas for at least one year before submitting the application violates the United States Constitution.

**Summary of Opinion.** All of the issues involved in a court's analysis of the constitutionality of the Alcoholic Beverage Code's one-year residency requirement involve the resolution of fact questions.

TRD-9510878



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Robert Rayner No. 7

Name: Robert Rayner  
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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 use of **bold text**. [Brackets] indicate deletion of existing material within a section.

## TITLE 4. AGRICULTURE Part I. Texas Department of Agriculture

### Chapter 17. Marketing and Development Division

#### Certification of Farmers Market

##### • 4 TAC §§17.70-17.74

The Texas Department of Agriculture (the department) proposes amendments to §§17.70-17.74, concerning Certification of Farmers Market. The proposed amendment to §17.70 changes the definition of applicant to provide that an applicant may be represented by an authorized agent. In addition, the definitions of farmers market and certified farmers market have been changed to track the statutory definition. The proposed amendment to §17.71 clarifies that farmers markets may be certified in accordance with these rules and the Texas Agriculture Code, Chapter 15. In addition, under the current rules, certified markets are issued a plaque, which the market must display at the main entrance to the market. The amendment provides that certified farmers markets will continue to receive a certificate, but will no longer be issued a plaque. The proposed amendment to §17.72(a) changes the reference to the department's district offices to regional offices, to reflect the current organization of the department. The proposed amendment to §17.72(b) changes the time period from receipt of application to approval or denial of same from 30 to 45 days, in order to better reflect the actual time it takes to review an application, particularly in light of the new requirements to be imposed by these amendments. The proposed amendment to §17.72(b) further provides that a farmers market certification expires on December 31 of the year of issuance. The proposed amendment to §17.72 also adds new subsection (c) which requires that certifications be renewed annually, and provides the procedure by which certifications may be renewed. Under the current rule, there are no provisions related to the renewal of a certificate, making it difficult for the department to monitor and maintain up-to-date information on the markets. The proposed amendment to §17.73(2) provides that, in order to be eligible for certi-

fication, a market must file with the department, annually, a copy of its bylaws, a list of members of the governing body, a list of its members, and a description of the market's location, and the seasons, days, and hours of operation. This provision makes it possible for the department to receive and maintain current information on its certified markets. Also, the annual filing of the market's bylaws assists the department in monitoring the market's compliance with the new requirements to be imposed by these amendments. The proposed amendment to §17.73(3) deletes the requirements that at least 50% of all agricultural products sold at the market are Texas-grown and that at least 50% of the sellers are farmers and ranchers. Instead, the proposed amendment to §17.73(3) provides that the farmers market association bylaws must require that a certain percentage of agricultural products sold through the market are grown in Texas, and the proposed amendment to §17.73(4) provides that the bylaws must require that a certain number of members, no less than two, are farmers selling their own produce. These changes are necessary in order to allow farmers markets to operate on a year-round basis, rather than be limited to the seasons and types of produce grown in the surrounding area. In other words, the change allows markets to permit farmers, or others, to bring in produce from other areas in order to keep the market open during the off-season to better serve both the farmers and consumers. In addition, since the requirements will be incorporated into the bylaws of the market, the markets will become more self-policing. The current §17.73(4) has been renumbered as §17.73(5) and provides that the farmers market association bylaws must require that the agricultural products sold at the market must be of merchantable quality. The proposed amendment to §17.74 changes the title of this section from "Appeal" to "Withdrawal of Certification," in order to more accurately reflect the content of the rule. In addition, the amendment provides that the failure of the farmers market to enforce the mandatory bylaws provisions required by §17.73 is grounds for withdrawal of the market's certification. This provision ensures that farmers markets will enforce the mandatory bylaws provisions, or face the loss of their certification. The proposed amendment to §17.74(b) contains changes to statutory cites.

Susan Dunn, director for food marketing, has determined that for the first five-year period

the sections are in effect there will be fiscal implications for state government as a result of enforcing or administering the sections. The cost to the department of monitoring the farmers market program should decrease in that the farmers market associations will now have a greater responsibility to police themselves and their members or risk losing their certification. There will be no fiscal implications for local governments as a result of enforcing or administering the sections.

Ms. Dunn also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be better data collection by the department, better monitoring of the markets by the department due to the ongoing collection of more information by the department, greater self-policing of the markets, and the more efficient operation of the program. The only effect on small or large businesses will be that farmers market associations may have to change their bylaws to meet the new requirements. Those costs are expected to be minimal. The economic cost to persons who are required to comply with the sections as proposed will be the same as the cost to small and large businesses, that is, the extent to which associations must change their bylaws to comply with the sections as proposed.

Comments on the proposal may be submitted to Susan Dunn, Director of Food Marketing, 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 amendments are proposed under the Texas Agriculture Code, Chapter 15, which provides the Texas Department of Agriculture with the authority to develop a farmers market certification program; and, Texas Government Code, §2001.004, which requires that the department adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The Texas Agriculture Code, Chapter 15, is affected by this proposal.

*§17.70. Definitions.* The following words and terms, when used in this undesignated head, shall have the following meanings, unless the context clearly indicates otherwise.

Applicant—A farmers market manager or other authorized agent[, or other members of the governing body] for a specified farmers market association [location].

Certified farmers markets—Farmers markets that have been certified by the Texas Department of Agriculture pursuant to this chapter [Locations recognized by the state agriculture commissioner, where Texas agricultural products are sold by Texas producers directly to consumers].

Commissioner—The commissioner [Commissioner] of the Texas Department of Agriculture.

Farmers market—An association operating one or more locations at which a group of two or more farmers offer produce for retail sale [A well-located site with or without permanent facilities where agricultural producers sell their own products directly to consumers].

§17.71. *Issuance of [Certification Plaque and] Certificate.* The commissioner shall certify farmers markets in accordance with this chapter and the Texas Agriculture Code, Chapter 15. Upon certification of a farmers market, the [state agriculture] commissioner shall issue, at no cost to the market, a [certified] farmers market [plaque and] certificate. [The plaque shall be prominently displayed at the main entrance to the market.] Certified farmers markets agree to comply with local municipal, county and state health and safety regulations, and general requirements of the Texas Department of Agriculture.

§17.72. *Application Process.*

(a) An applicant seeking certification must submit a completed application on a form approved by the Texas Department of Agriculture to the state headquarters in Austin. Application forms may be obtained from any regional [district] office and/or state headquarters of the Texas Department of Agriculture.

(b) Within 45 [30] days of receipt of a completed [an] application for certification, the commissioner or an authorized agent shall notify the [an] applicant in writing, of the approval or denial of his application. If approved, the department shall mail to the registrant the farmers market certificate, which shall expire on December 31 of the year of issuance.

(c) Certifications must be renewed annually. Between December 1, and December 31, annually, the department shall mail to each certified farmers market a renewal form setting forth the requirements for renewal. Within 30 days of receipt of the renewal form, the farmers market shall complete and return the form to the department, to-

gether with all items required by §17.73(2) of this title (relating to Eligibility Requirements) to be filed with the department on an annual basis.

§17.73. *Eligibility Requirements.* A farmers market is eligible for certification [may be certified] if:

(1) (No change.)

(2) the applicant has filed annually with the Texas Department of Agriculture at the state headquarters office in Austin, a copy of the farmers market association [market's] bylaws, a list of the members of the governing body, [and] a list of the association members, a description of the market location, and the seasons, days, and hours of operation;[.]

(3) the farmers market association bylaws require that a certain percentage of all agricultural products sold through the farmers market are grown in Texas; [on an annual basis, at least 50% of all agricultural products sold at market locations are produced in Texas and at least 50% of the sellers are Texas farmers and ranchers; and]

(4) the farmers market association bylaws require that a certain number, at least two or more, of its members are farmers selling their own produce; and [all agricultural products sold at the applicant market shall be of good quality as determined by the commissioner.]

(5) the farmers market association bylaws require that all agricultural products sold at the market shall be of merchantable quality.

§17.74. *Withdrawal of Certification.* [Appeal.]

(a) A [certified] farmers market's certification may be withdrawn for failure to adhere to any of the requirements set out in §17.73 of this title (relating to Eligibility Requirements), including failure of the farmers market association to enforce any of the mandatory bylaws provisions, or [and] violation of any general rules and regulations of the Texas Department of Agriculture.

(b) Proceedings for the revocation of certification shall be conducted in the manner provided for contested cases by the Administrative Procedure [and Texas Register] Act. Texas Government Code, Chapter 2001 [Civil Statutes, Article 6252-13a], and Chapter 1 of this title (relating to General Practice and Procedure).

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

Issued in Austin, Texas, on August 29, 1995.

TRD-9510927

Dolores Alvarado Hibbs  
Chief Administrative Law  
Judge  
Texas Department of  
Agriculture

Earliest possible date of adoption: October 6, 1995

For further information, please call: (512) 463-7583

Chapter 19. Seed Division

Texas Seed Law

• 4 TAC §19.3

The Texas Department of Agriculture (the department) proposes an amendment to §19.3, concerning noxious weed seeds. The proposed amendment adds tropical soda apple (*Solanum viarum Dunal*) seeds to the existing list of noxious weed seeds. The addition of *Solanum viarum Dunal* to the list of noxious weed seeds will enable Noxious Weed Control Districts to establish guidelines for keeping this noxious weed out of agricultural producing areas.

David Kostroun, plant quality coordinator, has determined that for the first five-year period the section is in effect there will be no effect on state government as a result of enforcing or administering the section. However, local government may incur costs of approximately \$5,000 per year if it decides to control or eradicate the weed when found in the early stages of infestation.

Mr. Kostroun also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a reduced artificial spread of the tropical soda apple. There will be no effect on small or large businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to David Kostroun, Coordinator for Plant Quality, P.O. Box 12847, Austin, Texas 78711 and must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment is proposed under the Texas Agriculture Code, §61.003, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the efficient enforcement of the Texas Seed Law.

The code affected by this proposal is the Texas Agriculture Code, Chapter 61.

§19.3. *Noxious Weed Seeds.* It shall be unlawful to sell, offer for sale, or expose for sale any agricultural or vegetable seed for planting purposes within this state containing noxious weed seed in excess of the following limitations per pound.

(1) Prohibited noxious weed seeds are:

Figure 4 TAC §19.3(1)

(2)-(6) (No change.)

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

Issued in Austin, Texas, on August 29, 1995.

TRD-9510926

Dolores Alvarado Hibbs  
Chief Administrative Law  
Judge  
Texas Department of  
Agriculture

Earliest possible date of adoption: October 6, 1995

For further information, please call. (512) 463-7583

◆ ◆ ◆  
**TITLE 16. ECONOMIC  
REGULATION**  
**Part I. Railroad**  
**Commission of Texas**  
**Chapter 3. Oil and Gas**  
**Division**

**Conservation Rules and Regu-  
lations**

• 16 TAC §3.10

The Railroad Commission of Texas proposes an amendment to §3.10, concerning production of oil and gas from different strata. The proposed amendment conforms §3.10 to Texas Natural Resources Code §85.046 and §86.012, as amended, which will be effective on September 1, 1995. The proposed amendment to §3.10, authorizes the commission, after notice and an opportunity for affected parties to request a hearing, to approve commingled production without a hearing. Approval without a hearing is authorized when neither the applicant nor the parties entitled to notice have requested a hearing and the commission finds that production in a commingled state will prevent waste, promote conservation or protect correlative rights.

Rita E. Percival, systems analyst for the Oil and Gas Division, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section

Colin K Lineberry, hearings examiner in the Legal Division, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a reduction of the regulatory burden by removing the requirement that a hearing be held on every initial application for approval of commingled production. There will be no effect on small businesses. There are no anticipated additional economic costs to persons who are required to comply with the section as proposed.

Comments may be submitted to Colin K. Lineberry, hearings examiner, Legal Division-Oil and Gas Section, Railroad Commission of

Texas, P.O. Box 12967, Austin, Texas 78711-2967. The deadline for filing comments is 30 days after publication in the *Texas Register*. Comments should refer to the docket number of this rule making proceeding, 20-0209676.

The amendment is proposed pursuant to Texas Natural Resources Code, §91.101, which authorizes the commission to prevent waste of oil and gas and to protect correlative rights.

The following code section is affected by this rule: Texas Natural Resources Code, §91.101

*§3.10. Restriction of Production of Oil and Gas from Different Strata*

(a) (No change.)

(b) Exception.

(1) After notice and opportunity for hearing, the commission may grant an exception to subsection (a) of this section to permit production from a well or wells commingling oil or gas or oil and gas from two separate reservoirs or multiple stratigraphic or lenticular accumulations of oil or gas or oil and gas if commingled production will:

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

(2) Subsequent exceptions, for wells producing from the same reservoirs, may be granted administratively without further notice and opportunity for hearing.

(c) (No change.)

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

Issued in Austin, Texas, on August 29, 1995.

TRD-9510940

Mary Ross McDonald  
Assistant Director Legal  
Division-Gas Utilities/LP  
Gas  
Railroad Commission of  
Texas

Earliest possible date of adoption: October 6, 1995

For further information, please call: (512) 463-7008

◆ ◆ ◆  
The Railroad Commission of Texas proposes to repeal §3.21, concerning fire prevention and swabbing, and concurrently to propose new §3.21, to address the fire hazard risks associated with modern drilling and production practices. This section specifies certain precautionary practices that the commission has determined are necessary to reduce the risk of causing fires during lease operations. The current rule contains out-dated language and refers to equipment and practices no longer necessary and/or in use.

Rita E. Percival, Systems Analyst for the Oil and Gas Division, has determined that for the

first five-year period the repeal and section are in effect there will be no fiscal implications for state or local government as a result of the repeal and section. There will be no fiscal implications for local government. There will be no cost of compliance with the proposed rule revision for small businesses as a result of enforcing or administering it.

Mr. Jeffrey T. Pender, Hearings Examiner, Legal Division, has determined that for each year of the first five years the section and repeal are in effect, the public will benefit from the reduced likelihood that operations subject to Railroad Commission regulation will cause, or be likely to cause a fire hazard.

Comments may be submitted to Jeffrey Pender, Legal Division-Oil and Gas Section, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register*.

• 16 TAC §3.21

*(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 Railroad Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed pursuant to Texas Natural Resources Code, §81.051 and §81.052, which provides 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. Further, §85.202(a)(4) provides the commission with the authority to promulgate rules requiring wells to be drilled and operated in a manner that will prevent injury to adjoining property.

The proposed repeal affects the following provisions of the Natural Resources Code. Texas Natural Resources Code, §§81.051, 81.052, 85.202(a)(4).

*§3.21. Fire Prevention and Swabbing.*

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

Issued in Austin, Texas, on August 29, 1995.

TRD-9510941

Mary Ross McDonald  
Assistant Director Legal  
Division-Gas Utilities/LP  
Gas  
Railroad Commission of  
Texas

Earliest possible date of adoption: October 6, 1995

For further information, please call: (512) 463-7008

◆ ◆ ◆  
The new section is proposed pursuant to Texas Natural Resources Code, §81.051 and §81.052, which provides the commission with jurisdiction over all persons owning or en-

gaged 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. Further, §85.202(a)(4) provides the commission with the authority to promulgate rules requiring wells to be drilled and operated in a manner that will prevent injury to adjoining property.

The proposed new section affects the following provisions of the Natural Resources Code. Texas Natural Resources Code, §§81.051, 81.052, 85.202(a)(4).

### §3.21. Fire Prevention and Swabbing.

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

(1) Tank—Any permanent or temporary storage vessel that is maintained at or near atmospheric pressure and contains crude oil, condensate or produced water except temporary storage tanks used for less than 30 days for such activities, including but not limited to, swabbing, periodic well tests and workover/completion operations.

(2) Secondary containment—Structures such as dikes, berms, fire walls, impoundment areas or drainage systems designed to prevent the escape of oil, condensate or produced water from the immediate vicinity of a tank in the event of tank failure.

(3) Drainage system—Controls appropriate to manage the flow of liquids so as to divert the liquids away from certain adjoining property or waterways and toward impoundment areas.

(4) Waters of the State—Any lake, bay, pond, impounding reservoir, spring, river, stream, creek, estuary, marsh, inlet, canal, the Gulf of Mexico inside the territorial limits of the state, or any other body of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of any watercourse or body of surface water that is wholly or partially inside or bordering the state or inside the jurisdiction of the state.

(b) Secondary containment, when required, shall be constructed and maintained to confine 100% of the maximum volume of the largest tank within the containment area. Secondary containment shall be constructed if the tanks are located:

(1) Within the corporate limits of any city, town, or village;

(2) Within 500 feet of any high-way or habitable building;

(3) Within 1,000 feet of any school or church;

(4) Such that it could be reasonably expected that upon failure, the tank or

tanks would probably discharge crude oil, condensate or produced water into or upon waters of the state;

(5) In any state, federal, county, municipal park or wildlife refuge to the extent it is not precluded by the park or refuge requirements;

(6) In any other area where the commission, through its employees or agents, determines that secondary protection is necessary to protect the population or waters of the State.

(c) No permanent tank shall be located nearer than 150 feet from any habitable building unless the building was erected subsequently

(d) All tanks that present a potential gas escape hazard shall be provided with proper gas vents.

(e) Any accumulation of rubbish or debris that might constitute a fire hazard shall be removed from the vicinity of any well, tank, pump station, compression station, or any spark or flame emitting apparatus. All rubbish and debris shall be removed from within the secondary containment.

(f) For good cause shown, the commission or its delegate may administratively grant exceptions to subsections (b)-(e) of this section. If the commission or its delegate declines to administratively grant, continue, or extend an exception, the operator may request a hearing.

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

Issued in Austin, Texas, on August 29, 1995.

TRD-9510942

Mary Ross McDonald  
Assistant Director Legal  
Division-Gas Utilities/LP  
Gas  
Railroad Commission of  
Texas

Earliest possible date of adoption: October 6, 1995

For further information, please call: (512) 463-7008

## TITLE 22. EXAMINING BOARDS

### Part XXXII. State Board of Examiners for Speech-Language Pathology and Audiology

#### Chapter 741. Speech-Language Pathologists and Audiologists

The State Board of Examiners for Speech-Language Pathology and Audiology (board) proposes amendments to §§741.65, 741.85,

741.103 and 741.181; and new §741.67 and §741.200, concerning speech-language pathology and audiology. Specifically, the sections cover qualifications for and job duties that an assistant may or may not perform; required application material; qualification for a limited license to practice in the public schools; and suspension and reinstatement of a license for failure to pay child support. The amendments reorganize and clarify the duties and supervision of an assistant; clarify how an applicant who did not accumulate the required clinical observation or clinical assisting experience required for an assistant's license may do so; establish a method to allow the board to approve a specific clinical observation or experience sponsor who submits such a proposal to the board; clarify and delete unnecessary language concerning required application materials; define application materials required for a limited license; and establish the fee required to reinstate a license that had been suspended for failure to pay child support. New §741.67 and §741.200 are necessary to implement legislation passed by the 74th Legislature, 1995. Section 741.67 establishes the qualifications for a limited license to practice in the public schools. Section 741.200 establishes the procedures to suspend and reinstate a license for failure to pay child support.

Bernie Underwood, C.P.A., Chief of Staff, Associateship for Health Care Quality and Standards, has determined that for the first five-year period the proposed sections are in effect there may be fiscal implications for state or local government as a result of enforcing or administering the rules. There should be no economic cost relating to the amendments to §§741.65, 741.85, or 741.103. Implementation of new §741.67 and §741.200 and the amendment to §741.181 will have fiscal implications. The first year the projected cost is estimated at \$41,638 which would include: travel for board members to develop rules by the January 1, 1996 deadline; employ one additional office staff; office equipment for the new position; and related costs. For the remaining four-year period the projected cost is \$26,864. The board cannot estimate the amount of revenue that may be required or generated as a result of reinstating a license for failure to pay child support because, at the present time, we do not know how many licensees will be affected. Since this program operates on fee funds collected from licensees, the projected cost would be offset by the collection of fees.

Ms. Underwood also has determined that for each year of the first five years that the proposed sections are in effect, the public benefit anticipated as a result of enforcing the sections will be to clarify the requirements, job duties and supervision of an assistant to ensure that the assistant does not mentally or physically harm a client and to simplify the section defining the required application material to avoid misunderstandings and delays during processing of an application. It is unsure how the new section concerning the limited license for practice in the public schools will benefit the public since an individual who holds the Texas Education Agency certificate in speech and hearing therapy may practice in the public schools with that certificate. This requirement will cre-



ate a economic cost to the individual of approximately \$70 for the first year and \$30 for following years in addition to the cost of earning the required continuing education for renewal of the license. The new section that establishes the procedures to suspend and reinstate a license for failure to pay child support may ensure that the children of Texas receive the compensation awarded by the court. There is no anticipated cost to small business. There may be impact on local employment if a license has been suspended for failure to pay child support.

Comments on the proposal may be submitted to Dorothy Cawthor, State Board of Examiners for Speech-Language Pathology and Audiology, 1100 West 49th Street, Austin, Texas 78756-3183, (512) 834-6627. Public comments will be accepted for 30 days after publication of the sections in the *Texas Register*.

### Subchapter E. Requirements for Licensure and Registration of Speech-Language Pathologists

#### • 22 TAC §741.65, §741.67

The amendment and new section are proposed under Texas Civil Statutes, Article 4512j, §5, which provide the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Article 4512j; §12 relating to rules on the examination; and §13A relating to rules on the limited license to practice in the public schools.

These proposed sections affect Texas Civil Statutes, Article 4512j and the Family Code, Chapter 232.

#### *§741.65. Requirements for an Assistant in Speech-Language Pathology License.*

(a) An assistant is an individual who provides speech-language pathology support services to [and support of] clinical programs under supervision of [speech-language pathology and is supervised by] a licensed speech-language pathologist.

(1) An applicant who applies for an assistant in speech-language pathology license prior to September 1, 1994, must meet the following requirements:

[(A)] a baccalaureate degree as shown on an original transcript filed with the board;

[(B)] no fewer than 21 semester hours in speech-language pathology and/or audiology, at least nine of which must be in the area for which license is being sought;

[(C)] the filing of original transcripts which shall be reviewed as in §741.61(11) of this title (relating to Requirements for a Speech-Language Pathology License); and

[(D)] a supervisory responsibility statement submitted upon application and each subsequent renewal or with a change of supervisor.]

(b)[(2)] An applicant [who applies] for an assistant in speech-language pathology license [on or after September 1, 1994.] must meet the following requirements:

(1)[(A)] a baccalaureate degree with an emphasis in speech-language pathology or audiology;

(2)[(B)] no fewer than 24 semester hours in speech-language pathology and/or audiology, at least nine of which must be in the area for which license is being sought;

(3)[(C)] no fewer than 25 hours of clinical observation and 25 hours of clinical assisting experience [practicum] obtained within an educational institution or in one of its cooperating programs [or completed under supervision of an individual licensed by this board. If an applicant has not obtained the hours within an educational institution or in one of its cooperating programs, the applicant may file a written request describing how the applicant wishes to obtain the hours and how the applicant's plan would insure appropriate training and experience for the applicant. The board may ask for further information or revisions before approving or disapproving the plan. If approved, an assistant's license shall be issued and the individual shall complete the hours in accordance with the board approved plan within 60 days. If the board office does not receive proof of successful completion of the hours by the end of the 60 days, the individual shall be considered to have voluntarily surrendered the assistant license];

(4)[(D)] the filing of original or certified copy of transcript(s) which shall be reviewed as in §741.61(11) of this title (relating to Requirements for a Speech-Language Pathology License); and

(5)[(E)] a supervisory responsibility statement submitted by the licensed speech-language pathologist responsible for services provided by the assistant [upon application and each subsequent renewal or with a change of supervisor].

(c) If an applicant has not obtained the hours referenced in subsection (b)(3) of this section, the applicant may file a written request for an alternative method to obtain the hours. A deficiency plan for the clinical observation and/or assisting experience designed and signed by an appropriate sponsor must be submitted with the application and fee. Such a plan must be approved by the board and the license issued before any observation or clinical assisting experience clock hours may begin. The board may

ask for further information or revisions before approving or disapproving the plan. If approved, an assistant license shall be issued upon payment of the initial license fee. The individual shall then complete the hours in accordance with the board approved plan within 60 days. If the board office does not receive proof of successful completion of the hours by the end of the 60 days, the individual shall be considered to have voluntarily surrendered the assistant license.

(d) Direct supervision of speech-language pathology duties assigned to the assistant shall be provided by a licensed speech-language pathologist.

(1) The assistant's initial client contact shall be directly supervised. Thereafter, the minimum supervision requirements for an assistant by the licensed speech-language pathologist shall be no less than two hours a week, at least half of which is direct on-site supervision at the location where the assistant is employed. If an alternative arrangement is needed, the licensed speech-language pathologist must submit a proposed plan for review by the board or the appropriate committee to determine if the plan is acceptable. Indirect methods of supervision such as audio and/or video tape recording, telephone communication, numerical data, or other means of reporting may be utilized.

(2) Supervisory records shall be maintained by the licensed speech-language pathologist which verify regularly scheduled monitoring, assessment, and evaluation of the assistant's and clients' performance. Such documentation may be requested by the board.

(3) If a change in the supervisory responsibility occurs, a new supervisory responsibility statement must be submitted to the board office before the assistant may resume practice.

(e)[(b)] Although the licensed speech-language pathologist [supervisor] may delegate specific clinical tasks to an assistant, the responsibility to the client for all services provided cannot be delegated. The licensed speech-language pathologist [supervisor] must ensure that all services provided are in compliance with this chapter. The assistant may execute specific components of the clinical speech, language, and/or hearing program if the licensed speech-language pathologist [supervisor] determines that the assistant has received the training and has the skill to accomplish that task, and the licensed speech-language pathologist [supervisor] provides sufficient supervision to ensure appropriate completion of the task assigned to the assistant. The licensed speech-language pathologist [supervisor] must keep job descriptions and performance records; these must be current

and must be made available to the board within 30 days of the date of the board's request for such records.

(1) Examples of duties which an assistant [assistants] may be assigned, provided appropriate training has been received, are to [include the following]:

(A) conduct [conducting] or participate [participating] in speech, language, and/or hearing screening;

(B) implement the treatment program or the individual education plan (IEP) designed by the licensed speech-language pathologist [conducting evaluative or management programs which may include the utilization of published materials for which the associate has received training];

(C) provide carry-over activities which are the therapeutically designed transfer of a newly acquired communication ability to other contexts and situations;

(D)[(C)] maintain [maintaining] clinical records [of client performance];

(E)[(D)] prepare [preparing] clinical materials; and

(F)[(E)] participate [participating] with the licensed speech-language pathologist [professional] in research projects, staff development, public relations programs, or similar activities as designated and supervised by the licensed speech-language pathologist [professional].

(2) The assistant must [should] not [engage in any of the following activities]:

(A) conduct independent evaluations;

(B)[(A)] interpret [interpreting] observations or data into diagnostic statements, clinical management strategies, or procedures;

(C) design a treatment program or individual education plan (IEP);

(D)[(B)] determine [determining] case selection;

(E)[(C)] present [presenting] written or oral reports of client information [to those other than the supervisor without the signature of the supervisor];

(F)[(D)] refer [referring] a client to other professionals or other agencies;

(G)[(E)] use [using] any title which connotes the competency of a licensed speech-language pathologist [professional, as defined in §2 of the Act]; or

(H)[(F)] practice [practicing] as an assistant in speech-language pathology without a valid supervisory responsibility statement on file in the board office

(3) Any references to the licensee's title shall state clearly that the license status is that of an assistant.

[(4) An assistant may not provide speech-language pathology services without an approved supervisor.

[(5) Direct-care staff in a residential care or treatment facility who use only the concepts of daily living in their job performance are not required to be licensed as assistants.

[(c) Therapy/intervention is:

[(1) the systematic, individualized process of minimizing communication disorders, involving the dynamic interaction between the fully licensed speech-language pathologist and client;

[(2) designed and executed on the basis of ongoing evaluation of the client's communication needs, skills, and resources; and

[(3) designed and executed only by a fully licensed speech-language pathologist; certain routine and perfunctory aspects of the intervention process, such as carryover activities, may be delegated to a licensed assistant

[(d) Carryover is:

[(1) the therapeutically designed transfer of a newly acquired communication ability to contexts and situations outside of the therapy situation; and

[(2) designed by a fully licensed speech-language pathologist.

[(e) The assistant may conduct carryover activities, language and auditory stimulation, and other activities related to intervention and record keeping as described in these sections and as deemed appropriate by the supervising fully licensed speech-language pathologist.

[(f) The assistant may oversee activities of communication helpers in consultation with, and direction of, a fully licensed speech-language pathologist.

[(g) Direct supervision of speech-language pathology duties assigned to the

assistant shall be provided by a licensed speech-language pathologist.

[(1) Following on-the-job training, the assistant's initial client contact shall be directly supervised. Thereafter, the minimum supervision requirements for an assistant by the supervisor shall be no less than two hours a week, at least half of which is direct on-site supervision at the location where the assistant is employed. If an alternative arrangement is needed, the supervisor must submit a proposed plan for review by the board or the appropriate committee to determine if the plan is acceptable. Indirect methods of supervision such as audio and/or video tape recording, telephone communication, numerical data, or other means of reporting may be utilized.

[(2) Supervisory records shall be maintained by the supervisor which verify regularly scheduled monitoring, assessment, and evaluation of assistant and client performance. Such documentation may be requested by the board.

[(h) An assistant will be required to meet continuing education requirements for license renewal as stated in §741.163 of this title (Relating to Requirements for Continuing Professional Education).]

[(f)[(i)] An assistant may renew a license without submitting a current supervisory responsibility statement completed by the licensed speech-language pathologist [even though the assistant does not have a supervisor]. However, if the assistant loses his or her licensed speech-language pathologist, the assistant may not practice until another licensed speech-language pathologist agrees to accept responsibility for the services provided by the assistant [a supervisor is obtained] and a new supervisory responsibility statement is submitted and approved by the board office. To continue to practice without a current supervisory responsibility statement on file in the board office [supervision] may result in revocation of the assistant's license.

*§741.67. Requirements for a Limited License to Practice Speech-Language Pathology in the Public Schools.*

(a) The requirements of §741.61 of this title (relating to Requirements for a Speech-Language Pathology License) shall be waived and a limited license to practice in the public schools as a fully licensed speech-language pathologist shall be issued to an individual who meets the requirements established in this section and submits an application on or before September 1, 1996.

(b) An applicant must submit a written statement by the superintendent of the school district employing the person certifying that the district has not been able to employ as a speech-language pathologist

a person who meets the licensing requirements of the Act.

(c) An applicant must:

(1) have been employed by a school district as a speech-language pathologist for two years preceding January 1, 1996 (January 1, 1994 through December 31, 1995);

(2) hold a baccalaureate degree in communication disorders (speech-language pathology) from an accredited institution of higher education;

(3) be certified by the Central Education Agency in speech and hearing therapy or, in the judgement of the board, satisfy equivalent requirements; and

(4) pass the examination referenced in §741.122 of this title (relating to Administration) within the past ten years.

(d) An applicant who meets the requirements of subsections (a)-(c) of this section must also meet one of the following:

(1) was eligible for a waiver of licensing requirements under the Act, §13(a), as amended by Chapter 448, Acts of the 69th Legislature, Regular Session, 1985; or

(2) is enrolled in a program of study towards a master's degree with a major in one of the areas of communicative sciences or disorders from a program accredited by the American Speech-Language-Hearing Association in a regionally accredited college or university.

(e) An applicant who is applying for licensure under subsection (d)(1) of this section must have been engaged in the practice of speech-language pathology within two years prior to September 1, 1983.

(f) Effective September 1, 1998, and biannually after that date, an applicant who applied for licensure under subsection (d)(2) of this section must submit an original transcript showing the licensee has successfully completed in the preceding two-year period not less than 12 hours of coursework towards completing the master's degree described in subsection (d)(2) of this section.

(g) An applicant who is issued the limited license to practice in the public schools must meet the requirements of §741.61 of this title (relating to Requirements for a Speech-Language Pathology License) on or before January 1, 2003.

(h) This section expires on the effective date of any federal requirement that a speech-language pathologist hold a master's degree as a condition for receipt of federal funding by the entity employing the person.

(i) A person licensed under this section must comply with all requirements

of the Act and this chapter unless excepted under the Act, Section 13A or this chapter.

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

Issued in Austin, Texas, on August 30, 1995.

TRD-9510929

Gene R Powers, Ph.D.  
Chairperson  
State Board of Examiners  
for Speech-Language  
Pathology and  
Audiology

Earliest possible date of adoption: October 6, 1995

For further information, please call: (512) 834-6627

### Subchapter F. Requirements for Licensure and Registration of Audiologists

#### • 22 TAC §741.85

The amendment is proposed under Texas Civil Statutes, Article 4512j, §5, which provide the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Article 4512j; §12 relating to rules on the examination; and §13A relating to rules on the limited license to practice in the public schools.

The proposed section affects Texas Civil Statutes, Article 4512j and the Family Code, Chapter 232.

#### §741.85. Requirements for an Assistant in Audiology License.

(a) An assistant is an individual who provides **audiological support** services to [and support of] clinical programs **under supervision** of [audiology and is supervised by] a licensed audiologist

[(1) The applicant who applies for an assistant in audiology license prior to September 1, 1994, must meet the following requirements:

[(A) a baccalaureate degree as shown on an original transcript filed with the board;

[(B) no fewer than 21 semester hours in speech-language pathology and/or audiology, at least nine of which must be in the area for which license is being sought;

[(C) the filing of original transcripts which shall be reviewed as in §741.61(11) of this title (relating to Requirements for a Audiology License); and

[(D) a supervisory responsibility statement submitted upon application

and each subsequent renewal or with a change of supervisor.]

(b)[(2)] An applicant [who applies] for an assistant in audiology license [on or after September 1, 1994,] must meet the following requirements:

(1) [(A)] a baccalaureate degree with an emphasis in speech-language pathology or audiology;

(2)[(B)] no fewer than 24 semester hours in speech-language pathology and/or audiology, at least nine of which must be in the area for which license is being sought;

(3)[(C)] no fewer than 25 hours of clinical observation and 25 hours of clinical assisting experience [practicum] obtained within an educational institution or in one of its cooperating programs [and completed under supervision of an individual licensed by this board. If an applicant has not obtained the hours within an educational institution or in one of its cooperating programs, the applicant may file a written request describing how the applicant wishes to obtain the hours and how the applicant's plan would insure appropriate training and experience for the applicant. The board may ask for further information or revisions before approving or disapproving the plan. If approved, an assistant's license shall be issued and the individual shall complete the hours in accordance with the board approved plan within 60 days. If the board office does not receive proof of successful completion of the hours by the end of the 60 days, the individual shall be considered to have voluntarily surrendered the assistant license];

(4)[(D)] the filing of an original or certified copy of transcript(s) which shall be reviewed as in §741.81(11) of this title (relating to Requirements for an Audiology License); and

(5)[(E)] a supervisory responsibility statement submitted by the licensed audiologist responsible for services provided by the assistant [upon application and each subsequent renewal or with a change of supervisor].

(c) If an applicant has not obtained the hours referenced in subsection (b)(3) of this section, the applicant may file a written request for an alternative method to obtain the hours. A deficiency plan for the clinical observation and/or assisting experience designed and signed by the appropriate sponsor must be submitted with the application and fee. Such a plan must be approved by the board and the license issued before any observation or clinical assisting experience clock hours may begin. The board may ask for further information or revisions before approving or disapproving the plan. If approved, an assistant license

shall be issued upon payment of the initial license fee. The individual shall then complete the hours in accordance with the board approved plan within 60 days. If the board office does not receive proof of successful completion of the hours by the end of the 60 days, the individual shall be considered to have voluntarily surrendered the assistant license.

(d) Direct supervision of speech-language pathology duties assigned to the assistant shall be provided by a licensed audiologist.

(1) The assistant's initial client contact shall be directly supervised. Thereafter, the minimum supervision requirements for an assistant by the licensed audiologist shall be no less than two hours a week, at least half of which is direct on-site supervision at the location where the assistant is employed. If an alternative arrangement is needed, the licensed audiologist must submit a proposed plan for review by the board or the appropriate committee to determine if the plan is acceptable. Indirect methods of supervision such as audio and/or video tape recording, telephone communication, numerical data, or other means of reporting may be utilized.

(2) Supervisory records shall be maintained by the licensed audiologist which verify regularly scheduled monitoring, assessment, and evaluation of the assistant's and clients' performance. Such documentation may be requested by the board.

(3) If a change in the supervisory responsibility occurs, a new supervisory responsibility statement must be submitted to the board office before the assistant may resume practice.

(e)(b) Although the licensed audiologist [supervisor] may delegate specific clinical tasks to an assistant, the responsibility to the client for all services provided cannot be delegated. The licensed audiologist [supervisor] must ensure that all services provided are in compliance with this chapter. The assistant may execute specific components of the clinical speech, language, and/or hearing program if the licensed audiologist [supervisor] determines that the assistant has received the training and has the skill to accomplish that task, and the licensed audiologist [supervisor] provides sufficient supervision to ensure appropriate completion of the task assigned to the assistant. The licensed audiologist [supervisor] must keep job descriptions and performance records; these must be current and must be made available to the board within 30 days of the date of the board's request for such records.

(1) Examples of duties which an assistant [assistants] may be assigned, pro-

vided appropriate training has been received, are to [include the following]:

(A) conduct [conducting] or participate [participating] in speech, language, audiometric and/or hearing screening;

(B) conduct aural habilitation or rehabilitation [conducting evaluative or management programs which may include the utilization of published materials for which the associate has received training];

(C) provide carry-over activities which are the therapeutically designed transfer of a newly acquired communication ability to other contexts and situations;

(D)(C) maintain [maintaining] clinical records [of client performance];

(E)(D) prepare [preparing] clinical materials; and

(F)(E) participate [participating] with the licensed audiologist [professional] in research projects, staff development, public relations programs, or similar activities as designated and supervised by the licensed audiologist [professional]

(2) The assistant must [should] not [engage in any of the following activities]:

(A) conduct independent evaluations;

(B) [(A)] interpret [interpreting] observations or data into diagnostic statements, clinical management strategies, or procedures;

(C) design a treatment program;

(D)(B) determine [determining] case selection;

(E)(C) present [presenting] written or oral reports of client information [to those other than the supervisor without the signature of the supervisor];

(F)(D) refer [referring] a client to other professionals or other agencies;

(G)(E) use [using] any title which connotes the competency of a licensed audiologist [professional, as defined in §2 of the Act]; or

(H)(F) practice [practicing] as an assistant in audiology without a valid supervisory responsibility statement on file in the board office.

(3) Any reference to the licensee's title shall state clearly that the license status is that of an assistant.

(4) An assistant may not provide audiology services without an approved supervisor.

(5) Direct-care staff in a residential care or treatment facility who use only the concepts of daily living in their job performance are not required to be licensed as assistants.

(c) Therapy/intervention is:

[(1) the systematic, individualized process of minimizing communication disorders involving the dynamic interaction between the fully licensed audiologist and client;

[(2) designed and executed on the basis of ongoing evaluation of the client's communication needs, skills, and resources, and

[(3) designed and executed only by a fully licensed audiologist; certain routine and perfunctory aspects of the intervention process, such as carryover activities, may be delegated to a licensed assistant.

(d) Carryover is:

[(1) the therapeutically designed transfer of a newly acquired communication ability to contexts and situations outside of the therapy situation; and

[(2) designed by a fully licensed audiologist.

(e) The assistant may conduct carryover activities, language and auditory stimulation, and other activities related to intervention and record keeping as described in these sections and as deemed appropriate by the supervising fully licensed audiologist

(f) The assistant may oversee activities of communication helpers in consultation with, and direction of, fully licensed audiologists.

(g) Direct supervision of audiologist duties assigned to the assistant shall be provided by a licensed audiologist.

(1) Following on-the-job training, the assistant's initial client contact shall be directly supervised. Thereafter, the minimum supervision requirements for an assistant by the supervisor shall be no less than

two hours a week, at least half of which is direct on-site supervision at the location where the assistant is employed. If an alternative arrangement is needed, the supervisor must submit a proposed plan for review by the board or the appropriate committee to determine if the plan is acceptable. Indirect methods of supervision such as audio and/or video tape recording, telephone communication, numerical data, or other means of reporting may be utilized.

[(2) Supervisory records shall be maintained by the supervisor which verify regularly scheduled monitoring, assessment, and evaluation of assistant and client performance. Such documentation may be requested by the board.

[(h) An assistant will be required to meet continuing education requirements for license renewal as stated in §741.163 of this title (relating to Requirements for Continuing Professional Education).

[(f)(i)] An assistant may renew a license without submitting a current supervisory responsibility statement completed by the licensed audiologist [even though the assistant does not have a supervisor]. However, if the assistant loses his or her licensed audiologist, the assistant may not practice until another licensed audiologist agrees to accept responsibility for the services provided by the assistant [a supervisor is obtained] and a new supervisory responsibility statement is submitted and approved by the board office. To continue to practice without a current supervisory responsibility statement on file in the board office [supervision] may result in revocation of the assistant's license.

(g) An assistant may not engage in tasks for the fitting, dispensing or sale of a hearing instrument; however, an assistant who is licensed under Texas Civil Statutes, Article 4566-1.01, et seq, may engage in activities as allowed by that law and is not considered to be functioning under his or her assistant license when performing those activities.

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

Issued in Austin, Texas, on August 30, 1995.

TRD-9510930

Gene R. Powers, Ph.D.  
Chairperson  
State Board of Examiners  
for Speech-Language  
Pathology and  
Audiology

Earliest possible date of adoption: October 6, 1995

For further information, please call: (512) 834-6627

## Subchapter H. Application Procedures

### • 22 TAC §741.103

The amendment is proposed under Texas Civil Statutes, Article 4512j, §5, which provide the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Article 4512j; §12 relating to rules on the examination, and §13A relating to rules on the limited license to practice in the public schools.

The proposed section affects Texas Civil Statutes, Article 4512j and the Family Code, Chapter 232.

#### §741.103. Required Application Materials.

(a) An applicant applying for a speech-language pathology or audiology license under §741.61 of this title (relating to Requirements for a Speech-Language Pathology License) or §741.81 of this title (relating to Requirements for an Audiology License) must submit the following:

(1) a current, original [an] application form obtained from the board office that requires the disclosure of the applicant's social security number and has been completed, signed, dated, and notarized by the applicant; [which shall contain:

[(A) specific information regarding personal data, employment and nature of professional practice, social security number, other state licenses and certifications held, disciplinary proceeding, felony and misdemeanor convictions, educational background, practicum experience, supervised experience and references;

[(B) a statement that the applicant has read Texas Civil Statutes, Article 4512j (Act), and the board rules and agrees to abide by them;

[(C) a statement that the applicant, if issued a license, shall return the license to the board upon the revocation or suspension of the license;

[(D) a statement that the applicant understands that fees submitted in the licensure process are nonrefundable;

[(E) the dated and notarized signature of the applicant; and

[(F) notification that the applicant may be entitled to a full refund if the application is not processed within the periods of time as required by §741.182 of this title (relating to Processing Procedures);]

(2) (No change.)

(3) an original or certified copy of transcript(s) of all relevant course work which also verifies that the applicant possesses a minimum of a master's degree with a major in one of the areas of communicative sciences or disorders;

(4) an original [or certified copy] coursework and clinical experience form obtained from the board office completed by [from] the director or designee of the college or university attended which verifies [training program verifying] the applicant has met the requirements established in §741.61(2)-(9) of this title or §741.81(2)-(9) of this title; [completed the clinical experience set out in either §741.61(8) or (9) of this title or §741.81(8) or (9) of this title.]

(5) an original report of completed internship form obtained from the board office completed by the applicant's supervisor and signed by both the applicant and the supervisor; and [a supervised post-graduate experience form which must contain the following information:

[(A) the name of the applicant;

[(B) the supervisor's name, address, degree, and licensure status;

[(C) the name and address of the agency or organization where the experience was gained;

[(D) the inclusive dates of the supervised experience and the total number of hours of supervised post-graduate practice;

[(E) the number of hours of weekly face-to-face supervision provided for the applicant and the types of supervision used (direct, observation room, video tape, audio tape, review of records, etc.);

[(F) the applicant's employment status during supervised experience; and

[(G) the dated and notarized signature of the supervisor; and]

(6) an original or certified statement from the Educational Testing Service showing the applicant passed [a passing score on] the examination described in §741.122 of this title (relating to Administration) within the past ten years.

(b) An applicant applying for an intern in speech-language pathology license

under §741.62 of this title (relating to Requirements for an Intern in Speech-Language Pathology License) or an intern in audiology license under §741.82 of this title (relating to Requirements for an Intern in Audiology License) must submit the following:

(1) a current, original [an] application form obtained from the board office that requires the disclosure of the applicant's social security number and has been completed, signed, dated and notarized by the applicant; [which shall contain:

[(A) specific information regarding personal data, employment and nature of professional practice, social security number, other state licenses and certifications held, disciplinary proceedings, felony and misdemeanor convictions, educational background, practicum experience, supervised experience and references;

[(B) a statement that the applicant has read the Act and the board rules and agrees to abide by them;

[(C) a statement that the applicant, if issued a license, shall return the license to the board upon the revocation or suspension of the license;

[(D) a statement that the applicant understands that fees submitted in the licensure process are nonrefundable; and

[(E) the dated and notarized signature of the applicant; and

[(F) notification that the applicant may be entitled to a full refund if the application is not processed within the periods of time as required by §741.182 of this title;]

(2) (No change.)

(3) an original or certified copy of transcript(s) of all relevant course work which also verifies that the applicant possesses a minimum of a master's degree with a major in one of the areas of communicative sciences or disorders;

(4) if the master's degree has not been officially conferred, an original or certified copy of transcript(s) and a letter signed by the program director at the university attended verifying the applicant successfully completed all requirements for the master's degree, and is only awaiting the date of next graduation for the degree to be conferred;

(5)[(4)] an original [or certified copy] coursework and clinical experience

form obtained from the board office completed by [from] the director or designee of the college or university attended which verifies [training program verifying] the applicant met the requirements established in §741.61(2)-(9) of this title or §741.81(2)-(9) of this title [completed the clinical experience set out in §741.61(8) or (9) of this title or §741.81(8) or (9) of this title]; and

(6) [(5)] a current, original [the] intern plan and [notarized] agreement of supervision form obtained from the board office completed by the supervisor and signed by both the applicant and the supervisor.

(c) An applicant who holds the American Speech-Language-Hearing Association certificate of clinical competence applying for licensure under §741.63 of this title (relating to Special Conditions for Licensure of Speech-Language Pathologists) or §741.83 of this title (relating to Special Conditions for Licensure of Audiologists) must submit the following:

(1) a current, original [an] application form obtained from the board office that requires the disclosure of the applicant's social security number and has been completed, signed, dated and notarized by the applicant; [which shall contain:

[(A) specific information regarding personal data, employment and nature of professional practice, social security number, other state licenses and certifications held, disciplinary proceedings, felony and misdemeanor convictions, educational background, practicum experience, supervised experience and references;

[(B) a statement that the applicant has read the Act and the board rules and agrees to abide by them;

[(C) a statement that the applicant, if issued a license, shall return the license to the board upon the revocation or suspension of the license;

[(D) a statement that the applicant understands that fees submitted in the licensure process are nonrefundable;

[(E) the dated and notarized signature of the applicant; and

[(F) notification that the applicant may be entitled to a full refund if the application is not processed within the periods of time as required by §741.182 of this title;]

(2) (No change.)

(3) an original or certified copy of a letter from the American Speech-Language-Hearing Association which verifies [stating] the applicant currently holds the certificate of clinical competence in the area in which the applicant has applied for license; however, an applicant who holds the American Speech-Language-Hearing Association certificate of clinical competence in audiology and in speech-language pathology applying for dual licensure as a speech-language pathologist and audiologist must submit an original or certified copy of a letter from the American Speech-Language-Hearing Association which verifies [stating] the applicant currently holds the certificate of clinical competence in speech-language pathology and in audiology; and

(4) (No change.)

(d) An applicant applying for a speech-language pathology or audiology provisional license under §741.64 of this title (relating to Requirements for a Provisional Speech-Language Pathology License) or §741.84 of this title (relating to Requirements for a Provisional Audiology License) must submit the following:

(1) a current, original [an] application form obtained from the board office that requires the disclosure of the applicant's social security number and has been completed, signed, dated, and notarized by the applicant; [which shall contain:

[(A) specific information regarding personal data, employment and nature of professional practice, social security number, other state licenses and certifications held, disciplinary proceedings, felony and misdemeanor convictions, educational background, practicum experience, supervised experience and references;

[(B) a statement that the applicant has read the Act and the board rules and agrees to abide by them;

[(C) a statement that the applicant, if issued a license, shall return the license to the board upon the revocation or suspension of the license;

[(D) a statement that the applicant understands that fees submitted in the licensure process are nonrefundable;

[(E) the dated and notarized signature of the applicant; and

[(F) notification that the applicant may be entitled to a full refund if the application is not processed within the

periods of time as required by §741.182 of this title;]

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

(5) an original letter or form completed by that state's licensing board with board seal affixed which verifies the applicant holds a current valid license and which contains:

(A)-(H) (No change.)

(6) an original or certified statement from the Education Testing Service which verifies the applicant passed [showing a passing score on] the examination described in §741.122 of this title [(relating to Administration)] within the past ten years if no examination is listed under paragraph (5)(F) of this subsection;

(7)-(8) (No change.)

(e) An applicant applying for an assistant in speech-language pathology license under §741.65 of this title (relating to Requirements for an Assistant in Speech-Language Pathology License) or an assistant in audiology license under §741.85 of this title (relating to Requirements for an Assistant in Audiology License) must submit the following:

(1) a current, original [an] application form obtained from the board office that requires the disclosure of the applicant's social security number and has been completed, signed, dated, and notarized by the applicant; [which shall contain:

[(A) specific information regarding personal data, employment and nature of professional practice, social security number, other state licenses and certifications held, disciplinary proceedings, felony and misdemeanor convictions, educational background and references;

[(B) a statement that the applicant has read the Act and the board rules and agrees to abide by them;

[(C) a statement that the applicant, if issued a license, shall return the license to the board upon the revocation or suspension of the license;

[(D) a statement that the applicant understands that fees submitted in the licensure process are nonrefundable;

[(E) the dated and notarized signature of the applicant; and

[(F) notification that the applicant may be entitled to a full refund if the

application is not processed within the periods of time as required by §741.182 of this title;]

(2) (No change.)

(3) a current, original supervisory responsibility statement form obtained from the board office completed by the licensed speech-language pathologist or licensed audiologist who agrees to accept responsibility for the services provided by the assistant; [which contains:

[(A) the name, address, employer, area of licensure and license number of the supervisor;

[(B) the name, area of licensure and employer of the associate;

[(C) a statement that the supervisor is responsible for notifying the board office of any change in the supervisory arrangements; and

[(D) the dated and notarized signature of the supervisor;]

(4) an original or certified copy of transcript(s) of relevant course work which also verifies that the applicant possesses a baccalaureate degree with an emphasis in speech-language pathology and/or audiology; [and]

(5) [for applicants who apply for license after September 1, 1994,] an original [or certified copy] clinical observation and experience form obtain from the board office and completed by [from] the director or designee of the college or university training program verifying the applicant completed the requirements [clinical experience] set out in §741.65(b)(3) [§741.65 (a)(2)(c)] of this title or §741.85(b)(3) [§741.85 (a)(2)(c)] of this title; and [.]

(6) for an applicant who did not obtain the hours referenced in paragraph (5) of this subsection, a written request for board review for an alternative method to obtain the hours.

(f) An applicant applying for a speech-language pathology temporary certificate of registration under §741.66 of this title (relating to Requirements for a Temporary Certificate of Registration in Speech-Language Pathology) or an audiology temporary certificate of registration under §741.86 of this title (relating to Requirements for a Temporary Certificate of Registration in Audiology) must submit the following:

(1) a current, original [an] application form obtained from the board office that requires the disclosure of the

applicant's social security number and has been completed, signed, dated and notarized by the applicant; [which shall contain:

[(A) specific information regarding personal data, employment and nature of professional practice, social security number, other state licenses and certifications held, disciplinary proceedings, felony and misdemeanor convictions, educational background, practicum experience, supervised experience and references;

[(B) a statement that the applicant has read the Act and the board rules and agrees to abide by them;

[(C) a statement that the applicant, if issued a license, shall return the license to the board upon the revocation or suspension of the license;

[(D) a statement that the applicant understands that fees submitted in the licensure process are nonrefundable;

[(E) the dated and notarized signature of the applicant; and

[(F) notification that the applicant may be entitled to a full refund if the application is not processed within the periods of time as required by §741.182 of this title;]

(2) (No change.)

(3) an original or certified copy of transcript(s) of all relevant course work which also verifies that the applicant possesses a minimum of a master's degree with a major in one of the areas of communicative sciences or disorders;

(4) an original [or certified copy] coursework and clinical experience form obtained from the board office completed by [from] the director or designee of the college or university attended which verifies [training program verifying] the applicant met the requirements established in §741.61(2)-(9) of this title or §741.81(2)-(9) of this title [completed the clinical experience set out in either §741.61(8) or (9) of this title or §741.81(8) or (9) of this title]; and

(5) an original report of completed internship form obtained from the board office completed by the applicant's supervisor and signed by both the applicant and the supervisor. [an original or certified copy of a supervised post-graduate experience form which must contain the following information:

[(A) the name of the applicant;

[(B) the supervisor's name, address, degree, and licensure status;

[(C) the name and address of the agency or organization where the experience was gained;

[(D) the inclusive dates of the supervised experience and the total number of hours of supervised post-graduate practice;

[(E) the number of hours of weekly face-to-face supervision provided for the applicant and the types of supervision used (direct, observation room, video tape, audio tape, review of records, etc.);

[(F) the applicant's employment status during supervised experience; and

[(G) the dated and notarized signature of the supervisor.]

(g) An applicant applying for a limited license to practice speech-language pathology in the public schools under §741.67 of this title (relating to Requirements for a Limited License to Practice Speech-Language Pathology in the Public Schools) must submit the following:

(1) a current, original application form obtained from the board office that requires the disclosure of the applicant's social security number and has been completed, signed, dated, and notarized by the applicant;

(2) the nonrefundable application fee;

(3) an original or certified copy of transcript(s) of all relevant course work which also verifies that the applicant holds a baccalaureate degree in communication disorders;

(4) a current, original statement signed by the superintendent of the school district stating the district has been unable to employ a licensed speech-language pathologist;

(5) an original form or letter from a school district showing the applicant has been employed as a speech-language pathologist from January 1, 1994 through December 31, 1995;

(6) an original form or letter from Central Education Agency stating the applicant is certified in speech and hearing therapy;

(7) an original or certified statement from the Educational Testing Service showing the applicant passed the examination described in §741.122 of this title within the past ten years;

(8) for an applicant applying under §741.67(d)(1) of this title, no fewer than two notarized statements from employers, administrators, professional colleagues, or members of related professions verifying that the applicant was engaged in the practice of speech-language pathology with two years prior to September 1, 1983; and

(9) for an applicant applying under §741.67(d)(2) of this title, an original letter from the program director of the college or university verifying the applicant is enrolled in a program of study towards a master's degree with a major in one of the areas of communicative sciences or disorders.

(h)[(g)] A licensed audiologist or licensed intern in audiology who wishes to fit and dispense hearing instruments under §741.87 of this title (relating to Requirements for Registration of Audiologists and Interns in Audiology who Fit and Dispense Hearing Instruments) must submit the following:

(1) a current, original registration form obtained from the board office that requires the disclosure of the applicant's social security number and has been completed, signed, dated, and notarized by the applicant; and [which shall contain:

[(A) the name, address, social security number, license number, expiration date of license and dated and notarized signature of the licensee; and

[(B) a statement that the audiologist or intern in audiology agrees to adhere to requirements of the Act and board rules and to comply with Title 21, Chapter 1, Code of Federal Regulations; and]

(2) the nonrefundable registration fee.

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

Issued in Austin, Texas, on August 30, 1995.

TRD-9510931  
Gene R. Powers, Ph.D.  
Chairperson  
State Board of Examiners  
for Speech-Language  
Pathology and  
Audiology

Earliest possible date of adoption: October 6, 1995

For further information, please call: (512) 834-6627

## Subchapter L. Fees and Processing Procedures

### • 22 TAC §741.181

The amendment is proposed under Texas Civil Statutes, Article 4512j, §5, which provide the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Article 4512j; §12 relating to rules on the examination; and §13A relating to rules on the limited license to practice in the public schools.

The amendment affects Texas Civil Statutes, Article 4512j and the Family Code, Chapter 232.

§741.181. *Schedule of Fees.* The purpose of this section is to establish a schedule of fees to provide the funds to support the activities of the board.

(1) The schedule of fees [and] is as follows:

(A) -(J) (No change.)

(K) late renewal penalty fee—an amount equal to the renewal fee(s), with a maximum of three renewal fees, plus the examination fee; [and]

(L) examination fee—the amount charged by the Texas Department of Health's designee administering the examination; and [.]

(M) reinstatement fee for a license that was suspended for failure to pay child support—\$50.

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

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

Issued in Austin, Texas, on August 30, 1995.

TRD-9510932  
Gene R. Powers, Ph.D.  
Chairperson  
State Board of Examiners  
for Speech-Language  
Pathology and  
Audiology

Earliest possible date of adoption: October 6, 1995

For further information, please call: (512) 834-6627



Subchapter M. Denial, Probation, Suspension, or Revocation of Licensure or Registration

• 22 TAC §741.200

The new section is proposed under Texas Civil Statutes, Article 4512j, §5, which provide the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Article 4512j; §12 relating to rules on the examination; and §13A relating to rules on the limited license to practice in the public schools.

The proposed section affects Texas Civil Statutes, Article 4512j and the Family Code, Chapter 232.

§741.200. Suspension of License for Failure to Pay Child Support.

(a) On receipt of a final court or attorney general's order suspending a license due to failure to pay child support, the executive secretary shall immediately determine if the board has issued a license to the obligor named on the order, and, if a license has been issued:

- (1) record the suspension of the license in the board's records;
(2) report the suspension as appropriate; and
(3) demand surrender of the suspended license.

(b) The board shall implement the terms of a final court or attorney general's order suspending a license without additional review or hearing. The board will provide notice as appropriate to the licensee or to others concerned with the license.

(c) The board may not modify, demand, reverse, vacate, or stay a court or attorney general's order suspending a license issued under the Family Code, Chapter 232 as added by Acts 1995, 74th Legislature Chapter 751, §751.85 (House Bill 433) and may not review, vacate, or reconsider the terms of an order.

(d) A licensee who is the subject of a final court or attorney general's order suspending his or her license is not entitled to a refund for any fee paid to the board.

(e) If a suspension overlaps a license renewal period, an individual with a license suspended under this section shall comply with the normal renewal procedures in the Act and this chapter; however, the license will not be renewed until subsections (g) and (h) of this section are met.

(f) An individual who continues to practice or represent himself or herself as a speech-language pathologist or audiologist after the issuance of a court or attorney

general's order suspending the license is liable for the same civil and criminal penalties provided for engaging in the prohibited activity without a license or while a license is suspended as any other license holder of the board.

(g) On receipt of a court or attorney general's order vacating or staying an order suspending a license, the executive secretary shall promptly issue the affected license to the individual if the individual is otherwise qualified for the license.

(h) The individual must pay a reinstatement fee set out at §711.181 (relating to Schedule of Fees) prior to issuance of the license under subsection (g) of this section.

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

Issued in Austin, Texas, on August 30, 1995.

TRD-9510933 Gene R. Powers, Ph.D. Chairperson State Board of Examiners for Speech-Language Pathology and Audiology

Earliest possible date of adoption: October 6, 1995

For further information, please call: (512) 834-6627

TITLE 25. HEALTH SERVICES

Part VIII. Interagency Council on Early Childhood Intervention Services

Chapter 621. Early Childhood Intervention

Early Childhood Intervention Service Delivery for Milestones Services

• 25 TAC §621.83

The Interagency Council on Early Childhood Intervention Services proposes an amendment to §621.83, concerning program requirements, in its Early Childhood Intervention Program chapter. The purpose of the amendment is to comply with federal regulations.

Mary Elder, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Elder also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be clear and

correct rules consistent with public comments and the Early Childhood Intervention Council's intent. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of this proposal may be directed to Donna Samuelson at (512) 502-4900. Written comments on the proposal may be submitted to Nancy Murphy, Media and Policy Services-555, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the Texas Register.

The amendment is proposed under the Human Resources Code, §§73.003, which authorizes the Interagency Council on Early Childhood Intervention Services to establish rules regarding services provided for children with developmental delays.

The amendment implements the Human Resources Code, §§73.001-73.021.

§621.83. Program Requirements. Programs that receive funds from the Interagency Council on Early Childhood Intervention (council) to operate a Milestones program shall implement the program according to the following requirements:

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

(5) Client eligibility. Programs must offer services to all potentially eligible infants and children in their service area. All eligible children shall be identified and offered services according to the following eligibility criteria before identifying any new criteria. A child is eligible for Milestones service if the child:

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

(E) is not receiving comprehensive case management from any other state, federal or public-supported program, including but not limited to, Children with Special Health Care Needs[;] or Women and Children's Services[; Women, Infants, and Children program; and Champus]. When a Milestones program has identified and offered services to all eligible infants and children in its service area according to Milestones eligibility criteria, the SAB may identify optional criteria which recognize biological risk factors. A plan shall be developed and submitted to the state office for approval which may include but is not limited to the following criteria:

(i)-(v) (No change.)

(6)-(7) (No change.)

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

Issued in Austin, Texas, on August 29, 1995.

Earliest possible date of adoption: October 6, 1995

For further information, please call: (512) 450-3765

## TITLE 30. ENVIRONMENTAL QUALITY

### Part I. Texas Natural Resource Conservation Commission

#### Chapter 101. General Rules

##### • 30 TAC §101.1

The Texas Natural Resource Conservation Commission (TNRCC) proposes an amendment to §101.1, concerning Definitions. The definition of volatile organic compounds (VOC) is proposed to be modified by exempting acetone, parachlorobenzotrifluoride (PCBTF), and volatile methyl siloxanes (VMS) from the definition of VOC. For clarity, and to increase consistency with recent TNRCC rule revisions, federal rules, and Environmental Protection Agency (EPA) terminology, the TNRCC also proposes minor revisions to several other definitions

The proposed changes to the definition of VOC would add acetone, PCBTF, and VMS to the list of compounds which are not classified as VOCs. The EPA has ruled that these compounds have negligible photochemical reactivity, and thus do not appreciably contribute to the formation of urban ozone (final rules at 59 Federal Register (FR) 50693 and 60 FR 31633). The proposed revisions to the definition of VOC would make the TNRCC definition consistent with the EPA definition. The proposal is also being made in response to a company's petition to exclude VMS from the definition of VOC, which the TNRCC approved for rulemaking on July 12, 1995.

The TNRCC also proposes to add definitions of high-bake coatings, low-bake coatings, mechanical shoe seal; revise the definitions of gasoline bulk plant and gasoline terminal to clarify that these do not include marine loading operations, which are separately regulated; delete the definition of specified solvent-using processes and relocate the associated definitions of cold solvent cleaning, open-top vapor degreasing, and conveyORIZED degreasing; and revise the definition of volatile organic compound to correct typographical errors. In addition, the TNRCC proposes changes to §101.1 to delete the definition of automobile refinishing and replace it with a definition of vehicle refinishing (body shops) which more accurately describes the activities included in this definition. Finally, the definitions of automotive basecoat/clearcoat system, automotive precoat, automotive pretreatment, automotive primer or primer surfacers, automotive seal-

ers, automotive specialty coatings, automotive three-stage system, and automotive wipe-down solutions are proposed to be revised to include a reference to vehicle refinishing (body shops).

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Minick also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a more understandable and enforceable environmental regulation. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Public hearings on this proposal will be held in Beaumont on September 26, 1995, at 7:00 p.m. at the John Gray Institute, 855 Florida Avenue, Beaumont; and in Houston on September 27, 1995, at 10.00 a.m. in Conference Room A at the Houston-Galveston Area Council, 3555 Timmons Lane, Houston. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however a TNRCC staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments not presented at the hearing may be submitted to the TNRCC central office in Austin. The deadline for submission of written comments will be 30 days after the date of publication of the proposal in the *Texas Register*. Material received by the TNRCC Office of Policy and Regulatory Development by 4:00 p.m. on that date will be considered by the Commission prior to any final action on the proposal. Please mail written comments to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, and reference Rule Log #95134-115-A1. Comments can also be faxed to (512) 239-5687. Copies of the proposal are available at the central office of the TNRCC, Air Policy and Regulations Division, located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, and at all TNRCC regional offices. For further information, contact Ann Hammer at (512) 239-6255 or Eddie Mack at (512) 239-1488.

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.

The amendment is proposed under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed amendment affects the Health and Safety Code, §382.017.

**§101.1. Definitions.** Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the Texas Natural Resource Conservation Commission (TNRCC), the terms used by the TNRCC have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

[Automobile refinishing—The recoating of individual automobiles and light-duty trucks by a commercial operation other than the manufacturer to repair, restore, or alter the exterior finish, including primer, primer surfacer, alkyd enamel, base coat, clear coat, and lacquer application.]

Automotive basecoat/clearcoat system (used in vehicle [automobile] refinishing (body shops))—A topcoat system composed of a pigmented basecoat portion and a transparent clearcoat portion. The volatile organic compound (VOC) content of a basecoat (bc) /clearcoat (cc) system shall be calculated according to the following formula:

Figure 1: 30 TAC §101.1

Automotive precoat (used in vehicle [automobile] refinishing (body shops))—Any coating that is applied to bare metal to deactivate the metal surface for corrosion resistance to a subsequent water-based primer. This coating is applied to bare metal solely for the prevention of flash rusting.

Automotive pretreatment (used in vehicle [automobile] refinishing (body shops))—Any coating which contains a minimum of 0.5% acid by weight that is applied directly to bare metal surfaces to etch the metal surface for corrosion resistance and adhesion.

Automotive primer or primer surfacers (used in vehicle [automobile] refinishing (body shops))—Any base coat, sealer, or intermediate coat which is applied prior to colorant or aesthetic coats.

Automotive sealers (used in vehicle [automobile] refinishing (body shops))—Coatings that are formulated with resins which, when dried, are not readily soluble in typical solvents. These coatings act as a shield for surfaces over which they are sprayed by resisting the penetration of solvents which are in the final topcoat.

Automotive specialty coatings (used in vehicle [automobile] refinishing (body shops))—Coatings or additives which are necessary due to unusual job performance requirements. These coatings or additives prevent the occurrence of surface defects and impart or improve desirable coating properties. These products include, but are not limited to, uniform finish blenders, elastomeric materials for coating of flexible plastic parts, coatings for non-metallic

parts, jaming clear coatings, gloss flatteners, and anti-glare/safety coatings.

**Automotive three-stage system (used in vehicle [automobile] refinishing (body shops))**—A topcoat system composed of a pigmented basecoat portion, a semitransparent midcoat portion, and a transparent clearcoat portion. The volatile organic compound (VOC) content of a three-stage system shall be calculated according to the following formula:

Figure 2: 30 TAC §101.1

**Automotive wipe-down solutions (used in vehicle refinishing (body shops))**—Any solution used for cleaning and surface preparation.

**Cold solvent cleaning**—The batch process of cleaning and removing soils from metal surfaces by spraying, brushing, flushing, and/or immersion while maintaining the solvent below its boiling point. Wipe cleaning (hand cleaning) is not included in this definition.

**Conveyorized degreasing**—The continuous process of cleaning and removing soils from metal surfaces by operating with either cold or vaporized solvent.

**Gasoline bulk plant**—A gasoline loading and/or unloading facility, excluding marine terminals, having a gasoline throughput less than 20,000 gallons (75,708 liters) per day, averaged over any consecutive 30-day period. A motor vehicle fuel dispensing facility is not a gasoline bulk plant.

**Gasoline terminal**—A gasoline loading and/or unloading facility, excluding marine terminals, having a gasoline throughput equal to or greater than 20,000 gallons (75,708 liters) per day, averaged over any consecutive 30-day period.

**High-bake coatings**—Coatings designed to cure at temperatures above 194 degrees Fahrenheit.

**Low-bake coatings**—Coatings designed to cure at temperatures of 194 degrees Fahrenheit or less.

**Mechanical shoe seal**—A metal sheet which is held vertically against the storage tank wall by springs or weighted levers and is connected by braces to the floating roof. A flexible coated fabric (envelope) which is impervious to volatile organic compounds spans the annular space between the metal sheet and the floating roof.

**Open-top vapor degreasing**—The batch process of cleaning and removing soils from metal surfaces by condensing hot solvent vapors on the colder metal parts.

[Specified solvent-using processes—

(A) **Cold solvent cleaning**—The batch process of cleaning and removing soils from metal surfaces by spraying, brushing, flushing, and/or immersion

while maintaining the solvent below its boiling point. Wipe cleaning (hand cleaning) is not included in this definition.

(B) **Open-top vapor degreasing**—The batch process of cleaning and removing soils from metal surfaces by condensing hot solvent vapors on the colder metal parts.

(C) **Conveyorized degreasing**—The continuous process of cleaning and removing soils from metal surfaces by operating with either cold or vaporized solvent.]

**Vehicle refinishing (body shops)**—The repair and recoating of vehicles, including, but not limited to, motorcycles, passenger cars, vans, light-duty trucks, medium-duty trucks, heavy-duty trucks, buses, and other vehicle body parts, bodies, and cabs by an operation other than the original manufacturer. The repair and recoating of trailers and construction equipment is not included.

**Volatile organic compound**—Any compound of carbon or mixture of carbon compounds excluding methane, ethane, 1,1,1-trichloroethane (methyl chloroform), methylene chloride (dichloromethane), trichlorofluoromethane (CFC-11), dichlorodifluoromethane (CFC-12), chlorodifluoromethane (HCFC-22) [(CFC-22)], trifluoromethane (HFC-23) [(FC-23)], 1,1,2-trichloro-1,2,2-trifluoroethane [1,1,1-trichloro-2,2,2-trifluoroethane] (CFC-113), 1,2-dichloro-1,1,2, 2-tetrafluoroethane (CFC-114), chloropentafluoroethane (CFC-115), 1,1, 1-trifluoro-2,2-dichloroethane (HCFC-123), 2-chloro-1,1,1, 2-tetrafluoroethane [1,1,1,2-tetrafluoroethane] (HCFC-124), pentafluoroethane (HFC-125), 1,1,2,2-tetrafluoroethane (HFC-134), 1,1,1, 2-tetrafluoroethane (HFC-134a), 1,1-dichloro-1-fluoroethane (HCFC-141b), 1-chloro-1,1-difluoroethane (HCFC-142b), 1,1,1-trifluoroethane (HFC-143a), 1, 1-difluoroethane (HFC-152a), parachlorobenzotrifluoride (PCBTF-), cyclic, branched, or linear completely methylated siloxanes, acetone, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, ammonium carbonate, and perfluorocarbon compounds which fall into these classes:

(A) cyclic, branched, or linear, completely fluorinated alkanes;

(B) cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(C) cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(D) sulfur-containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

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

Issued in Austin, Texas, on August 30, 1995.

TRD-9510945

Lydia Gonzalez-Gromatzky  
Acting Director, Legal  
Services Division  
Texas Natural Resource  
Conservation  
Commission

Proposed date of adoption: December 20, 1995

For further information, please call: (512) 239-1970

## Chapter 115. Control of Air Pollution From Volatile Organic Compounds

### Subchapter A. Definitions

#### • 30 TAC §115.10

The Texas Natural Resource Conservation Commission (TNRCC) proposes an amendment to §115.10, concerning Definitions. The definition of volatile organic compounds (VOC) is proposed to be modified by exempting acetone, parachlorobenzotrifluoride (PCBTF), and volatile methyl siloxanes (VMS) from the definition of VOC. For clarity, and to increase consistency with recent TNRCC rule revisions, federal rules, and Environmental Protection Agency (EPA) terminology, the TNRCC also proposes minor revisions to several other definitions.

The proposed changes to the definition of VOC would add acetone, PCBTF, and VMS to the list of compounds which are not classified as VOCs. The EPA has ruled that these compounds have negligible photochemical reactivity, and thus do not appreciably contribute to the formation of urban ozone (final rules at 59 Federal Register (FR) 50693 and 60 FR 31633). The proposed revisions to the definition of VOC would make the TNRCC definition consistent with the EPA definition. The proposal is also being made in response to a company's petition to exclude VMS from the definition of VOC, which the TNRCC approved for rulemaking on July 12, 1995.

The TNRCC also proposes to add definitions of high-bake coatings, low-bake coatings, mechanical shoe seal; revise the definitions of gasoline bulk plant and gasoline terminal to clarify that these do not include marine loading operations, which are separately regulated; delete the definition of specified solvent-using processes and relocate the associated definitions of cold solvent cleaning, open-top vapor degreasing, and conveyorized degreasing; and revise the definition of volatile organic compound to correct typographical errors. In addition, the TNRCC pro-

poses changes to §115.10 to delete the definition of automobile refinishing and replace it with a definition of vehicle refinishing (body shops) which more accurately describes the activities included in this definition. Finally, the definitions of automotive basecoat/clearcoat system, automotive precoat, automotive pretreatment, automotive primer or primer surfacers, automotive sealers, automotive specialty coatings, automotive three-stage system, and automotive wipe-down solutions are proposed to be revised to include a reference to vehicle refinishing (body shops).

The proposed changes to §115.10 also revise the definitions of external floating roof and internal floating cover to specify that an external floating roof storage tank which is equipped with a self-supporting fixed roof (typically a bolted aluminum geodesic dome) is considered to be an internal floating roof storage tank for inspection requirements in Chapter 115. The confined space created by the addition of the dome cover may be unsafe to enter while the tank is in service, so the requirement for an annual physical measurement of the seal gap, which requires entry, is not appropriate. Since geodesic domes are typically retrofitted onto external floating roof tanks (for weather protection), these tanks will already be equipped with primary and secondary seals on the floating roof. The TNRCC considers it appropriate to maintain the requirement for a secondary seal, after the addition of a geodesic dome. The emissions from a storage tank with a single seal and a geodesic dome roof are higher than an internal floating roof storage tank with a single seal, due to the gap between the geodesic dome roof and the tank, which creates evaporative wind effects at the fitting penetrations and seals of the floating roofs.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Minick also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a more understandable and enforceable environmental regulation. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Public hearings on this proposal will be held in Beaumont on September 26, 1995, at 7:00 p.m. at the John Gray Institute, 855 Florida Avenue, Beaumont; and in Houston on September 27, 1995, at 10:00 a.m. in Conference Room A at the Houston-Galveston Area Council, 3555 Timmons Lane, Houston. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however a TNRCC staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments not presented at the hearing may be submitted to the TNRCC central

office in Austin. The deadline for submission of written comments will be 30 days after the date of publication of the proposal in the *Texas Register*. Material received by the TNRCC Office of Policy and Regulatory Development by 4:00 p.m. on that date will be considered by the Commission prior to any final action on the proposal. Please mail written comments to Heather Evans, Office of Policy and Regulatory Development, MC 205, P O Box 13087, Austin, Texas 78711-3087, and reference Rule Log #95134-115-A1. Comments can also be faxed to (512) 239-5687. Copies of the proposal are available at the central office of the TNRCC, Air Policy and Regulations Division, located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, and at all TNRCC regional offices. For further information, contact Ann Hammer at (512) 239-6255 or Eddie Mack at (512) 239-1488.

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.

The amendment is proposed under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed amendment affects the Health and Safety Code, §382.017.

**§115.10 Definitions.** Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the Texas Natural Resource Conservation Commission (Commission), the terms used by the Commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

[Automobile refinishing—The recoating of individual automobiles and light-duty trucks by a commercial operation other than the manufacturer to repair, restore, or alter the exterior finish, including primer, primer surfacer, alkyd enamel, base coat, clear coat, and lacquer application.]

Automotive basecoat/clearcoat system (used in vehicle [automobile] refinishing (body shops))—A topcoat system composed of a pigmented basecoat portion and a transparent clearcoat portion. The volatile organic compound (VOC) content of a basecoat (bc) /clearcoat (cc) system shall be calculated according to the following formula:

Figure 1: 30 TAC §115.10

Automotive precoat (used in vehicle [automobile] refinishing (body shops))—Any coating that is applied to bare metal to deactivate the metal surface for corrosion resistance to a subsequent water-

based primer. This coating is applied to bare metal solely for the prevention of flash rusting.

Automotive pretreatment (used in vehicle [automobile] refinishing (body shops))—Any coating which contains a minimum of 0.5% acid by weight that is applied directly to bare metal surfaces to etch the metal surface for corrosion resistance and adhesion.

Automotive primer or primer surfacers (used in vehicle [automobile] refinishing (body shops))—Any base coat, sealer, or intermediate coat which is applied prior to colorant or aesthetic coats.

Automotive sealers (used in vehicle [automobile] refinishing (body shops))—Coatings that are formulated with resins which, when dried, are not readily soluble in typical solvents. These coatings act as a shield for surfaces over which they are sprayed by resisting the penetration of solvents which are in the final topcoat.

Automotive specialty coatings (used in vehicle [automobile] refinishing (body shops))—Coatings or additives which are necessary due to unusual job performance requirements. These coatings or additives prevent the occurrence of surface defects and impart or improve desirable coating properties. These products include, but are not limited to, uniform finish blenders, elastomeric materials for coating of flexible plastic parts, coatings for non-metallic parts, jaming clear coatings, gloss flatteners, and anti-glare/safety coatings.

Automotive three-stage system (used in vehicle [automobile] refinishing (body shops))—A topcoat system composed of a pigmented basecoat portion, a semitransparent midcoat portion, and a transparent clearcoat portion. The volatile organic compound (VOC) content of a three-stage system shall be calculated according to the following formula:

Figure 2: 30 TAC §115.10

Automotive wipe-down solutions (used in vehicle refinishing (body shops))—Any solution used for cleaning and surface preparation.

Cold solvent cleaning—The batch process of cleaning and removing soils from metal surfaces by spraying, brushing, flushing, and/or immersion while maintaining the solvent below its boiling point. Wipe cleaning (hand cleaning) is not included in this definition.

Conveyorized degreasing—The continuous process of cleaning and removing soils from metal surfaces by operating with either cold or vaporized solvent.

External floating roof—A cover or roof in an open-top tank which rests upon or is floated upon the liquid being contained and is equipped with a single or double seal to close the space between the roof edge and tank shell. A double seal consists of two complete and separate closure seals.

one above the other, containing an enclosed space between them. An external floating roof storage tank which is equipped with a self-supporting fixed roof (typically a bolted aluminum geodesic dome) shall be considered to be an internal floating roof storage tank only for the inspection requirements of this chapter (relating to Control of Air Pollution from Volatile Organic Compounds).

**Gasoline bulk plant**—A gasoline loading and/or unloading facility, excluding marine terminals, having a gasoline throughput less than 20,000 gallons (75,708 liters) per day, averaged over any consecutive 30-day period. A motor vehicle fuel dispensing facility is not a gasoline bulk plant.

**Gasoline terminal**—A gasoline loading and/or unloading facility, excluding marine terminals, having a gasoline throughput equal to or greater than 20,000 gallons (75,708 liters) per day, averaged over any consecutive 30-day period.

**High-bake coatings**—Coatings designed to cure at temperatures above 194 degrees Fahrenheit.

**Internal floating cover**—A cover or floating roof in a fixed roof tank which rests upon or is floated upon the liquid being contained, and is equipped with a closure seal or seals to close the space between the cover edge and tank shell. An external floating roof storage tank which is equipped with a self-supporting fixed roof (typically a bolted aluminum geodesic dome) shall be considered to be an internal floating roof storage tank only for the inspection requirements of this chapter (relating to Control of Air Pollution from Volatile Organic Compounds).

**Low-bake coatings**—Coatings designed to cure at temperatures of 194 degrees Fahrenheit or less.

**Mechanical shoe seal**—A metal sheet which is held vertically against the storage tank wall by springs or weighted levers and is connected by braces to the floating roof. A flexible coated fabric (envelope) which is impervious to volatile organic compounds spans the annular space between the metal sheet and the floating roof.

**Open-top vapor degreasing**—The batch process of cleaning and removing soils from metal surfaces by condensing hot solvent vapors on the colder metal parts.

[Specified solvent-using processes—

[(A) Cold solvent cleaning—The batch process of cleaning and removing soils from metal surfaces by spraying, brushing, flushing, and/or immersion while maintaining the solvent below its boiling point. Wipe cleaning (hand cleaning) is not included in this definition.

[(B) Open-top vapor degreasing—The batch process of cleaning and removing soils from metal surfaces by condensing hot solvent vapors on the colder metal parts.

[(C) ConveyORIZED degreasing—The continuous process of cleaning and removing soils from metal surfaces by operating with either cold or vaporized solvent.]

**Vehicle refinishing** (body shops)—The repair and recoating of vehicles, including, but not limited to, motorcycles, passenger cars, vans, light-duty trucks, medium-duty trucks, heavy-duty trucks, buses, and other vehicle body parts, bodies, and cabs by an operation other than the original manufacturer. The repair and recoating of trailers and construction equipment is not included.

**Volatile organic compound**—Any compound of carbon or mixture of carbon compounds excluding methane, ethane, 1,1,1-trichloroethane (methyl chloroform), methylene chloride (dichloromethane), trichlorofluoromethane (CFC-11), dichlorodifluoromethane (CFC-12), chlorodifluoromethane (HCFC-22) [(CFC-22)], trifluoromethane (HFC-23) [(FC-23)], 1,1,2-trichloro-1,2,2-trifluoroethane [1,1,1-trichloro-2,2,2-trifluoroethane] (CFC-113), 1,2-dichloro-1,1,2, 2-tetrafluoroethane (CFC-114), chloropentafluoroethane (CFC-115), 1,1, 1-trifluoro-2,2-dichloroethane (HCFC-123), 2-chloro-1,1,1, 2-tetrafluoroethane [1,1,1,2-tetrafluoroethane] (HCFC-124), pentafluoroethane (HFC-125), 1,1,2,2-tetrafluoroethane (HFC-134), 1,1,1, 2-tetrafluoroethane (HFC-134a), 1,1-dichloro-1-fluoroethane (HCFC-141b), 1-chloro-1,1-difluoroethane (HCFC-142b), 1,1,1-trifluoroethane (HFC-143a), 1, 1-difluoroethane (HFC-152a), **parachlorobenzotrifluoride** (PCBTF-), cyclic, branched, or linear completely methylated siloxanes, acetone, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, ammonium carbonate, and perfluorocarbon compounds which fall into these classes:

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

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

Issued in Austin, Texas, on August 30, 1995.

TRD-9510946

Lydia Gonzalez-Gromatzky  
Acting Director, Legal  
Services Division  
Texas Natural Resource  
Conservation  
Commission

Proposed date of adoption: December 20, 1995

For further information, please call (512) 239-1970

## Subchapter B. General Volatile Organic Compound Sources Storage of Volatile Organic Compounds

• 30 TAC §§115.112, 115.114, 115.116, 115.117

The Texas Natural Resource Conservation Commission (TNRCC or Commission) proposes amendments to §§115.112, 115.114, 115.116, and 115.117, concerning Storage of Volatile Organic Compounds (VOC). The proposed changes to §115.112, concerning Control Requirements, clarify existing control requirements and update terminology.

The proposed changes to §115.114, concerning Inspection Requirements, establish separate inspection requirements for internal and external floating roof tanks, and establish a 45-day repair schedule with the availability of a 30-day extension.

The proposed changes to §115.116, concerning Monitoring and Recordkeeping Requirements, and §115.117, concerning Exemptions, clarify that exemptions based upon vapor pressure are determined at storage conditions. The TNRCC intends to include more specific language which defines the temperature used to establish the vapor pressure in the adoption of final rules.

The proposed changes to §115.117 also update terminology and resolve a conflict between recordkeeping requirements and exemptions. The conflict is between §115.117(a)(1) and (b)(1), which exempt tanks storing VOC with a true vapor pressure less than 1.5 psia, and §115.116(a)(1) and (b)(1), which require maintenance of records for certain exempt storage tanks. Because maintaining records of exempt status is necessary for enforcement of the rule, a proposed correction to §115.117(a)(1) and (b)(1) specifies that the recordkeeping requirements are not included in these exemptions.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Minick also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a more understandable and enforceable environmental regulation. There will be minimal or no effect on small businesses, persons, or businesses who are required to comply with the sections as proposed. The proposed requirement to maintain records of exempt status will have minimal fiscal impact, since most companies already maintain such records.

Public hearings on this proposal will be held in Beaumont on September 26, 1995, at 7:00 p.m. at the John Gray Institute, 855 Florida Avenue, Beaumont; and in Houston on Sep-

tember 27, 1995 at 10:00 a.m. in Conference Room A at the Houston-Galveston Area Council, 3555 Timmons Lane, Houston. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, a TNRCC staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments not presented at the hearing may be submitted to the TNRCC central office in Austin. The deadline for submission of written comments will be 30 days after the date of publication of the proposal in the *Texas Register*. Material received by the TNRCC Office of Policy and Regulatory Development by 4:00 p.m. on that date will be considered by the Commission prior to any final action on the proposal. Please mail written comments to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, and reference Rule Log #95137-115-AI. Comments can also be faxed to (512) 239-5687. Copies of the proposal are available at the central office of the TNRCC, Air Policy and Regulations Division, located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, and at all TNRCC regional offices. For further information, contact Eddie Mack at (512) 239-1488.

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.

The amendments are proposed under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed amendments affect the Health and Safety Code, §382.017.

#### §115.112. Control Requirements.

(a) For all persons 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), the following requirements shall apply.

(1) (No change.)

(2) For floating roof storage tanks subject to the provisions of paragraph (1) of this subsection, the following requirements shall apply.

(A) All openings in an internal or external floating roof except for automatic bleeder vents (vacuum breaker vents) and rim space vents must provide a projection below the liquid surface or be equipped with a cover, seal, or lid. Any cover, seal, or lid must be in a closed (i.e., no visible gap) position at all times except when the device is in actual use.

(B) Automatic bleeder vents (vacuum breaker vents) are to be closed at all times except when the roof is being floated off or landed on the roof leg supports.

(C) (No change.)

(D) Any [emergency] roof drain that empties into the stored liquid shall be equipped [must be provided] with a slotted membrane fabric cover that covers at least 90% of the area of the opening.

(E)-(F) (No change.)

(3) (No change.)

(b) For all persons in Gregg, Nueces, and Victoria counties, the following requirements shall apply:

(1) (No change.)

(2) For floating roof storage tanks subject to the provisions of paragraph (1) of this subsection, the following requirements shall apply.

(A) All openings in an internal or external floating roof, except for automatic bleeder vents (vacuum breaker vents) and rim space vents, must provide a projection below the liquid surface or be equipped with a cover, seal, or lid. Any cover, seal, or lid must be in a closed (i.e., no visible gap) position at all times, except when the device is in actual use.

(B) Automatic bleeder vents (vacuum breaker vents) are to be closed at all times except when the roof is being floated off or landed on the roof leg supports.

(C) (No change.)

(D) Any [emergency] roof drain that empties into the stored liquid shall be equipped [must be provided] with a slotted membrane fabric cover that covers at least 90% of the area of the opening.

(E)-(F) No change.)

(c) (No change.)

#### §115.114. Inspection Requirements.

(a) For all persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the following inspection requirements shall apply [all secondary seals used to comply with §115.112(a)(1) of this title (relating to Control Requirements) shall be inspected

according to the following schedules by the owner, operator, or authorized representative to insure compliance with §115.112(a)(2)(E) and (F) of this title].

(1) If during an inspection of an internal floating roof storage tank, the internal floating roof is not resting on the surface of the volatile organic compounds (VOC) inside the storage tank, or liquid has accumulated on the internal floating roof, or the seal is detached, or there are holes or tears in the seal fabric, within 45 days of the inspection the owner or operator shall repair the items or shall empty and degas the storage tank in accordance with §§115.541-115.547 of this title (relating to Degassing or Cleaning of Stationary, Marine, and Transport Vessels). If a failure cannot be repaired within 45 days and if the vessel cannot be emptied within 45 days, the owner or operator may submit a written request for a 30-day extension to the appropriate Texas Natural Resource Conservation Commission (TNRCC) regional office and any local air pollution control program with jurisdiction.

(2) For external floating roof storage tanks, the secondary seal gap shall be physically measured at least once every 12 months to insure compliance with §115.112(a)(2)(F) of this title (relating to Control Requirements). If the secondary seal gap exceeds the limitations specified by §115.112(a)(2)(F) of this title, within 45 days of the inspection the owner or operator shall make the necessary repairs or shall empty and degas the storage tank in accordance with §§115.541-115.547 of this title. If a failure cannot be repaired within 45 days and if the vessel cannot be emptied within 45 days, the owner or operator may submit a written request for a 30-day extension to the appropriate TNRCC regional office and any local air pollution control program with jurisdiction.

[(1) If the primary seal is vapor-mounted, the secondary seal gap area shall be physically measured annually to insure compliance with §115.112(a)(2)(F) of this title.]

(3)[(2)] If the tank is equipped with a mechanical [metallic-type] shoe or liquid-mounted primary seal, compliance with §115.112(a)(2)(F) of this title can be determined by visual inspection.

(4)[(3)] For external floating roof storage tanks, the [All] secondary seal [seals] shall be visually inspected at least once every six months [semiannually] to ensure compliance with §115.112(a)(2)(E)-(H) [§115.112(a)(2)(E) and (F)] of this title. If the external floating roof is not resting on the surface of the VOC inside the storage tank, or liq-

liquid has accumulated on the external floating roof, or the seal is detached, or there are holes or tears in the seal fabric, within 45 days of the inspection the owner or operator shall repair the items or shall empty and degas the storage tank in accordance with §§115.541-115.547 of this title. If a failure cannot be repaired within 45 days and if the vessel cannot be emptied within 45 days, the owner or operator may submit a written request for a 30-day extension to the appropriate TNRCC regional office and any local air pollution control program with jurisdiction.

(b) For all persons in Gregg, Nueces, and Victoria counties, the following inspection requirements shall apply [all secondary seals used to comply with §115.112(b)(1) of this title shall be inspected according to the following schedules by the owner, operator, or authorized representative to insure compliance with §115.112(b)(2)(E) and (F) of this title].

(1) If during an inspection of an internal floating roof storage tank, the internal floating roof is not resting on the surface of the VOC inside the storage tank, or liquid has accumulated on the internal floating roof, or the seal is detached, or there are holes or tears in the seal fabric, within 45 days of the inspection the owner or operator shall repair the items or shall empty and degas the storage tank. If a failure cannot be repaired within 45 days and if the vessel cannot be emptied within 45 days, the owner or operator may submit a written request for a 30-day extension to the appropriate TNRCC regional office and any local air pollution control program with jurisdiction.

(2) For external floating roof storage tanks, the secondary seal gap shall be physically measured at least once every 12 months to insure compliance with §115.112(b)(2)(F) of this title. If the secondary seal gap exceeds the limitations specified by §115.112(b)(2)(F) of this title, within 45 days of the inspection the owner or operator shall make the necessary repairs or shall empty and degas the storage tank. If a failure cannot be repaired within 45 days and if the vessel cannot be emptied within 45 days, the owner or operator may submit a written request for a 30-day extension to the appropriate TNRCC regional office and any local air pollution control program with jurisdiction.

(1) If the primary seal is vapor-mounted, the secondary seal gap area shall be physically measured annually to insure compliance with §115.112(b)(2)(F) of this title.]

(3) If the tank is equipped with a mechanical shoe or liquid-mounted primary seal, compliance with §115.112(b)(2)(F) of this title can be determined by visual inspection.

(4)[(2)] For external floating roof storage tanks, the [All] secondary seal [seals] shall be visually inspected at least once every 12 months [annually] to insure compliance with §115.112(b)(2)(E) and (F) of this title. If the external floating roof is not resting on the surface of the VOC inside the storage tank, or liquid has accumulated on the external floating roof, or the seal is detached, or there are holes or tears in the seal fabric, within 45 days of the inspection the owner or operator shall repair the items or shall empty and degas the storage tank. If a failure cannot be repaired within 45 days and if the vessel cannot be emptied within 45 days, the owner or operator may submit a written request for a 30-day extension to the appropriate TNRCC regional office and any local air pollution control program with jurisdiction.

(c) For all persons in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis counties, the following inspection requirements shall apply.

(1) If during an inspection of an internal floating roof storage tank, the internal floating roof is not resting on the surface of the VOC inside the storage tank, or liquid has accumulated on the internal floating roof, or the seal is detached, or there are holes or tears in the seal fabric, within 45 days of the inspection the owner or operator shall repair the items or shall empty and degas the storage tank. If a failure cannot be repaired within 45 days and if the vessel cannot be emptied within 45 days, the owner or operator may submit a written request for a 30-day extension to the appropriate TNRCC regional office and any local air pollution control program with jurisdiction.

(2) If during an inspection of an external floating roof storage tank, the external floating roof is not resting on the surface of the VOC inside the storage tank, or liquid has accumulated on the external floating roof, or the seal is detached, or there are holes or tears in the seal fabric, within 45 days of the inspection the owner or operator shall repair the items or shall empty and degas the storage tank. If a failure cannot be repaired within 45 days and if the vessel cannot be emptied within 45 days, the owner or operator may submit a written request for a 30-day extension to the appropriate TNRCC regional office and any local air pollution control program with jurisdiction.

#### *§115.116. Monitoring and Recordkeeping Requirements.*

(a) For all persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the following recordkeeping requirements shall apply.

(1) The owner or operator of any storage vessel with an external floating roof which is exempted from the requirement for a secondary seal as specified in §115.117(a)(1), (6), and (7) of this title (relating to Exemptions) and used to store volatile organic compounds (VOC) with a true vapor pressure greater than 1.0 psia (6.9 kPa) at storage conditions shall maintain records of the type of VOC stored and the average monthly true vapor pressure of the stored liquid.

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

(b) For all persons in Gregg, Nueces, and Victoria counties, the following recordkeeping requirements shall apply.

(1) The owner or operator of any storage vessel with an external floating roof which is exempted from the requirement for a secondary seal as specified in §115.117(b)(1), (6), and (7) of this title and used to store VOC with a true vapor pressure greater than 1.0 psia (6.9 kPa) at storage conditions shall maintain records of the type of VOC stored and the average monthly true vapor pressure of the stored liquid.

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

#### *§115.117. Exemptions.*

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

(1) Except as provided in §115.116 of this title (relating to Monitoring and Recordkeeping Requirements), any [Any] volatile organic compound (VOC) with a true vapor pressure less than 1.5 psia (10.3 kPa) at storage conditions is exempt from the requirements of this undesignated head (relating to the Storage of Volatile Organic Compounds).

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

(4) A welded tank with a mechanical [metallic-type] shoe primary seal which has a secondary seal from the top of the shoe seal to the tank wall (a shoe-mounted secondary seal) is exempt from the requirement for retrofitting with a rim-mounted secondary seal if the shoe-mounted secondary seal was installed or scheduled for installation before August 22, 1980.

(5) (No change.)

(6) Any welded tank storing VOC having a true vapor pressure less than 4.0 psia (27.6 Kpa) is exempt from any external floating roof secondary seal requirement if any of the following types of primary seals have been installed before August 22, 1980:

(A) a mechanical [metallic-type] shoe seal;

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

(7) Any welded tank storing crude oil having a true vapor pressure equal to or greater than 4.0 psia (27.6 Kpa) and less than 6.0 psia (41.4 kPa) at storage conditions is exempt from any external floating roof secondary seal requirement if any of the following types of primary seals have been installed before December 10, 1982:

(A) a mechanical [metallic-type] shoe seal;

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

(b) For all persons in Gregg, Nueces, and Victoria counties, the following exemptions apply:

(1) Except as provided in §115.116 of this title, any [Any] VOC with a true vapor pressure less than 1.5 psia (10.3 kPa) at storage conditions is exempt from the requirements of this undesignated head (relating to the Storage of Volatile Organic Compounds).

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

(4) A welded tank with a mechanical [metallic-type] shoe primary seal which has a secondary seal from the top of the shoe seal to the tank wall (a shoe-mounted secondary seal) is exempt from the requirement for retrofitting with a rim-mounted secondary seal if the shoe-mounted secondary seal was installed or scheduled for installation before August 22, 1980.

(5) (No change.)

(6) Any welded tank storing VOC having a true vapor pressure less than 4.0 psia (27.6 kPa) is exempt from any external secondary seal requirement if any of the following types of primary seals have been installed before August 22, 1980:

(A) a mechanical [metallic-type] shoe seal;

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

(7) Any welded tank storing crude oil having a true vapor pressure equal to or greater than 4.0 psia (27.6 kPa) and

less than 6.0 psia (41.4 kPa) at storage conditions is exempt from any external secondary seal requirement if any of the following types of primary seals have been installed before December 10, 1982:

(A) a mechanical [metallic-type] shoe seal;

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

(c) For all persons in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties, the following exemptions apply:

(1) Any VOC with a true vapor pressure less than 1.5 psia (10.3 kPa) at storage conditions is exempt from the requirements of this undesignated head (relating to the Storage of Volatile Organic Compounds).

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

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

Issued in Austin, Texas, on August 30, 1995.

TRD-9510947

Lydia Gonzalez-Gromatzky  
Acting Director, Legal  
Services Division  
Texas Natural Resource  
Conservation  
Commission

Proposed date of adoption: December 20, 1995

For further information, please call: (512) 239-1970

## Vent Gas Control

### • 30 TAC §§115.121-115.123, 115.126, 115.127, 115.129

The Texas Natural Resource Conservation Commission (TNRCC or Commission) proposes amendments to §§115.121, 115.122, 115.123, 115.126, 115.127, and 115.129, concerning Vent Gas Control. The proposed changes have been developed in response to a recent policy decision to exempt general vent gas streams originating from sources which are addressed by more specific rules elsewhere in Chapter 115. Consequently, the TNRCC is proposing an exemption for vent gas streams if all the volatile organic compounds (VOC) in the vent gas stream originate from a source(s) for which another undesignated head within Chapter 115 (for example, Storage of VOC) has established a control requirement(s), emission specification(s), or exemption(s) which applies to that VOC source category in that county.

The proposed exemption does not affect the approvability of the Rate-of-Progress State Implementation Plan because emission reductions associated with lowering the general vent gas stream exemption level were not included in the emission reduction credit cal-

culations. The proposed rule change will, however, ensure that reasonably available control technology (RACT) continues to be applied at major sources of VOC, since in order for this new exemption to apply, a more specific rule designed to meet RACT must be applicable.

In addition, to address concerns raised by a company, the proposed amendments revise the synthetic organic chemical manufacturing industry (SOCMI) reactor processes and distillation operations vent gas stream control requirements through the addition of exemptions (by reference to the corresponding federal New Source Performance Standards) which are based upon the total resource effectiveness (TRE) index value for individual vent gas streams. The TRE index is a decision tool used to determine if the annual cost of controlling a given SOCMI reactor/distillation vent gas stream is acceptable when considering the emissions reduction achieved. The TRE index value is based upon the vent stream flow rate, VOC emission rate, net heating value, and corrosion properties (whether or not the vent gas stream contains halogenated compounds). Addition of the TRE exemption to the SOCMI reactor processes and distillation operation rules will make these rules consistent with the corresponding United States Environmental Protection Agency Control Techniques Guideline.

The TNRCC is also proposing amendments in order to clarify existing requirements, update rule references, and delete obsolete or unnecessary language.

The proposed amendment to §115.121, concerning Emission Specifications, deletes language made obsolete by the passage of the May 31, 1995, compliance date.

The proposed amendment to §115.122, concerning Control Requirements, updates rule references and deletes language made obsolete by the passage of the May 31, 1995, compliance date. The proposed changes to §115.123, concerning Alternate Control Requirements, deletes language made obsolete by the passage of the May 31, 1995, compliance date.

The proposed amendment to §115.126, concerning Monitoring and Recordkeeping Requirements, updates rule references.

The proposed amendment to §115.127, concerning Exemptions, adds exemptions for a vent gas stream if all of the VOCs in the vent gas stream originate from a source(s) for which another undesignated head within Chapter 115 (for example, Storage of VOC) has established a control requirement(s), emission specification(s), or exemption(s) which apply to that VOC source category in that county. In addition, the proposed amendment adds a TRE index limit to the SOCMI reactor/distillation vent gas exemptions. The proposed amendment to §115.127 also updates rule references and deletes language made obsolete by the passage of the May 31, 1995, compliance date.

The proposed amendment to §115.129, concerning Counties and Compliance Schedules, updates rule references and deletes language made obsolete by the passage of the May 31, 1995, compliance date.



Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Minick also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a more economically balanced environmental regulation, clarification of existing requirements, and deletion of obsolete or unnecessary language. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. Owners or operators of facilities qualifying for the proposed exemptions could obtain relief from the requirement to control VOC emissions under the vent gas rule and, therefore, could potentially save the cost of controls.

Public hearings on this proposal will be held in Beaumont on September 26, 1995, at 7:00 p.m. at the John Gray Institute, 855 Florida Avenue, Beaumont; and in Houston on September 27, 1995, at 10:00 a.m. in Conference Room A at the Houston-Galveston Area Council, 3555 Timmons Lane, Houston. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however a TNRCC staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments not presented at the hearing may be submitted to the TNRCC central office in Austin. The deadline for submission of written comments will be 30 days after the date of publication of the proposal in the *Texas Register*. Material received by the TNRCC Office of Policy and Regulatory Development by 4:00 p.m. on that date will be considered by the Commission prior to any final action on the proposal. Please mail written comments to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, and reference Rule Log #95116-115-AI. Comments can also be faxed to (512) 239-5687. Copies of the proposal are available at the central office of the TNRCC, Air Policy and Regulations Division, located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, and at all TNRCC regional offices. For further information, contact Eddie Mack at (512) 239-1488.

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.

The amendments are proposed under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed amendments affect the Health and Safety Code, §382.017.

#### §115.121. Emission Specifications.

(a) For all persons 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), the following emission specifications shall apply.

[(1) Until May 31, 1995 in Brazoria, El Paso, Galveston, Jefferson, and Orange counties, no person may allow a vent gas stream to be emitted from any process vent containing one or more of the following volatile organic compounds (VOC) or classes of VOC, unless the vent gas stream is burned properly in accordance with §115.122(a) (1) of this title (relating to Control Requirements):

[(A) emissions of ethylene associated with the formation, handling, and storage of solidified low-density polyethylene;

[(B) emissions of the following specific VOC: ethylene, butadiene, isobutylene, styrene, isoprene, propylene, methylstyrene; and

[(C) emissions of specified classes of VOC, including aldehydes, alcohols, aromatics, ethers, olefins, peroxides, amines, acids, esters, ketones, sulfides, and branched chain hydrocarbons (C8 and above).]

(1)[(2)] [In Dallas, Harris, and Tarrant counties, and after May 31, 1995 in ozone nonattainment counties other than Dallas, Harris, and Tarrant, no] No person may allow a vent gas stream containing VOC to be emitted from any process vent, unless the vent gas stream is burned properly in accordance with §115.122(a)(1) of this title (relating to Control Requirements).

(2)[(3)] [In Harris County, and after May 31, 1995 in ozone nonattainment counties other than Harris, no] No person may allow a vent gas stream to be emitted from any air oxidation synthetic organic chemical manufacturing process, any liquid phase polypropylene manufacturing process, any liquid phase slurry high-density polyethylene manufacturing process, or any continuous polystyrene manufacturing process, unless the vent gas stream is controlled to a VOC emission rate of no more than 20 parts per million by volume (ppmv) (on a dry basis corrected to 3.0% oxygen), or is burned properly in accordance with §115.122(a)(2) of this title.

(3)[(4)] After November 15, 1996, no person may allow a vent gas stream to be emitted from any synthetic organic chemical manufacturing industry re-

actor process or distillation operation, as defined in §115.10 of this title, unless the vent gas stream is controlled to a VOC emission rate of no more than 20 ppmv (on a dry basis corrected to 3.0% oxygen), or is burned properly in accordance with §115.122(a)(2) of this title.

(4)[(5)] In the Dallas/Fort Worth, El Paso, and Houston/Galveston areas, VOC emissions from bakery ovens, as defined in §115.10 of this title [(relating to Definitions)], shall be controlled properly in accordance with §115.122(a)(3) of this title.

(b) (No change.)

(c) For persons in Aransas, Bexar, Calhoun, [Hardin,] Matagorda, [Montgomery,] San Patricio, and Travis counties, the following emission specifications shall apply:

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

#### §115.122. Control Requirements.

(a) For all persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston Areas, the following control requirements shall apply:

(1) Any vent gas streams affected by §115.121(a)(1) [§115.121(a)(1) and (2)] of this title (relating to Emission Specifications) must be burned properly at a temperature equal to or greater than 1,300 degrees Fahrenheit (704 degrees Celsius) in a smokeless flare or a direct-flame incinerator with a destruction efficiency of at least 90%.

(2) Any vent gas streams affected by §115.121(a)(2) and (3) [§115.121(a)(3) and (4)] of this title, must be controlled to a volatile organic compound (VOC) emission rate of no more than 20 parts per million by volume (on a dry basis corrected to 3.0% oxygen), or burned properly in a smokeless flare or a direct-flame incinerator which has a destruction efficiency of at least 98%. The owner or operator of an affected facility that uses a flare shall install, calibrate, maintain, and operate according to the manufacturer's specifications, a heat-sensing device, such as an ultraviolet beam sensor or thermocouple, at the pilot light to indicate continuous presence of a flame.

(3) For the Dallas/Fort Worth, El Paso, and Houston/Galveston areas, VOC emissions from each bakery with a bakery oven vent gas stream(s) affected by §115.121(a)(4) [§115.121(a)(5)] of this title [(relating to Emission Specifications)] shall be reduced as follows.

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

(C) Each bakery in the Dallas/Fort Worth area with a total weight of VOC emitted from all bakery ovens on the property, when uncontrolled, equal to or greater than 25 tons per calendar year, but less than 100 tons per calendar year, shall reduce total VOC emissions by at least 30% from the bakery's 1990 baseline emissions inventory in accordance with the schedule specified in §115.129(a)(4) [§115.129(a)(7)] of this title (relating to Counties and Compliance Schedules).

(D) Each bakery in the El Paso area with a total weight of VOC emitted from all bakery ovens on the property, when uncontrolled, equal to or greater than 25 tons per calendar year shall reduce total VOC emissions by at least 30% from the bakery's 1990 baseline emissions inventory in accordance with the schedule specified in §115.129(a)(5) [§115.129(a)(8)] of this title.

(4) (No change.)

(b) (No change.)

(c) For all persons in Aransas, Bexar, Calhoun, [Hardin,] Matagorda, [Montgomery,] San Patricio, and Travis counties, the following control requirements shall apply:

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

#### §115.123. Alternate Control Requirements.

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

(c) For all persons in Aransas, Bexar, Calhoun, [Hardin,] Matagorda, [Montgomery,] San Patricio, and Travis 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. Direct-flame incineration specified for vent gas control in this undesignated head (relating to Vent Gas Control) is not intended as an exclusive emission control method for VOC. In no event shall a vent gas stream be direct-flame incinerated without heat recovery if the incineration will have no practical effect in reducing the emission of air contaminants or will result in an actual degradation of air quality. Alternate vapor recovery systems which achieve the percent reduction efficiencies equivalent to direct-flame incinerators, as stated in §115.122(c) of this title, do not require Executive Director approval.

#### §115.126. 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 facility which emits volatile organic compounds (VOC) through a stationary vent shall maintain records at the facility for at least two years and shall make such records available to representatives of the Texas Natural Resource Conservation Commission (TNRCC), United States Environmental Protection Agency (EPA), or any local air pollution control agency having jurisdiction in the area upon request. These records shall include, but not be limited to, the following.

(1) Records for each vent required to satisfy the provisions of §115.121(a)(1)-(3) [§115.121(a)(2)-(4)] of this title (relating to Emission Specifications) shall be sufficient to demonstrate the proper functioning of applicable control equipment to design specifications, including:

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

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

(5) For bakeries affected by §115.122(a)(3)(C) and (D) of this title, the following additional requirements apply.

(A) No later than six months after the TNRCC publishes notification in the *Texas Register* as specified in §115.129(a)(4) [§115.129(a)(7)] of this title (relating to Counties and Compliance Schedules), the owner or operator of each bakery shall submit an initial control plan to the TNRCC Austin Office (Office of Air Quality), the appropriate TNRCC Regional Office, and any local air pollution control program with jurisdiction which demonstrates that the overall reduction of VOC emissions [from the bakery's 1990 baseline emissions inventory] will be at least 30%. At a minimum, the control plan shall include the EPN and the FIN of each bakery oven and any associated control device, a plot plan showing the location, EPN, and FIN of each bakery oven and any associated control device, and the 1990 VOC emission rates (consistent with the bakery's 1990 emissions inventory). The projected VOC emission rates shall be calculated in a manner consistent with the 1990 emissions inventory.

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

(b) (No change.)

#### §115.127. Exemptions.

(a) For all persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the following exemptions apply.

(1) A vent gas stream from a low-density polyethylene plant is exempt from the requirements of §115.121(a) (1)

[and (2)] of this title (relating to Emission Specifications) if no more than 1.1 pounds of ethylene per 1,000 pounds (1.1 kg/1000 kg) of product are emitted from all the vent gas streams associated with the formation, handling, and storage of solidified product.

[(2) Until May 31, 1995 in Brazoria, El Paso, Galveston, Jefferson, and Orange counties, the following vent gas streams are exempt from the requirements of §115.121(a)(1) of this title:

[(A) a vent gas stream having a combined weight of the volatile organic compounds (VOC) or classes of compounds specified in §115.121(a)(1) (B) and (C) of this title equal to or less than 100 pounds (45.4 kg) in any continuous 24-hour period; and

[(B) a vent gas stream with a concentration of the VOC or classes of compounds specified in §115.121(a)(1) (B) and (C) of this title less than 0.44 psia true partial pressure (30,000 ppm).]

[(2) [(3) [In Dallas, Harris, and Tarrant counties, and after May 31, 1995 in ozone nonattainment counties other than Dallas, Harris, and Tarrant, the] The following vent gas streams are exempt from the requirements of §115.121(a)(1) [§115.121(a)(2)] of this title:

(A) a vent gas stream having a combined weight of volatile organic compounds (VOC) equal to or less than 100 pounds (45.4 kg) in any continuous 24-hour period;

[(B) until May 31, 1995 in Harris County, a vent gas stream specified in §115.121(a)(2) of this title with a concentration of volatile organic compound (VOC) less than 0.44 pounds per square inch absolute (psia) true partial pressure (30,000 parts per million);

[(C) until November 15, 1998 for facilities which have been assigned the code number 26 as described in the document Standard Industrial Classification (SIC) Manual, 1972, as amended by the 1977 Supplement, a vent gas stream specified in §115.121(a)(2) of this title with a concentration of VOC less than 0.44 psia true partial pressure (30,000 parts per million); and]

[(B) [(D)] a vent gas stream specified in §115.121(a)(1) [§115.121(a)(2)] of this title with a concentration of VOC less than 0.009 per square inch absolute (psia) true partial pressure (612 parts per million (ppm)); and [ppm].]

(C) until November 15, 1998 for facilities which have been assigned the code number 26 as described in the document Standard Industrial Classification (SIC) Manual, 1972, as amended by the 1977 Supplement, a vent gas stream specified in §115.121(a)(1) of this title with a concentration of VOC less than 0.44 psia true partial pressure (30,000 ppm).

(3)[(4)] [In Harris County, and after May 31, 1995 in ozone nonattainment counties other than Harris, the] The following vent gas streams are exempt from the requirements of §115.121(a)(2) [§115.121(a)(3)] of this title:

(A) a vent gas stream having a combined weight of VOC equal to or less than 100 pounds (45.4 kilograms) in any continuous 24-hour period;

(B) a vent gas stream from any air oxidation synthetic organic chemical manufacturing process with a concentration of VOC less than 0.009 pounds psia [per square inch absolute (psia)] true partial pressure (612 ppm); [parts per million (ppm)]; and

(C) a vent gas stream from any liquid phase polypropylene manufacturing process, any liquid phase slurry high-density polyethylene manufacturing process, and any continuous polystyrene manufacturing process with a concentration of VOC less than 0.006 psia true partial pressure (408 ppm).

(4)[(5)] For synthetic organic chemical manufacturing industry (SOCMI) reactor processes and distillation operations:

(A) Any reactor process or distillation operation that is designed and operated in a batch mode is exempt from the requirements of §115.121(a)(3) [§115.121(a)(4)] of this title. For the purposes of this subparagraph, batch mode means any noncontinuous reactor process or distillation operation which is not characterized by steady-state conditions, and in which the addition of reactants does not occur simultaneously with the removal of products.

(B) Any reactor process or distillation operation operating in a process unit with a total design capacity of less than 1,100 tons per year, for all chemicals produced within that unit, is exempt from the requirements of §115.121(a)(3) [§115.121(a)(4)] of this title.

(C) Any reactor process or distillation operation vent gas stream with a flow rate less than 0.011 standard cubic meters per minute or a VOC concentration less than 500 parts per million by volume is exempt from the requirements of §115.121(a)(3) [§115.121(a)(4)] of this title [(relating to Emission Specifications)].

(D) Any distillation operation vent gas stream which meets the requirements of 40 Code of Federal Regulations (CFR) 60.660(c)(4) or 60.662(c) (concerning Subpart NNN-Standards of Performance for VOC Emissions From SOCOMI Distillation Operations) is exempt from the requirements of §115.121(a)(3) of this title.

(E) Any reactor process vent gas stream which meets the requirements of 40 CFR 60.700(c)(2) or 60.702(c) (concerning Subpart RRR-Standards of Performance for VOC Emissions From SOCOMI Reactor Processes) is exempt from the requirements of §115.121(a)(3) of this title.

(5)[(6)] Bakeries are exempt from the requirements of §115.121(a)(4) [§115.121(a)(5)] and §115.122(a)(3) of this title (relating to Emission Specifications and Control Requirements) if the total weight of VOC emitted from all bakery ovens on the property, when uncontrolled, is less than 25 tons per calendar year.

(6) A vent gas stream is exempt from this undesignated head (relating to Vent Gas Control) if all of the VOCs in the vent gas stream originate from a source(s) for which another undesignated head within Chapter 115 (for example, Storage of VOC) has established a control requirement(s), emission specification(s), or exemption(s) which applies to that VOC source category in that county.

(b) For all persons in Nueces and Victoria counties, the following exemptions apply:

(1) (No change.)

(2) The following vent gas streams are exempt from the requirements of §115.121(b) [§115.121(b)(1)] of this title:

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

(3) A vent gas stream is exempt from this undesignated head (relating to Vent Gas Control) if all of the VOCs in the vent gas stream originate from a source(s) for which another undesignated head within Chapter 115 (for example, Storage of VOC) has established a control requirement(s), emission

specification(s), or exemption(s) which applies to that VOC source category in that county.

(c) For all persons in Aransas, Bexar, Calhoun, [Hardin,] Matagorda, [Montgomery,] San Patricio, and Travis counties, the following exemptions apply:

(1) (No change.)

(2) The following vent gas streams are exempt from the requirements of §115.121(c)(1) of this title:

(A) (No change.)

(B) a vent gas stream having a concentration of the VOC specified in §115.121(c)(1)(B) and (C) of this title less than 0.44 psia true partial pressure (30,000 ppm) [(3.0 kPa)]; and

(C) (No change.)

(3) A vent gas stream is exempt from this undesignated head (relating to Vent Gas Control) if all of the VOCs in the vent gas stream originate from a source(s) for which another undesignated head within Chapter 115 (for example, Storage of VOC) has established a control requirement(s), emission specification(s), or exemption(s) which applies to that VOC source category in that county.

*§115.129. Counties and Compliance Schedules.* All affected persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas shall be in compliance with this undesignated head (relating to Vent Gas Control) in accordance with the following schedules:

[(1) All affected persons in Chambers, Collin, Denton, Fort Bend, Hardin, Liberty, Montgomery, and Waller counties shall be in compliance with §115.121(a) of this title (relating to Emission Specifications), §115.122(a) of this title (relating to Control Requirements), §115.123(a) of this title (relating to Alternate Control Requirements), §115.125(a) of this title (relating to Testing Requirements), §115.126(a) of this title (relating to Monitoring and Recordkeeping Requirements), and §115.127(a) of this title (relating to Exemptions), as soon as practicable, but no later than May 31, 1995. Sections 115.121(c), 115.122(c), 115.123(c), and 115.127(c) of this title shall no longer apply in Hardin and Montgomery counties after May 31, 1995.

[(2) All persons in Brazoria, El Paso, Galveston, Jefferson, and Orange counties affected by the provisions of §115.121(a)(2) and (3) of this title and §115.127(a)(3) of this title shall be in com-

pliance with these sections as soon as practicable, but no later than May 31, 1995.

[(3)] All persons in Harris County affected by the provisions of §115.127(a)(3)(C) of this title shall be in compliance with this section as soon as practicable, but no later than May 31, 1995.]

[(1)][(4)] All affected synthetic organic chemical manufacturing industry reactor process or distillation operations in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller counties shall be in compliance with §115.121(a)(3) [§115.121(a)(4)] of this title (relating to Emission Specifications) as soon as practicable, but no later than November 15, 1996.

[(2)][(5)] All affected bakeries in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller counties shall be in compliance with §§115.121(a)(4), [115.121(a)(5),] 115.122(a) (3), 115.126(a)(4), and 115.127(a)(5) [115.127(a)(6)] of this title (relating to Emission Specifications; Control Requirements; Monitoring and Recordkeeping Requirements; and Exemptions) as soon as practicable, but no later than May 31, 1996.

[(3)][(6)] All bakeries in Collin, Dallas, Denton, and Tarrant counties affected by §115.122(a)(3)(B) of this title shall be in compliance with §§115.121(a)(4), [115.121(a)(5),] 115.122(a)(3), 115.126(a)(4), and 115.127(a)(5) [115.127(a)(6)] of this title as soon as practicable, but no later than May 31, 1996.

[(4)][(7)] All bakeries in Collin, Dallas, Denton, and Tarrant counties affected by §115.122(a)(3)(C) of this title shall be in compliance with §§115.121(a)(4), [115.121(a)(5),] 115.122(a)(3)(C), 115.126(a)(5), and 115.127(a)(5) [115.127(a)(6)] of this title as soon as practicable, but no later than one year after the Texas Natural Resource Conservation Commission (TNRCC) publishes notification in the *Texas Register* of its determination that this contingency rule is necessary as a result of failure to attain the national ambient air quality standard (NAAQS) for ozone by the [November 15, 1996] attainment deadline or failure to demonstrate reasonable further progress as set forth in the 1990 Amendments to the Federal Clean Air Act (FCAA), §172(c)(9).

[(5)] [(8)] All bakeries in El Paso County affected by §115.122(a)(3)(D) of this title shall be in compliance with §§115.121(a)(4), [115.121(a) (5),] 115.122(a)(3)(D), 115.126(a)(5), and 115.127(a)(5) [115.127(a) (6)] of this title as soon as practicable, but no later than one year, after the TNRCC publishes notifica-

tion in the *Texas Register* of its determination that this contingency rule is necessary as a result of failure to attain the NAAQS for ozone by the [November 15, 1996] attainment deadline or failure to demonstrate reasonable further progress as set forth in the 1990 Amendments to the FCAA, §172(c)(9).

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

Issued in Austin, Texas, on August 30, 1995.

TRD-9510948

Lydia Gonzalez-Gromatzky  
Acting Director, Legal  
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Texas Natural Resource  
Conservation  
Commission

Proposed date of adoption: December 20, 1995

For further information, please call. (512) 239-1970

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### Subchapter C. Volatile Organic Compounds

#### Transfer Operations Loading and Unloading of Volatile Organic Compounds

#### • 30 TAC §115.212, §115.219

The Texas Natural Resource Conservation Commission (TNRCC) proposes amendments to §115.212 and §115.219, concerning Loading and Unloading of Volatile Organic Compounds (VOC). The proposed revisions to §115.212, concerning Control Requirements, would remove the requirement to upgrade the vapor collection systems at gasoline terminals with vacuum-assisted vapor collection. The proposal is in response to a petition for rulemaking, approved by the TNRCC on July 12, 1995. The proposed revisions to §115.219, concerning Counties and Compliance Schedules, are initiated to satisfy in the Beaumont/Port Arthur (BPA) ozone nonattainment area the 1990 Federal Clean Air Act (FCAA) requirement that Reasonably Available Control Technology (RACT) be implemented at major VOC sources in ozone nonattainment areas classified as moderate and above. The proposed rule revision would implement in BPA, only if absolutely necessary, the marine vessel loading control requirements currently applicable to the Houston/Galveston (HGA) ozone nonattainment area.

The FCAA requires states to adopt a Rate-of-Progress (ROP) State Implementation Plan (SIP) which achieves by November 15, 1996, in each moderate and above ozone nonattainment area, a 15% net-of-growth reduction in the VOC emissions level. The requirement to install vacuum assisted vapor collection systems on gasoline loading racks, part of the 15% ROP SIP for the HGA, Dallas/Fort Worth, and El Paso ozone nonattainment areas, was adopted by the TNRCC in May, 1994.

The proposed deletion of §115.212(a)(11)(A) would remove the requirement to install vacuum assisted vapor collection systems on gasoline loading racks. The TNRCC developed the vacuum assist requirement because it was proposed by the United States Environmental Protection Agency (EPA) under the federal Maximum Achievable Control Technology (MACT) standards for gasoline terminals (59 Federal Register 5868), there was experience with the technology in Texas, and based on existing information at the time, it was expected to produce meaningful additional emission reductions that could be credited towards the 15% ROP requirements. The EPA dropped the vacuum assist requirement from the December 1994 promulgated gasoline distribution MACT standard, due to its determination that the required annual leak test of transport vehicles would control most of the emissions it previously had thought would be collected by the vacuum assist technology. The EPA now estimates that the maximum benefit which may result from installing this technology is 1.3% additional capture efficiency, and that even this small amount of reduction can not be demonstrated in practice. The deletion of the vacuum assist requirement should not affect the approvability of the 15% ROP SIP, since the 1.3% capture efficiency which may possibly be lost by not installing this technology represents negligible actual VOC emissions.

In addition to including rules which achieve a 15% VOC emissions reduction (net of growth) from the 1990 base year emissions inventory by 1996, the ROP SIP must include additional control measures representing at least a 3.0% reduction to be maintained as contingency measures. The marine vessel loading rule was adopted as a contingency rule for BPA on January 4, 1995. The TNRCC can choose to implement this rule if the BPA area fails to attain the national ambient air quality standard for ozone by the attainment deadline (currently November 15, 1999), or if the BPA area fails to demonstrate reasonable further progress as set forth in the 1990 Amendments to the FCAA, §172(c)(9).

In addition, BPA is currently classified as a serious ozone nonattainment area, but the TNRCC has petitioned EPA to reclassify this area as a moderate nonattainment area. If BPA is successfully reclassified as a moderate area, the RACT requirement for major sources will still continue to apply. However, the TNRCC's ultimate intention is to petition EPA to redesignate BPA as an attainment area based upon actual monitoring data or upon modeling using urban arshed model (UAM) modeling. If BPA can be successfully redesignated as an attainment area, EPA has indicated preliminarily that marine vessel loading could remain a contingency rule.

The proposed changes to §115.219 include a new paragraph (6) which establishes marine vessel loading as a control requirement for BPA. This rule will be implemented if EPA denies the proposal to redesignate the area as attainment for ozone, or if EPA denies approval of the BPA attainment demonstration based upon UAM modeling. The TNRCC believes that this satisfies the requirement that RACT be implemented for major sources for VOC. The proposed changes to §115.219

also delete the attainment date from the BPA marine vessel loading contingency rule since this date may be revised in the near future.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections

Mr. Minick also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be satisfaction of FCAA Amendments and EPA requirements, and more cost-effective control of VOC emissions from gasoline terminals. Cost savings to owners or operators of gasoline terminals would result from this rule amendment. Cost savings to owners or operators of marine terminals could result from the rule revision since marine vessel loading requirements might be delayed indefinitely in BPA. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Public hearings on this proposal will be held in Beaumont on September 26, 1995, at 7:00 p.m. at the John Gray Institute, 855 Florida Avenue, Beaumont; and in Houston on September 27, 1995, at 10:00 a.m. in Conference Room A at the Houston-Galveston Area Council, 3555 Timmons Lane, Houston. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however a TNRCC staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments not presented at the hearing may be submitted to the TNRCC central office in Austin. The deadline for submission of written comments will be 30 days after the date of publication of the proposal in the *Texas Register*. Material received by the TNRCC Office of Policy and Regulatory Development by 4.00 p.m. on that date will be considered by the Commission prior to any final action on the proposal. Please mail written comments to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, and reference Rule Log #95135-115-A1. Comments can also be faxed to (512) 239-5687. Copies of the proposal are available at the central office of the TNRCC, Air Policy and Regulations Division, located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, and at all TNRCC regional offices. For further information, contact Gus Eghneim at (512) 239-1965 or Eddie Mack at (512) 239-1488.

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.

The amendments are proposed under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA),

§382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed amendments affect the Health and Safety Code, §382.017.

#### §115.212. Control Requirements.

(a) For all persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the following control requirements shall apply.

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

(11) After November 15, 1996 for gasoline terminals in the Dallas/Fort Worth, El Paso, and Houston/Galveston areas, [the following control requirements shall apply.

[(A) Each vapor recovery device serving a loading rack shall be upgraded to include a vacuum assisted vapor collection system followed by a vapor recovery system. For the purposes of this paragraph, a vacuum assisted vapor collection system is defined as a blower system which produces a vacuum at the transport vessel to prevent fugitive emissions during loading operations.

[(B)] [Each] each vapor recovery system shall be instrumented in such a way that the pump(s) transferring fuel to the transport vessels will not operate unless the vapor recovery system is properly connected and properly operating. No transport vessel loading shall take place at a loading rack when the vapor recovery systems serving that loading rack is out of service or is not operating in accordance with the manufacturer's parameters.

(12) (No change.)

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

§115.219. Counties and Compliance Schedules. All affected persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas shall be in compliance with this undesignated head (relating to Loading and Unloading of Volatile Organic Compounds) in accordance with the following schedules.

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

(5) All affected marine terminals in Hardin, Jefferson, and Orange counties shall be in compliance with §§115.211(a), 115.212(a), 115.213(a), 115.214(a), 115.215(a), 115.216(a), and 115.217(a) of this title (relating to Emission Specifications; Control Requirements; Alternate Control Requirements; Inspection Requirements; Approved Test Methods; Monitoring and Recordkeeping Requirements; and Exemptions) as soon as practica-

ble, but no later than three years after the Texas Natural Resource Conservation Commission publishes notification in the *Texas Register* of its determination that this contingency rule is necessary as a result of failure to attain the national ambient air quality standard for ozone by the [November 15, 1999] attainment deadline or failure to demonstrate reasonable further progress as set forth in the 1990 Amendments to the Federal Clean Air Act, §172(c)(9).

(6) All affected marine terminals in Hardin, Jefferson, and Orange counties shall be in compliance with §§115.211(a), 115.212(a), 115.213(a), 115.214(a), 115.215(a), 115.216(a), and 115.217(a) of this title as soon as practicable, but no later than three years after:

(A) the United States Environmental Protection Agency (EPA) publishes notification in the *Federal Register* of its determination to deny the petition to redesignate the Beaumont/Port Arthur ozone nonattainment area as an ozone attainment area; or

(B) EPA publishes notification in the *Federal Register* of its determination to deny approval of the demonstration of attainment for the Beaumont/Port Arthur ozone nonattainment area based upon Urban Airshed Model (UAM) modeling.

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

Issued in Austin, Texas, on August 30, 1995.

TRD-9510973

Lydia Gonzalez-Gromatzky  
Acting Director, Legal  
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Conservation  
Commission

Proposed date of adoption: December 20, 1995

For further information, please call: (512) 239-1970

### ◆ ◆ ◆ Subchapter E. Solvent-Using Processes

#### Degreasing and Clean-up Processes

- 30 TAC §§115.412, 115.413, 115.416, 115.417, 115.419

The Texas Natural Resource Conservation Commission (TNRCC or Commission) proposes amendments to §§115.412, 115.413, 115.416, 115.417, and 115.419, concerning Degreasing and Clean-up Processes. The proposed amendments to §115.412, concerning Control Requirements, §115.416, concerning Recordkeeping Requirements,

§115.417, concerning Exemptions, and §115.419, concerning Counties and Compliance Schedules, delete the requirements concerning acetone usage at polyester resin operations (cultured marble and fiber-reinforced plastic manufacturing) because the United States Environmental Protection Agency (EPA) recently excluded acetone from the federal definition of volatile organic compound (VOC). The proposed changes to §115.413, concerning Alternate Control Requirements, update a reference to §115.910 to reflect a title change. The proposed changes to §115.417 also delete exemptions which do not provide any flexibility beyond that already available in §115.412(a)(2)(D) and §115.412(b)(2)(D). In addition, the TNRCC proposes to change the title of the undesignated head from Degreasing and Clean-up Processes to Degreasing Processes to reflect the content of the proposed amendments. Concurrently, the TNRCC proposes amendments to §115.10, concerning Definitions, and §101.1, concerning Definitions, to exclude acetone from the definition of VOC for consistency with the recently promulgated federal definition of VOC.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Minick also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a more understandable and enforceable environmental regulation. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. Cost savings to owners or operators of polyester resin operations could result from the removal of the acetone usage limits.

Public hearings on this proposal will be held in Beaumont on September 26, 1995, at 7:00 p.m. at the John Gray Institute, 855 Florida Avenue, Beaumont; and in Houston on September 27, 1995, at 10:00 a.m. in Conference Room A at the Houston-Galveston Area Council, 3555 Timmons Lane, Houston. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however a TNRCC staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments not presented at the hearing may be submitted to the TNRCC central office in Austin. The deadline for submission of written comments will be 30 days after the date of publication of the proposal in the *Texas Register*. Material received by the TNRCC Office of Policy and Regulatory Development by 4:00 p.m. on that date will be considered by the Commission prior to any final action on the proposal. Please mail written comments to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, and reference Rule Log #95137-115-AI.

Comments can also be faxed to (512) 239-5687. Copies of the proposal are available at the central office of the TNRCC, Air Policy and Regulations Division, located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, and at all TNRCC regional offices. For further information, contact Eddie Mack at (512) 239-1488.

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.

The amendments are proposed under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed amendments affect the Health and Safety Code, §382.017.

#### §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), the following control requirements shall apply.

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

[(4) In the Dallas/Fort Worth, El Paso, and Houston/Galveston areas, acetone usage at polyester resin operations, as defined in §115.10 of this title, is limited as follows (with usage defined as gross usage minus waste disposal).

[(A) Monthly usage of acetone for cleanup at cultured (synthetic) marble operations is limited to no more than 2.0% by weight of the total monthly polyester resin usage, including gelcoat.]

[(B) Monthly usage of acetone for cleanup at fiber reinforced plastic manufacturing operations is limited to no more than 1.0% by weight of the total monthly polyester resin usage, including gelcoat.]

(b) (No change.)

#### §115.413. 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 section may be approved by the Executive Director in accordance with §115.910 of this title (relating to Availability of Alternate Means of Control) if emission reductions are demonstrated to be substantially equivalent.

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

(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 (relating to Availability of Alternate Means of Control) if emission reductions are demonstrated to be substantially equivalent.

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

#### §115.416. Recordkeeping Requirements.

(a) For the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the owner or operator of any [polyester resin operation, or] 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 Texas Natural Resource Conservation Commission (TNRCC), United States Environmental Protection Agency (EPA), or the local air pollution control agency having jurisdiction in the area.

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

[(3) A record of monthly resin and acetone usage sufficient to document compliance with the requirements described in §115.412(a)(4) of this title (relating to Control Requirements).

[(4) A record of monthly resin and acetone usage sufficient to document the applicability of the conditions for exemption referenced in §115.417(a)(3) of this title (relating to Exemptions).]

(b) (No change.)

#### §115.417. 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) A polyester resin operation with a monthly resin usage, including gelcoat, of less than one ton is exempt from §115.412(a)(4) of this title (relating to Control Requirements). For the purposes of this paragraph, usage is defined as gross usage minus waste disposal.]

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

[(5) Any open-top vapor degreaser with an open area less than 10 ft<sup>2</sup> (1 m<sup>2</sup>) is exempt from the refrigerated

chiller or the carbon adsorber requirements in §115.412(a)(2)(D) (ii) and (iv) of this title (relating to Control Requirements).]

(4) [(6)] 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<sup>2</sup> (100 cm<sup>2</sup>) and who properly disposes of waste solvent in enclosed containers is exempt from §115.412(a)(1) of this title.

(b) For Gregg, Nueces, and Victoria counties, the following exemptions shall apply.

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

[(5)] Any open-top vapor degreaser with an open area less than 10 ft<sup>2</sup> (1 m<sup>2</sup>) is exempt from the refrigerated chiller or the carbon adsorber requirements in §115.412(b)(2)(D) (ii) and (iv) of this title.]

(5)[(6)] 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<sup>2</sup> (100 cm<sup>2</sup>) 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 this undesignated head (relating to Degreasing Processes) as required by §115.930 of this title (relating to Compliance Dates). [All affected polyester resin operations in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Harris, Liberty, Montgomery, Tarrant, and Waller counties shall be in compliance with §§115.412(a)(4), 115.416(a)(3) and (4), and 115.417(a)(3) of this title (relating to Control Requirements; Recordkeeping Requirements; and Exemptions) as soon as practicable, but no later than May 31, 1995.]

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

Issued in Austin, Texas, on August 30, 1995.

TRD-9510949

Lydia Gonzalez-Gromatzky  
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Texas Natural Resource  
Conservation  
Commission

Proposed date of adoption: December 20, 1995

For further information, please call. (512) 239-1970

## Surface Coating Processes

### • 30 TAC §§115.421-115.423, 115.425-115.427, 115.429

The Texas Natural Resource Conservation Commission (TNRCC or Commission) proposes amendments to §§115.421-115.423, 115.425-115.427, and 115.429, concerning Surface Coating Processes. The proposed changes to §115.421, concerning Emission Specifications, change the basis for all surface coating emission limitations from pounds of volatile organic compounds (VOC) per gallon of solids to pounds of VOC per gallon of coating (minus water and exempt solvent). This will provide the same emission limitations using different units of measurement which are more readily understood by the regulated community. The proposed changes to §115.421 also add current terminology ("high-bake coatings" and "low-bake coatings") to more clearly define operations which include "air or forced air driers." The term daily weighted average is defined, for clarity.

In addition, the proposed changes to §115.421, concerning Emission Specifications; §115.422, concerning Control Requirements; §115.426, concerning Monitoring and Recordkeeping Requirements; §115.427, concerning Exemptions; and §115.429, concerning Counties and Compliance Schedules, delete language which is obsolete due to the passage of a July 31, 1994 compliance date, update rule references, and change references from "automobile refinishing" to "vehicle refinishing (body shops)" for consistency with Standard Exemption 124. The change from "automobile refinishing" to "vehicle refinishing (body shops)" will enable owners or operators of some vehicle refinishing operations (such as bus and heavy-duty truck refinishing) to utilize the body shop requirements rather than the miscellaneous metal parts/products requirements.

The proposed changes to §115.422, concerning Control Requirements, and §115.423, concerning Alternate Control Requirements, also update a reference to §115.910 to reflect a title change. The proposed changes to §115.425, concerning Testing Requirements, correct a reference to a United States Environmental Protection Agency (EPA) guidance document. In addition, the proposed changes to §115.427 delete an exemption for customized (decorative) top coating of automobiles and trucks which is redundant because this coating category is already regulated under the exemption for vehicle refinishing (body shops) in the preceding subparagraph.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr Minick also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a more understandable and enforceable environmental regulation. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Public hearings on this proposal will be held in Beaumont on September 26, 1995, at 7:00 p.m. at the John Gray Institute, 855 Florida Avenue, Beaumont; and in Houston on September 27, 1995, at 10:00 a.m. in Conference Room A at the Houston-Galveston Area Council, 3555 Timmons Lane, Houston. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however a TNRCC staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments not presented at the hearing may be submitted to the TNRCC central office in Austin. The deadline for submission of written comments will be 30 days after the date of publication of the proposal in the *Texas Register*. Material received by the TNRCC Office of Policy and Regulatory Development by 4:00 p.m. on that date will be considered by the Commission prior to any final action on the proposal. Please mail written comments to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, and reference Rule Log #95137-115-A1. Comments can also be faxed to (512) 239-5687. Copies of the proposal are available at the central office of the TNRCC, Air Policy and Regulations Division, located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, and at all TNRCC regional offices. For further information, contact Eddie Mack at (512) 239-1488.

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.

The amendments are proposed under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed amendments affect the Health and Safety Code, §382.017.

### *§115.421. Emission Specifications.*

(a) No person 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) may cause, suffer, allow, or permit volatile organic compound (VOC) emissions from the surface coating processes as defined in §115.10 of this title affected by paragraphs (1)-(13) of this subsection to exceed the

specified emission limits. These limitations are based on the daily weighted average of all coatings delivered to each coating line, except for those in paragraph (10) of this subsection which are based on paneling surface area and those in paragraph (11) of this subsection which are based on the VOC content of architectural coatings sold or offered for sale. For the purposes of this undesignated head (relating to Surface Coating Processes), daily weighted average means the total weight of VOC emissions from all coatings, divided by the total volume of all coatings applied each day.

(1) Large appliance coating. VOC emissions from the application, flashoff, and oven areas during the coating of large appliances (prime and topcoat, or single coat) shall not exceed 2.8 [4.5] pounds per gallon of coating (minus water and exempt solvent) [solids] delivered to the application system (0.34 kg/liter) [(0.54 kg/liter)].

(2) Metal furniture [Furniture] coating. VOC emissions from metal furniture coating lines (prime and topcoat, or single coat) shall not exceed 3.0 [5.1] pounds per gallon of coating (minus water and exempt solvent) [solids] delivered to the application system (0.36 kg/liter) [(0.61 kg/liter)].

(3) Coil coating. VOC emissions from the coating (prime and topcoat, or single coat) of metal coils shall not exceed 2.6 [4.0] pounds per gallon of coating (minus water and exempt solvent) [solids] delivered to the application system (0.31 kg/liter) [(0.48 kg/liter)].

(4) Paper coating. VOC emissions from the coating of paper (or specified tapes or films) shall not exceed 2.9 [4.8] pounds per gallon of coating (minus water and exempt solvent) [solids] delivered to the application system (0.35 kg/liter) [(0.57 kg/liter)].

(5) Fabric coating. VOC emissions from the coating of fabric shall not exceed 2.9 [4.8] pounds per gallon of coating (minus water and exempt solvent) [solids] delivered to the application system (0.35 kg/liter) [(0.57 kg/liter)].

(6) Vinyl coating. VOC emissions from the coating of vinyl fabrics or sheets shall not exceed 3.8 [7.9] pounds per gallon of coating (minus water and exempt solvent) [solids] delivered to the application system (0.45 kg/liter) [(0.95 kg/liter)]. Plastisol coatings should not be included in calculations.

(7) Can coating. The following VOC emission limits shall be achieved, on the basis of solvent content per gallon of coating (minus water and exempt solvent) [solids] delivered to the application system:

Figure 1: 30 TAC §115.421(a)(7)

(8) Vehicle coating [Automobile and light-duty truck coating].

(A) (No change.)

[(B) Until July 31, 1994 in Dallas and Tarrant counties, VOC emissions from the coatings or solvents used in automobile and truck refinishing shall be based on an assumed 65% transfer efficiency from all application equipment, unless otherwise specified, in an alternate means of control approved by the Executive Director in accordance with §115.910 (relating to Alternate Means of Control), and shall not exceed the following limits, as delivered to the application system:

(i) 5.0 pounds per gallon (0.60 kg/liter) of coating (minus water and exempt solvent) for primers or primer/surfacers;

(ii) 5.2 pounds per gallon (0.62 kg/liter) of coating (minus water and exempt solvent) for acrylic enamel coatings;

(iii) 5.0 pounds per gallon (0.60 kg/liter) of coating (minus water and exempt solvent) for alkyd enamel coatings;

(iv) 5.2 pounds per gallon (0.62 kg/liter) of coating (minus water and exempt solvent) for clear coatings;

(v) 6.2 pounds per gallon (0.74 kg/liter) of coating (minus water and exempt solvent) for base coatings;

(vi) 6.2 pounds per gallon (0.74 kg/liter) of coating (minus water and exempt solvent) for lacquers; and

(vii) 1.4 pounds per gallon (0.17 kg/liter) of wipe-down solutions.]

(B)[(C)] [After July 31, 1994,] VOC emissions from the coatings or solvents used in vehicle [automobile and truck] refinishing (body shops) as defined in §115.10 of this title shall not exceed the following limits, as delivered to the application system:

(i) 5.0 pounds per gallon (0.60 kg/liter) of coating (minus water and exempt solvent) for primers or primer surfacers, as defined in §115.10 of this title;

(ii) 5.5 pounds per gallon (0.66 kg/liter) of coating (minus water and exempt solvent) for precoat, as defined in §115.10 of this title;

(iii) 6.5 pounds per gallon (0.78 kg/liter) of coating (minus water and exempt solvent) for pretreatment, as defined in §115.10 of this title;

(iv) 5.0 pounds per gallon

(0.60 kg/liter) of coating (minus water and exempt solvent) for single-stage top-coats;

(v) 5.0 pounds per gallon (0.60 kg/liter) of coating (minus water and exempt solvent) for basecoat/clearcoat systems, as defined in §115.10 of this title;

(vi) 5.2 pounds per gallon (0.62 kg/liter) of coating (minus water and exempt solvent) for three-stage systems, as defined in §115.10 of this title;

(vii) 7.0 pounds per gallon (0.84 kg/liter) of coating (minus water and exempt solvent) for specialty coatings, as defined in §115.10 of this title;

(viii) 6.0 pounds per gallon (0.72 kg/liter) of coating (minus water and exempt solvent) for sealers, as defined in §115.10 of this title; and

(ix) 1.4 pounds per gallon (0.17 kg/liter) of wipe-down solutions, as defined in §115.10 of this title.

(C)[(D)] Additional control requirements for vehicle [automobile and truck] refinishing (body shops) [operations] are referenced in §115.422 of this title (relating to Control Requirements).

(9) Miscellaneous metal parts and products coating.

(A) VOC emissions from the coating of miscellaneous metal parts and products shall not exceed the following limits for each surface coating type:

(i) 4.3 [10.2] pounds per gallon (0.52 kg/liter) [(1.23 kg/liter)] of coating (minus water and exempt solvent) [solids] delivered to the application system as a clear coat; or as an interior protective coating for pails and drums;

(ii) 3.5 [6.7] pounds per gallon (0.42 kg/liter) [(0.81 kg/liter)] of coating (minus water and exempt solvent) [solids] delivered to the application system as a low-bake coating; or that utilizes air or forced air driers;

(iii) 3.5 [6.7] pounds per gallon (0.42 kg/liter) [(0.81 kg/liter)] of coating (minus water and exempt solvent) [solids] delivered to the application system as an extreme performance coating, including chemical milling maskants;

(iv) 3.0 [5.1] pounds per gallon (0.36 kg/liter) [(0.61 kg/liter)] of coating (minus water and exempt solvent) [solids] delivered to the application system for all other coating applications, including high-bake coatings, that pertain to miscellaneous metal parts and products; and

(v) [In Dallas and Tarrant counties, and after July 31, 1993 in counties other than Dallas and Tarrant,] 3.5



[6.7] pounds per gallon (0.42 kg/liter) [(0.81 kg/liter)] of coating (minus water and exempt solvent) [solids] delivered to the application system as a prime coat for the exterior of aircraft

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

(10)-(11) (No change.)

(12) Surface coating of mirror backing.

(A) [After July 31, 1994,] VOC emissions from the coating of mirror backing shall not exceed the following limits for each surface coating application method:

(i) 4.2 [9.8] pounds per gallon (0.50 kg/liter) of coating (minus water and exempt solvent) [solids] delivered to a curtain coating application system;

(ii) 3.6 [7.1] pounds per gallon (0.43 kg/liter) of coating (minus water and exempt solvent) [solids] delivered to a roll coating application system.

(B) (No change.)

(13) (No change.)

(b) No person in Gregg, Nueces, and Victoria counties may cause, suffer, allow, or permit VOC emissions from the surface coating processes as defined in §115.10 of this title affected by paragraphs (1)-(9) [(1)-(10)] of this subsection to exceed the specified emission limits. These limitations are based on the daily weighted average of all coatings delivered to each coating line, except for those in paragraph (9) [(10)] of this subsection which are based on paneling surface area. For the purposes of this undesignated head (relating to Surface Coating Processes), daily weighted average means the total weight of VOC emissions from all coatings, divided by the total volume of all coatings applied each day.

(1) Large appliance coating. VOC emissions from the application, flashoff, and oven areas during the coating of large appliances (prime and topcoat, or single coat) shall not exceed 2.8 [4.5] pounds per gallon of coating (minus water and exempt solvent) [solids] delivered to the application system (0.34 kg/liter) [(0.54 kg/liter)]

(2) Metal furniture [Furniture] coating. VOC emissions from metal furniture coating lines (prime and topcoat, or single coat) shall not exceed 3.0 [5.1] pounds per gallon of coating (minus water and exempt solvent) [solids] delivered to the application system (0.36 kg/liter) [(0.61 kg/liter)].

(3) Coil coating. VOC emissions from the coating (prime and topcoat, or single coat) of metal coils shall not exceed 2.6 [4.0] pounds per gallon of coating (minus water and exempt solvent) [solids] delivered to the application system (0.31 kg/liter) [(0.48 kg/liter)].

(4) Paper coating. VOC emissions from the coating of paper (or specified tapes or films) shall not exceed 2.9 [4.8] pounds per gallon of coating (minus water and exempt solvent) [solids] delivered to the application system (0.35 kg/liter) [(0.57 kg/liter)].

(5) Fabric coating. VOC emissions from the coating of fabric shall not exceed 2.9 [4.8] pounds per gallon of coating (minus water and exempt solvent) [solids] delivered to the application system (0.35 kg/liter) [(0.57 kg/liter)].

(6) Vinyl coating. VOC emissions from the coating of vinyl fabrics or sheets shall not exceed 3.8 [7.9] pounds per gallon of coating (minus water and exempt solvent) [solids] delivered to the application system (0.45 kg/liter) [(0.95 kg/liter)]. Plastisol coatings should not be included in calculations.

(7) Can coating. The following VOC emission limits shall be achieved, on the basis of solvent content per gallon of coating (minus water and exempt solvent) [solids] delivered to the application system: Figure 2: 30 TAC §115.421(b)(7)

(8) Miscellaneous metal parts and products coating.

(A) VOC emissions from the coating of miscellaneous metal parts and products shall not exceed the following limits for each surface coating type:

(i) 4.3 [10.2] pounds per gallon (0.52 kg/liter) [(1.23 kg/liter)] of coating (minus water and exempt solvent) [solids] delivered to the application system as a clear coat; or as an interior protective coating for pails and drums;

(ii) 3.5 [6.7] pounds per gallon (0.42 kg/liter) [(0.81 kg/liter)] of coating (minus water and exempt solvent) [solids] delivered to the application system as a low-bake coating; or that utilizes air or forced air driers;

(iii) 3.5 [6.7] pounds per gallon (0.42 kg/liter) [(0.81 kg/liter)] of coating (minus water and exempt solvent) [solids] delivered to the application system as an extreme performance coating, including chemical milling maskants; and

(iv) 3.0 [5.1] pounds per gallon (0.36 kg/liter) [(0.61 kg/liter)] of coating (minus water and exempt solvent) [solids] delivered to the application system for all other coating applications, including

high-bake coatings, that pertain to miscellaneous metal parts and products; [and]

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

(9) (No change.)

§115.422. Control Requirements. For the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the following control requirements shall apply.

(1) [In Dallas and Tarrant counties, and after July 31, 1994 in ozone nonattainment counties other than Dallas and Tarrant, the] The owner or operator of each vehicle [any automobile] refinishing (body shop) operation shall minimize volatile organic compound emissions during equipment clean-up by utilizing the following procedures:

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

(2) [After July 31, 1994, automobile] Each vehicle [and truck] refinishing (body shop) operation [operations] shall use coating application equipment with a transfer efficiency of at least 65%, unless otherwise specified in an alternate means of control approved by the Executive Director in accordance with §115.910 of this title (relating to Availability of Alternate Means of Control). High-volume low-pressure (HVLP) spray guns, as defined in §115.10 of this title (relating to Definitions), are assumed to comply with the 65% transfer efficiency requirement.

(3) (No change.)

§115.423. Alternate Control Requirements.

(a) For all affected persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the following alternate control requirements may apply:

(1) Emission calculations for surface coating operations performed to satisfy the conditions of §101.23 of this title, §115.910 of this title (relating to Availability of Alternate Means of Control), or other demonstrations of equivalency with the specified emission limits in this section shall be based on the pounds of volatile organic compounds (VOC) per gallon of solids for all affected coatings.

(2) Any alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria, such as use of improved transfer efficiency in this section, may be approved by the Executive Director in accordance with §115.910 of this title (relating to Availability of Alternate Means of Control) if emission reductions are demonstrated to be substantially equivalent.

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

(b) For all affected persons in Gregg, Nueces, and Victoria counties, the following alternate control requirements may apply:

(1) Emission calculations for surface coating operations performed to satisfy the conditions of §101.23 of this title (relating to Alternate Emission Reduction "Bubble" Policy), §115.910 of this title (relating to Availability of Alternate Means of Control), or other demonstrations of equivalency with the specified emission limits in this section shall be based on the pounds of VOC per gallon of solids for all affected coatings.

(2) Any alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria, such as use of improved transfer efficiency in this section, may be approved by the Executive Director in accordance with §115.910 of this title (relating to Availability of Alternate Means of Control) if emission reductions are demonstrated to be substantially equivalent.

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

#### §115.425. Testing Requirements.

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

(1) Compliance with §115.421(a) of this title (concerning Emission Specifications) shall be determined by applying the following test methods, as appropriate:

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

(C) U.S. Environmental Protection Agency (EPA) guidelines series document "Procedures for Certifying Quantity of Volatile Organic Compounds (VOC) Emitted by Paint, Ink, and Other Coatings," EPA-450/3-84-019 [EPA-450/3-84-011], as in effect December, 1984;

(D)-(E) (No change.)

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

(b) For Gregg, Nueces, and Victoria counties, the following testing requirements shall apply:

(1) Compliance with §115.421(b) of this title shall be determined by applying the following test methods, as appropriate:

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

(C) EPA guidelines series document "Procedures for Certifying Quantity of Volatile Organic Compounds Emitted by Paint, Ink, and Other Coatings," EPA-450/3-84-019 [EPA-450/3-84-011], as in effect December, 1984;

(D)-(E) (No change.)

(2) (No change.)

#### §115.426. Monitoring and Recordkeeping Requirements.

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

(1) Any person affected by §115.421(a) of this title (relating to Emission Specifications) shall satisfy the following recordkeeping requirements.

(A) (No change.)

(B) Records shall be maintained of the quantity and type of each coating and solvent consumed during the specified averaging period. Such records shall be sufficient to calculate the applicable weighted average of VOC for all coatings. As an alternative to the recordkeeping requirements of this subparagraph, any vehicle [automobile and truck] refinishing (body shop) operation [operations] affected by §115.421(a)(8)(B) [§115.421(a)(8)(B) and (C)] of this title may substitute the recordkeeping requirements specified in Standard Exemption 124 [the applicable standard exemption for automobile and truck refinishing operations] as referenced in §116.211 of this title (relating to Standard Exemption List).

(C)-(D) (No change.)

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

(b) (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) The following coating operations are exempt from the application of §115.421(a)(9) of this title (relating to Emission Specifications):

(A) (No change.)

(B) vehicle [automobile] refinishing (body shops), except as required

by §115.421(a)(8)(B) and (C) [§115.421(a)(8)(B) -(D)] of this title; [and]

[(C) customized (decorative) top coating of automobiles and trucks, if production is less than 35 vehicles per day;]

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

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

(2) (No change.)

(3) The following exemptions shall apply to surface coating operations, except for aircraft prime coating controlled by §115.421(a)(9)(A)(v) of this title and vehicle [automobile and truck] refinishing (body shops) controlled by §115.421(a)(8)(B) and (C) of this title.

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

(4) (No change.)

(5) Automobile refinishing facilities in Hardin, Jefferson, and Orange counties are exempt from the requirements of §115.421(a)(8)(B) [§115.421(a)(8)(C)] of this title and §115.422(1) and (2) of this title (relating to Control Requirements).

[(6) Until July 31, 1994, automobile refinishing facilities in Brazoria, Chambers, Collin, Denton, El Paso, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller counties are exempt from the requirements of §115.421(a)(8)(C) of this title and §115.422(1) and (2) of this title.]

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

(1) (No change.)

(2) The following coating operations are exempt from the application of §115.421(b)(9) of this title:

(A) (No change.)

(B) vehicle [automobile] refinishing (body shops);

[(C) customized (decorative) top coating of automobiles and trucks, if production is less than 35 vehicles per day;]

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

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

(3) (No change.)

*§115.429. Counties and Compliance Schedules.*

[(a) All affected mirror backing coating facilities in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller counties shall be in compliance with §115.421(a) of this title (relating to Emission Specifications), §115.422 of this title (relating to Control Requirements), §115.423(a) of this title (relating to Alternate Control Requirements), §115.424(a) of this title (relating to Inspection Requirements), §115.425(a) of this title (relating to Testing Requirements), §115.426(a) of this title (relating to Monitoring and Recordkeeping Requirements), and §115.427(a) of this title (relating to Exemptions) as soon as practicable, but no later than July 31, 1994.

[(b) All automobile refinishing facilities in Dallas and Tarrant counties shall be in compliance with §115.421(a)(8)(C) of this title as soon as practicable, but no later than July 31, 1994.

[(c) All automobile refinishing facilities in Brazoria, Chambers, Collin, Denton, El Paso, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller counties shall be in compliance with §115.421(a)(8)(C) of this title and §115.422(1) and (2) of this title as soon as practicable, but no later than July 31, 1994.

[(d)] All wood parts and products surface coating affected by §115.421(a)(13) of this title (relating to Emission Specifications) in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Harris, Liberty, Montgomery, Tarrant, and Waller counties shall be in compliance with this undesignated head (relating to Surface Coating Processes) as soon as practicable, but no later than November 15, 1996.

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

Issued in Austin, Texas, on August 30, 1995.

TRD-9510950 Lydia Gonzalez-Gromatzky  
Acting Director, Legal  
Services Division  
Texas Natural Resource  
Conservation  
Commission

Proposed date of adoption: December 20, 1995

For further information, please call: (512) 239-1970

**Graphic Arts (Printing) by Rotogravure and Flexographic Processes**

• 30 TAC §§115.433,  
115.435-115.437, 115.439

The Texas Natural Resource Conservation Commission (TNRCC or Commission) proposes amendments to §§115.433, 115.435-115.437, and 115.439, concerning Graphic Arts (Printing) by Rotogravure and Flexographic Processes. The proposed changes to §115.433, concerning Alternate Control Requirements, update a reference to §115.910 to reflect a title change. The proposed changes to §115.435, concerning Testing Requirements, correct a reference to a United States Environmental Protection Agency (EPA) guidance document. The proposed changes to §115.436, concerning Monitoring and Recordkeeping Requirements, correct an unintended loophole by which exempted printing operations are not currently required to maintain records (for example, ink and solvent usage records) to document qualification for exemption status, resulting in difficulty in enforcement. The proposed changes to §115.437, concerning Exemptions, delete language which is obsolete due to the passage of a July 31, 1993 compliance date. The proposed changes to §115.439, concerning Counties and Compliance Schedules, update rule references.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Minick also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a more understandable and enforceable environmental regulation. There will be minimal or no effect on small businesses, persons, and businesses who are required to comply with the sections as proposed. The proposed requirement to maintain ink and solvent usage records will have minimal fiscal impact, since most companies already maintain such records.

Public hearings on this proposal will be held in Beaumont on September 26, 1995, at 7:00 p.m. at the John Gray Institute, 855 Florida Avenue, Beaumont; and in Houston on September 27, 1995, at 10:00 a.m. in Conference Room A at the Houston-Galveston Area Council, 3555 Timmons Lane, Houston. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however a TNRCC staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments not presented at the hearing may be submitted to the TNRCC central office in Austin. The deadline for submission of written comments will be 30 days after the date of publication of the proposal in the

*Texas Register.* Material received by the TNRCC Office of Policy and Regulatory Development by 4:00 p.m. on that date will be considered by the Commission prior to any final action on the proposal. Please mail written comments to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, and reference Rule Log #95137-115-AI. Comments can also be faxed to (512) 239-5687. Copies of the proposal are available at the central office of the TNRCC, Air Policy and Regulations Division, located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, and at all TNRCC regional offices. For further information, contact Eddie Mack at (512) 239-1488.

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.

The amendments are proposed under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed amendments affect the Health and Safety Code, §382.017.

*§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 section may be approved by the Executive Director in accordance with §115.910 of this title (relating to Availability of Alternate Means of Control) if emission reductions are demonstrated to be substantially equivalent.

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

(5) 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 [EPA-450/3-84-011], as in effect December, 1984;

(6)-(8) (No change.)

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

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

(5) EPA guidelines series document "Procedures for Certifying Quantity of Volatile Organic Compounds Emitted by Paint, Ink, and Other Coatings," EPA-450/3-84-019 [EPA-450/3-84-011], as in effect December, 1984;

(6)-(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 [graphic arts] facility [subject to the control requirements of §115.432(a) of this title (relating to Control Requirements)] shall:

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

(b) For Gregg, Nueces, and Victoria counties, the owner or operator of any rotogravure or flexographic printing [graphic arts] facility [subject to the control requirements of §115.432(b) of this title] shall:

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

*§115.437. Exemptions.*

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

(1) Until July 31, 1993 in Brazoria, El Paso, Galveston, Harris, Jefferson, and Orange counties, all rotogravure and flexographic facilities on a property which, when uncontrolled, have a maximum potential to emit a combined weight of volatile organic compounds (VOC) less than 100 tons (91 metric tons) in one year (based on historical ink and VOC solvent usage, and at maximum production capacity) are exempt from the requirements of §115.432(a) of this title (relating to Control Requirements).

(2) Until July 31, 1993 in Dallas and Tarrant counties, all rotogravure and flexographic printing facilities on a property which, when uncontrolled, emit a combined weight of VOC less than 50 tons in one year (based on historical ink and solvent usage) are exempt from the requirements of §115.432(a) of this title.]

(1)[(3)] [After July 31, 1993 in] In the Beaumont/Port Arthur, Dallas/Fort Worth, and El Paso areas, all rotogravure and flexographic facilities on a property which, when uncontrolled, have a maximum potential to emit a combined weight of volatile organic compounds (VOC) less than 50 tons in one year (based on historical ink and VOC solvent usage, and at maximum production capacity) are exempt from the requirements of §115.432(a) of this title (relating to Control Requirements).

(2)[(4)] [After July 31, 1993 in] In the Houston/Galveston area, all rotogravure and flexographic facilities on a property which, when uncontrolled, have a maximum potential to emit a combined weight of VOC less than 25 tons in one year (based on historical ink and VOC solvent usage, and at maximum production capacity) are exempt from the requirements of §115.432(a) of this title.

(b) (No change.)

*§115.439. Counties and Compliance Schedules.*

(a) (No change.)

(b) All affected persons in Dallas, El Paso, Jefferson, Orange, and Tarrant counties shall be in compliance with §115.437(a)(1) [§115.437(a)(3)] 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) [§115.437(a)(4)] of this title as soon as practicable, but no later than July 31, 1993.

(d) (No change.)

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

Issued in Austin, Texas, on August 30, 1995.

TRD-9510951 Lyda Gonzalez-Gromatzky  
Acting Director, Legal  
Services Division  
Texas Natural Resource  
Conservation  
Commission

Proposed date of adoption: December 20, 1995

For further information, please call: (512) 239-1970

◆ ◆ ◆  
**Offset Lithographic Printing**  
• 30 TAC §§115.442, 115.443,  
115.445, 115.446

The Texas Natural Resource Conservation Commission (TNRCC or Commission) proposes amendments to §§115.442, 115.443, 115.445, and 115.446, concerning Offset

Lithographic Printing. Section 115.442, concerning Control Requirements, is intended to set standards for alcohols in the fountain solutions, with a separate standard for cleaning solutions. The proposed changes to §115.442, correct an unintended loophole by which the current rule language could be interpreted to exempt facilities from the cleaning solution standards. The proposed changes to §115.442 also clarify that the cleaning solutions volatile organic compounds (VOC) content limitations are based upon volume percentages. The proposed changes to §115.443, concerning Alternate Control Requirements, update a reference to §115.910 to reflect a title change. The proposed changes to §115.445, concerning Testing Requirements, correct a reference to a United States Environmental Protection Agency (EPA) guidance document. The proposed changes to §115.446, concerning Monitoring and Recordkeeping Requirements, update a reference to §115.445 to reflect the correct title.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Minick also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a more understandable and enforceable environmental regulation. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Public hearings on this proposal will be held in Beaumont on September 26, 1995, at 7:00 p.m. at the John Gray Institute, 855 Florida Avenue, Beaumont; and in Houston on September 27, 1995, at 10:00 a.m. in Conference Room A at the Houston-Galveston Area Council, 3555 Timmons Lane, Houston. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however a TNRCC staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments not presented at the hearing may be submitted to the TNRCC central office in Austin. The deadline for submission of written comments will be 30 days after the date of publication of the proposal in the *Texas Register*. Material received by the TNRCC Office of Policy and Regulatory Development by 4:00 p.m. on that date will be considered by the Commission prior to any final action on the proposal. Please mail written comments to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, and reference Rule Log #95137-115-AI. Comments can also be faxed to (512) 239-5687. Copies of the proposal are available at the central office of the TNRCC, Air Policy and Regulations Division, located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, and at all TNRCC

regional offices. For further information, contact Eddie Mack at (512) 239-1488.

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.

The amendments are proposed under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed amendments affect the Health and Safety Code, §382.017.

**§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 [one of] the following:

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

(F) Any person who owns or operates an offset lithographic printing press shall reduce VOC emissions from cleaning solutions by one of the following methods:

(i) using cleaning solutions with a VOC content of 50% or less (by volume, as used) [VOC content]; or

(ii) using cleaning solutions with a VOC content of 70% or less (by volume, as used) [VOC content] and incorporating a towel handling program which ensures that all waste ink, solvents, and cleanup rags shall be stored in closed containers until removed from the site by a licensed disposal/cleaning service.

(2) (No change.)

**§115.443. Alternate Control Requirements.** For all affected persons in the Dallas/Fort Worth, El Paso, and Houston/Galveston areas, as defined in §115.10 of this title (relating to Definitions), 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 (relating to Availability of Alternate Means of Control) if emission reductions are demonstrated to be substantially equivalent.

**§115.445. Approved Test Methods.** For the Dallas/Fort Worth, El Paso, and Houston/Galveston areas as defined in §115.10 of this title (relating to Definitions), compliance shall be determined by applying the following test methods, as appropriate:

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

(5) 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 [EPA-450/3-84-011], as in effect December, 1984; or

(6) (No change.)

**§115.446. Monitoring and Recordkeeping 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 monitoring and recordkeeping requirements shall apply.

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

(7) The owner or operator of any offset lithographic printing press shall maintain the results of any testing conducted at an affected facility in accordance with the provisions specified in §115.445 of this title (relating to Approved Test Methods [Testing Requirements]).

(8) (No change.)

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

Issued in Austin, Texas, on August 30, 1995.

TRD-9510952 Lydia Gonzalez-Gromatzky  
Acting Director, Legal  
Services Division  
Texas Natural Resource  
Conservation  
Commission

Proposed date of adoption: December 20, 1995

For further information, please call: (512) 239-1970

## Subchapter F. Miscellaneous Industrial Sources

### Cutback Asphalt

#### • 30 TAC §§115.512, 115.513, 115.517

The Texas Natural Resource Conservation Commission (TNRCC or Commission) proposes amendments to §§115.512, 115.513, and 115.517, concerning Cutback Asphalt. The proposed changes to §115.512, concerning Control Requirements, delete language which is obsolete due to the passage of a December 31, 1992 compliance date. The proposed changes to §115.513, concerning Alternate Control Requirements, update a ref-

erence to §115.910 to reflect a title change. The proposed changes to §115.517, concerning Exemptions, clarify the intent of an existing exemption for pothole patching material made with cutback asphalt.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Minick also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a more understandable and enforceable environmental regulation. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Public hearings on this proposal will be held in Beaumont on September 26, 1995, at 7:00 p.m. at the John Gray Institute, 855 Florida Avenue, Beaumont; and in Houston on September 27, 1995, at 10:00 a.m. in Conference Room A at the Houston-Galveston Area Council, 3555 Timmons Lane, Houston. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however a TNRCC staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments not presented at the hearing may be submitted to the TNRCC central office in Austin. The deadline for submission of written comments will be 30 days after the date of publication of the proposal in the *Texas Register*. Material received by the TNRCC Office of Policy and Regulatory Development by 4:00 p.m. on that date will be considered by the Commission prior to any final action on the proposal. Please mail written comments to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, and reference Rule Log #95137-115-AI. Comments can also be faxed to (512) 239-5687. Copies of the proposal are available at the central office of the TNRCC, Air Policy and Regulations Division, located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, and at all TNRCC regional offices. For further information, contact Eddie Mack at (512) 239-1488.

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.

The amendments are proposed under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed amendments affect the Health and Safety Code, §382.017.

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

(1) In Nueces County, [and until December 31, 1992 in Brazoria, Galveston, Harris, Jefferson, and Orange counties,] the use of cutback asphalt containing volatile organic compound (VOC) solvents for the paving of roadways, driveways, or parking lots is restricted to no more than 8.0% of the total annual volume averaged over a two-year period of asphalt used or specified for use by any state, municipal, or county agency who uses or specifies the type of asphalt application.

(2) In [Dallas, El Paso, and Tarrant counties, and after December 31, 1992 in counties other than Dallas, El Paso, and Tarrant in] the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the use of cutback asphalt containing VOC solvents for the paving of roadways, driveways, or parking lots is restricted to no more than 7.0% of the total annual volume averaged over a two-year period of asphalt used or specified for use by any state, municipal, or county agency who uses or specifies the type of asphalt application.

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

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

**§115.517. 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(3) of this title (relating to Control Requirements):

(1) asphalt concrete made with cutback asphalt, used for patching, which is stored in a long-life stockpile (longer than one-month storage) [stockpile storage of cutback asphalt]; and

(2) (No change.)

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

Issued in Austin, Texas, on August 30, 1995.

TRD-9510953

Lydia Gonzalez-Gromatzky  
Acting Director, Legal  
Services Division  
Texas Natural Resource  
Conservation  
Commission

Proposed date of adoption: December 20, 1995

For further information, please call: (512) 239-1970

◆ ◆ ◆  
**Degassing or Cleaning of Stationary, Marine, and Transport Vessels**

• 30 TAC §§115.541-115.543,  
115.546, 115.547, 115.549

The Texas Natural Resource Conservation Commission (TNRCC or Commission) proposes amendments to §§115.541, 115.542, 115.543, 115.546, 115.547, and 115.549, concerning Degassing or Cleaning of Stationary, Marine, and Transport Vessels. The proposed amendments to §115.541, concerning Emission Specifications, §115.542, concerning Control Requirements, §115.546, concerning Monitoring and Recordkeeping Requirements, §115.547, concerning Exemptions, and §115.549, concerning Counties and Compliance Schedules, correct typographical errors and change VOC transport vessel and VOC marine vessel to transport vessel and marine vessel, respectively, for consistency with the remainder of Chapter 115 and the definitions of these terms contained within §115.10, concerning Definitions. The proposed changes to §115.549 also delete the attainment date from the contingency rules since this date may be revised in the future. The proposed changes to §115.543, concerning Alternate Control Requirements, update a reference to §115.910 to reflect a title change.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Minick also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a more understandable and enforceable environmental regulation. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Public hearings on this proposal will be held in Beaumont on September 26, 1995, at 7:00 p.m. at the John Gray Institute, 855 Florida Avenue, Beaumont; and in Houston on September 27, 1995, at 10:00 a.m. in Conference Room A at the Houston-Galveston Area Council, 3555 Timmons Lane, Houston. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however a TNRCC staff

member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments not presented at the hearing may be submitted to the TNRCC central office in Austin. The deadline for submission of written comments will be 30 days after the date of publication of the proposal in the *Texas Register*. Material received by the TNRCC Office of Policy and Regulatory Development by 4:00 p.m. on that date will be considered by the Commission prior to any final action on the proposal. Please mail written comments to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, and reference Rule Log #95137-115-AI. Comments can also be faxed to (512) 239-5687. Copies of the proposal are available at the central office of the TNRCC, Air Policy and Regulations Division, located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, and at all TNRCC regional offices. For further information, contact Eddie Mack at (512) 239-1488.

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.

The amendments are proposed under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed amendments affect the Health and Safety Code, §382.017.

**§115.541. Emission Specifications.**

(a) For all persons 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), the following emission specifications shall apply to degassing during or in preparation of cleaning.

(1) (No change.)

(2) For all [VOC] transport vessels, as defined in §115.10 of this title, with a nominal storage capacity of 8,000 gallons or more:

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

(C) When conducting degassing or cleaning operations, no avoidable liquid or gaseous leaks, as detected by sight or sound, shall originate from the degassing or cleaning operations; [and]

(D) (No change.)

(E) All [VOC] transport vessels, as defined in §115.10 of this title,

shall be kept vapor-tight at all times until the vapors remaining in the vessel are discharged to a vapor control system.

(b) For all persons in the Beaumont/Port Arthur and Houston/Galveston areas [as defined in §115.10 of this title], the following emission specifications shall apply to degassing during or in preparation of cleaning for all [VOC] marine vessels, as defined in §115.10 of this title, with a nominal storage capacity of 10,000 barrels (420,000 gallons) or more.

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

(5) All [VOC] marine vessels, as defined in §115.10 of this title, shall have all cargo tank closures properly secured, or maintain a negative pressure within the tank when a closure is opened, and shall have all pressure/vacuum relief valves operating within certified limits as specified by classification society or flag state until the vapors are discharged to a vapor control system if the vessel is degassed or cleaned.

#### §115.542. Control Requirements.

(a) For all persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the following control requirements shall apply to stationary storage tanks and transport vessels.

(1) No person shall permit the degassing or cleaning of volatile organic compounds (VOC) a stationary storage tank or [VOC] transport vessel unless the vapors are processed by a vapor control system.

(2) When degassing or cleaning is effected through the hatches of a [VOC] transport vessel with a loading arm equipped with a vapor collection adapter, then pneumatic, hydraulic, or other mechanical means shall be provided to force a vapor-tight seal between the adapter and the hatch. A means shall be provided to minimize liquid drainage from the degassing or cleaning device when it is removed from the hatch of any [VOC] transport vessel or to accomplish drainage before such removal.

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

(5) Vapors shall be routed to the control device until a turnover of at least four vapor space volumes has occurred, or four turnovers of the vapor space under a floating roof, or the partial vapor pressure is less than 0.5 psia (19,000 ppmw, [expressed as methane] or 34,000 ppmv expressed as methane). After one of these conditions has been satisfied, the storage vessel may be vented to the atmosphere for the remainder of the degassing or cleaning process.

(b) For all persons in the Beaumont/Port Arthur and Houston/Galveston

areas, the following control requirements shall apply to [VOC] marine vessels:

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

(4) Vapors shall be routed to the control device until the [VOC] marine vessel is stripped liquid-free and a turnover of at least four vapor space volumes has occurred, the partial vapor pressure is less than 0.5 psia (19,000 ppmw, [ppmv] or 34,000 ppmv expressed as methane), or the concentration of VOC is less than 20% of lower explosion limit. After one of these conditions has been satisfied, the [VOC] marine vessel may be vented to the atmosphere for the remainder of the degassing or cleaning process.

§115.543. *Alternate Control Requirements.* For all 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 undesignated head may be approved by the Executive Director in accordance with §115.910 of this title (relating to Availability of Alternate Means of Control) if emission reductions are demonstrated to be substantially equivalent.

§115.546. *Monitoring and Recordkeeping Requirements.* For facilities in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas affected by §115.541 and §115.542 of this title (relating to Emission Specifications and Control Requirements), the owner or operator of any volatile organic compound (VOC) degassing or cleaning facility shall maintain the following information at the facility for at least two years and shall make such information available upon request to representatives of the Texas Natural Resource Conservation Commission, United States Environmental Protection Agency, or any local air pollution control agency having jurisdiction in the area:

(1) For vessel degassing or cleaning operations:

(A) a record of the type and number of all [VOC] transport vessels, stationary VOC storage tanks, and [VOC] marine vessels which are degassed or cleaned at the affected facility;

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

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

§115.547. *Exemptions.* For all persons 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), the following exemptions apply.

(1) (No change.)

(2) Degassing or cleaning any [VOC] transport vessel with a nominal storage capacity of less than 8,000 gallons, or any stationary VOC storage tank with a nominal storage capacity of less than 1,000,000 gallons, or any [VOC] marine vessel with a nominal storage capacity of less than 10,000 barrels (420,000 gallons), is exempt from the requirements of this undesignated head.

(3) (No change.)

(4) Any [VOC] marine vessel which has sustained damage which prevents a cargo tanks opening from being properly secured, the onboard vapor recovery system to be inoperative, or the pressure/vacuum relief valves from operating within certified limits as specified by classification society or flag state is [are] exempt from §115.541(3) and §115.542(b) of this title (relating to Emission Specification and Control Requirements); however, all reasonable measures shall [will] be taken to minimize VOC emissions.

(5) Any oceangoing, self-propelled [VOC] marine vessel is exempt from the degassing or cleaning requirements of this undesignated head.

#### §115.549. Counties and Compliance Schedules.

(a) All affected persons in the Brazoria, Chambers, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, and Waller counties shall be in compliance with this undesignated head (relating to Degassing or Cleaning of Stationary, Marine, and Transport Vessels) as soon as practicable, but no later than November 15, 1996.

(b) All affected persons in Collin, Dallas, Denton, and Tarrant counties shall be in compliance with this undesignated head as soon as practicable, but no later than one year, after the Texas Natural Resource Conservation Commission (TNRCC) publishes notification in the *Texas Register* of its determination that this contingency rule is necessary as a result of failure to attain the national ambient air quality standard (NAAQS) for ozone by the [November 15, 1996] attainment deadline or failure to demonstrate reasonable further progress as set forth in the 1990 Amendments to the Federal Clean Air Act (FCAA), §172(c) (9).

(c) All affected persons in El Paso County shall be in compliance with this undesignated head as soon as practicable, but no later than one year, after the TNRCC publishes notification in the *Texas Register* of its determination that this contingency

rule is necessary as a result of failure to attain the NAAQS for ozone by the [November 15, 1996] attainment deadline or failure to demonstrate reasonable further progress as set forth in the 1990 Amendments to the FCAA, §172(c)(9).

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

Issued in Austin, Texas, on August 30, 1995

TRD-9510954 Lydia Gonzalez-Gromatzky  
Acting Director, Legal  
Services Division  
Texas Natural Resource  
Conservation  
Commission

Proposed date of adoption December 20, 1995

For further information, please call (512) 239-1970

## Subchapter J. Administrative Provisions

### General Permits

#### • 30 TAC §115.950

*(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 at the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Natural Resource Conservation Commission (TNRCC or Commission) proposes the repeal of §115.950, concerning Standard Permits (Standard Construction Permit for Volatile Organic Compounds (VOC) Control Projects). The repeal is proposed in order to streamline TNRCC rules through the elimination of essentially redundant requirements.

Section 115.950 was added to Chapter 115 effective December 3, 1993 in order to address the permit requirements of VOC emission control equipment being installed to comply with the control requirements of Chapter 115. As noted in the evaluation of testimony published in the November 19, 1993, issue of the *Texas Register* (18 TexReg 8568), this section was "only a stop-gap first effort to solve an immediate need to prevent undue impediments to compliance with new Chapter 115 control requirements" which were adopted concurrently.

New §§116.610, 116.611, 116.614, and 116.617, concerning Standard Permits, were added to Chapter 116 effective May 4, 1994 and include two standard permits. The first standard permit is designed to handle emission control equipment required by any state or federal rule, standard, or regulation. The second standard permit relates to voluntary installation of emission control equipment. The adoption of the Chapter 116 standard permit rules removed the need for the "stop-gap" Chapter 115 standard permit rules.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for local governments as a result of enforcing or administering the repeal. The fiscal implications for state government as a result of enforcing or administering the repeal includes the receipt of a flat \$450 fee for each Chapter 116 standard permit registration.

Mr. Minick also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of duplicative rules. The anticipated costs for small businesses, persons, or facilities who are required to comply with the repeal includes a flat \$450 fee for each Chapter 116 standard permit registration. Because the requirements of the Chapter 115 and Chapter 116 standard permits are so similar, the actual cost of preparing a standard permit registration is not expected to change significantly with the repeal of §115.950.

Public hearings on this proposal will be held in Beaumont on September 26, 1995, at 7:00 p.m. at the John Gray Institute, 855 Florida Avenue, Beaumont; and in Houston on September 27, 1995, at 10:00 a.m. in Conference Room A at the Houston-Galveston Area Council, 3555 Timmons Lane, Houston. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however a TNRCC staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments not presented at the hearing may be submitted to the TNRCC central office in Austin. The deadline for submission of written comments will be 30 days after the date of publication of the proposal in the *Texas Register*. Material received by the TNRCC Office of Policy and Regulatory Development by 4:00 p.m. on that date will be considered by the Commission prior to any final action on the proposal. Please mail written comments to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, and reference Rule Log #95137-115-AI. Comments can also be faxed to (512) 239-5687. Copies of the proposal are available at the central office of the TNRCC, Air Policy and Regulations Division, located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, and at all TNRCC regional offices. For further information, contact Eddie Mack at (512) 239-1488.

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.

The repeal is proposed under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed repeal affects the Health and Safety Code, §382.017.

#### §115.950. Standard Construction Permit for Volatile Organic Compounds (VOC) Control Projects.

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

Issued in Austin, Texas, on August 30, 1995.

TRD-9510956 Lydia Gonzalez-Gromatzky  
Acting Director, Legal  
Services Division  
Texas Natural Resource  
Conservation  
Commission

Proposed date of adoption: December 20, 1995

For further information, please call: (512) 239-1970

## Chapter 116. Control of Air Pollution by Permits for New Construction or Modification

### Subchapter B. New Source Review Permits

#### Nonattainment Review

#### • 30 TAC §116.150

The Texas Natural Resource Conservation Commission (TNRCC) proposes an amendment to §116.150, concerning Nonattainment Review. The nitrogen oxides (NO<sub>x</sub>) requirements of §116.150 were originally adopted in response to a requirement by the United States Environmental Protection Agency (EPA) and the 1990 Federal Clean Air Act (FCAA) Amendments for states to implement nonattainment new source review (NNSR) for NO<sub>x</sub> in the following ozone nonattainment areas: Dallas/Fort Worth (Collin, Dallas, Denton, and Tarrant counties), El Paso (El Paso County), Houston/ Galveston (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller counties), and Beaumont/ Port Arthur (Hardin, Jefferson, and Orange counties).

The FCAA, §182(f) allows the following federally required NO<sub>x</sub> measures to be waived if the state demonstrates through photochemical dispersion modeling that NO<sub>x</sub> reductions do not contribute to ozone attainment: reasonably available control technology (RACT), NNSR, vehicle inspection and maintenance, and conformity. Section 182(f) exemptions for the Dallas/Fort Worth (DFW) and El Paso areas were approved by EPA on November 21, 1994. The TNRCC requested a temporary §182(f) exemption for RACT and transportation conformity for Houston/ Galveston (HGA) and Beaumont/Port Arthur (BPA) to allow the results of further Urban Airshed Model (UAM) modeling to guide the NO<sub>x</sub> reduction strategy. On April 12, 1995, EPA approved a temporary §182(f) exemption, which expires on December 31, 1996.



for all NO<sub>x</sub> requirements in HGA and BPA.

Section 116.150 requires, among other things, that NO<sub>x</sub> emission increases from any proposed major new or modified facility in an ozone nonattainment area be offset before commencing operation, using the appropriate offset ratio for the area. The major new or modified facility must also comply with the lowest achievable emission rate (LAER). A "netting" procedure, in which creditable emissions increases and decreases over a defined time period (contemporaneous period) are summed, may be required to be performed to determine if NNSR is necessary. If NNSR is not required, the source must still undergo state new source review.

The TNRCC is proposing to repeal NO<sub>x</sub> NNSR in the DFW and El Paso ozone nonattainment areas, since UAM modeling predicts that these areas will attain the ozone standard without NO<sub>x</sub> reductions. For the HGA and BPA areas, however, further UAM modeling, using data from the Coastal Oxidant Assessment for Southeast Texas (COAST) study, is needed to determine whether NO<sub>x</sub> reductions are necessary for ozone attainment. For this reason, the TNRCC is proposing to temporarily suspend, rather than repeal, certain NNSR requirements for the HGA and BPA areas.

Specifically, the NO<sub>x</sub> NNSR requirements for LAER, compliance certifications, and alternative site analysis would be suspended in HGA and BPA until January 1, 1998. In addition, it is proposed to temporarily raise the de minimis threshold level for proposed NO<sub>x</sub> emissions increases from 5 to 40 tons per year. Projects with NO<sub>x</sub> increases less than 40 tons per year would not be required to submit netting calculations as part of the new source review process. However, these cumulative increases must be considered for future projects requiring netting.

Existing Prevention of Significant Deterioration (PSD) rules already require projects with NO<sub>x</sub> increases equal to or greater than 40 tons per year to undergo PSD review. However, for net NO<sub>x</sub> emissions increases aggregated over the contemporaneous period which are greater than 25 tons per year (major modification level for sources in HGA or BPA), the offset requirements of §116.150 would be in effect in accordance with the existing rule, but would be held in abeyance until January 1, 1998.

The current definitions in §116.12, concerning Nonattainment Review Definitions, would continue to apply. In particular, the definition of "major modification" would remain at 25 tons per year in the HGA and BPA areas. The suspension of requirements of §116.150 would be retroactive to April 12, 1995, the date EPA approved the state's temporary §182(f) exemption. However, companies would still have the option to be evaluated under existing rule requirements. The current NNSR requirements for volatile organic compounds (VOC) and other pollutants besides NO<sub>x</sub> are not changed by this proposed revision.

Two potential scenarios may influence the agency's future actions with regard to NO<sub>x</sub> NNSR for HGA and BPA. 1) If the next round

of UAM modeling using COAST data shows ozone benefits from NO<sub>x</sub> reductions, the waived NNSR requirements would be reinstated on January 1, 1998. Offsets which had been held in abeyance during the temporary suspension period would be required, and affected sources would have until January 1, 2000 to obtain them. In concurrent actions, the TNRCC is preparing to conduct hearings before submitting a petition to EPA, requesting a one-year extension of the temporary §182(f) exemption to December 31, 1997. 2) If the UAM results show no ozone benefits from NO<sub>x</sub> reductions, then a permanent §182(f) exemption may be requested from EPA, and if granted, followed by the repeal of Chapter 117 NO<sub>x</sub> RACT rules and Chapter 116 NO<sub>x</sub> NNSR provisions in HGA and BPA. In this instance the NO<sub>x</sub> offsets held in abeyance would not be required.

These changes have consequences for NO<sub>x</sub> emission reduction credits (ERCs) deposited in the TNRCC emissions bank for the purpose of selling these credits for offsets. Removal of NO<sub>x</sub> offset requirements could lead to unmarketable ERCs and, since certified ERCs are currently available for offset credits up to five years after the reduction was achieved, these ERCs could possibly expire before use. In order to help avoid this situation, separate rulemaking has been proposed (20 TexReg 5013) to revise the Emissions Banking rule (Chapter 101, General Rules, §101.29). These revisions, which would apply both to NO<sub>x</sub> and VOC ERCs, would extend the life of certified credits from 5 to 10 years, eliminate the 3.0% per year depreciation factor for ERCs deposited in the bank, and promote additional flexibility in the use of ERCs.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the proposed section is in effect, there will be no significant fiscal implications for state and local governments as a result of administration or enforcement of the section. In regard to economic costs to businesses, affected companies are anticipated to realize cost savings as a result of deferring offset, LAER, compliance certifications, and alternative site analysis requirements to a later date or repealing these requirements altogether. These cost savings will vary on a case-by-case basis with each affected company and have not been quantified. Sales of emission reduction credits by the few sources which made reductions for the purpose of providing offsets to other companies could be jeopardized. The impacts of the proposed rule on the market value of emission reduction credits and the indirect fiscal implications have also not been determined. There are no significant direct implications anticipated for small businesses.

Mr. Minick also has determined that for each year of the first five-year period the proposed section is in effect, the public benefit anticipated as a result of implementing the section will be consistency with federal requirements. There are no fiscal implications anticipated for any person required to comply with this section as proposed.

A public hearing on the proposal will be held on October 2, 1995, at 10:00 a.m. in Room

254S of TNRCC Building E, located at 12118 North IH-35, Park Technology Center, Austin. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, a TNRCC staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments not presented at the hearing may be submitted to the TNRCC central office in Austin. The deadline for submission of written comments will be 30 days after the date of publication in the *Texas Register*. Material received by the TNRCC Office of Policy and Regulatory Development by 4:00 p.m. on that date will be considered by the Commission prior to any final action on the proposal. Please mail written comments to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, and reference Rule Log #95101-116-AI. Please fax written comments to (512) 239-5687. Copies of the proposed rule are available at the central office of the TNRCC, Air Policy and Regulations Division, located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, and at all TNRCC regional offices. For further information, contact Mike Magee at (512) 239-1511.

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.

The amendment is proposed under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed amendment affects the Health and Safety Code, §382.017.

*§116.150. New Major Source or Major Modification in Ozone Nonattainment Area.*

(a) This section applies to administratively complete applications received on or after November 15, 1992. Applications filed before November 15, 1992 shall be reviewed using the procedures outlined in this chapter in effect on October 22, 1991. The owner or operator of a proposed new facility which is a major stationary source of volatile organic compound (VOC) emissions or nitrogen oxides (NO<sub>x</sub>) emissions, or which is a facility that will undergo a major modification with respect to VOC or NO<sub>x</sub> emissions, and which is to be located in any area designated as nonattainment for ozone in accordance with the Federal Clean Air Act (FCAA), §107 shall meet the additional requirements of paragraphs (1)-(4) of this subsection, except as provided for in subsections (b) and (c) of this section. Table I of §116.12 of this title (relating to Nonattainment Review Definitions)

specifies the various classifications of nonattainment along with the associated emission levels which designate a major stationary source or major modification for those classifications. The de minimis threshold test shall be required for proposed VOC [or NO<sub>x</sub>] emissions increases that equal or exceed five tons per year in moderate, serious, and severe ozone nonattainment areas, and for NO<sub>x</sub> emissions increases that equal or exceed forty tons per year in moderate, serious, and severe ozone nonattainment areas. In applying the de minimis threshold test, if the net emissions increases aggregated over the contemporaneous period are greater than the major modification levels stated in Table I, then the following requirements apply:

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

(b) For sources located in the Dallas/Fort Worth ozone nonattainment area (Collin, Dallas, Denton, and Tarrant counties) or the El Paso ozone nonattainment area (El Paso County), the requirements of this section do not apply to NO<sub>x</sub> emissions.

(c) For sources located in the Houston/Galveston (HGA) ozone nonattainment area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller counties) or the Beaumont/Port Arthur (BPA) ozone nonattainment area (Hardin, Jefferson, and Orange counties), the following shall apply to NO<sub>x</sub> emissions:

(1) For permit applications in review after April 12, 1995 and declared administratively complete on or before December 31, 1997:

(A) Subsection (a)(1), (2), and (4) of this section do not apply.

(B) The requirements of subsection (a)(3) of this section apply and shall be made a part of the source's permit. However, the requirements shall be held in abeyance for a period ending no sooner than January 1, 1998. The Commission may on or after January 1, 1998, and after making the determinations described in paragraph (2) of this subsection, require the source to implement the permit requirements imposed pursuant to the requirements of subsection (a)(3) of this section. If the Commission requires implementation, the source shall obtain the NO<sub>x</sub> offsets as specified in subsection (a)(3) of this section no later than January 1, 2000.

(C) Documentation of proposed increases of NO<sub>x</sub> equal to or greater than 40 tons per year, as well as documentation of netting calculations for these increases, shall be submitted.

(D) A source otherwise subject to the requirements of subsection (a)(1)-(4) of this section may, at its option, comply with any of those requirements.

(2) The Commission will review, during the years 1996 and 1997, the results of the Urban Airshed Model for the HGA and BPA ozone nonattainment areas, using data from the Coastal Oxidant Assessment for Southeast Texas study, in accordance with the United States Environmental Protection Agency document "Guideline for Determining the Applicability of Nitrogen Oxides Requirements under Section 182(f)" (December 1993). If the Commission determines that additional NO<sub>x</sub> reductions in the nonattainment area would contribute to attainment of the National Ambient Air Quality Standards for ozone in that nonattainment area the Commission will notify sources which have permit requirements in abeyance pursuant to paragraph (1)(B) of this subsection, that the period of abeyance shall end. The source shall obtain the NO<sub>x</sub> offsets as specified in subsection (a)(3) of this section no later than January 1, 2000. On or after January 1, 1998, the Commission pursuant to a formal rulemaking proceeding may require sources in the HGA and BPA nonattainment areas who file an application after January 1, 1998, to comply with the requirements of subsection (a)(1)-(4) of this section.

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

Issued in Austin, Texas, on August 24, 1995.

TRD-9510765

Lydia Gonzalez-Gromatzky  
Director, Legal Services  
Division  
Texas Natural Resource  
Conservation  
Commission

Proposed date of adoption. December 20, 1995

For further information, please call: (512) 239-1970

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Chapter 117. Control of Air  
Pollution From Nitrogen  
Compounds

Subchapter C. Acid Manufac-  
turing

The Texas Natural Resource Conservation Commission (TNRCC) proposes amendments to §§117.451, 117.510, 117.520, 117.530, and 117.601, to extend the final compliance dates in Chapter 117, concerning Control of Air Pollution From Nitrogen Compounds, by two years to May 31, 1999. Chapter 117 was adopted in response to a requirement by the United States Environmental Protection Agency (EPA) and the 1990 Federal Clean Air Act (CAA) Amendments for states to apply reasonably available

control technology (RACT) requirements to major sources of nitrogen oxides (NO<sub>x</sub>) in the following ozone nonattainment counties: Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller (Houston/Galveston ozone nonattainment area) and Hardin, Jefferson, and Orange (Beaumont/Port Arthur ozone nonattainment area).

Section 182(f) of the 1990 CAA requires states to adopt rules to apply RACT by May 31, 1995 to major stationary sources of NO<sub>x</sub> in ozone nonattainment areas designated moderate or above, unless it can be demonstrated that reducing NO<sub>x</sub> emissions would not contribute to attainment of the ozone standard in those areas. The TNRCC adopted NO<sub>x</sub> RACT rules in Chapter 117, effective June 9, 1993, for the Houston/Galveston (HGA) and Beaumont/Port Arthur (BPA) ozone nonattainment areas, based on the strength of preliminary indications of resulting benefits. By March, 1994, initial results of photochemical grid modeling, using the Urban Airshed Model (UAM), became available which predicted that NO<sub>x</sub> reductions would be counterproductive to ozone control in portions of the HGA and BPA areas.

As a result, the Chapter 117 final compliance date was extended from May 31, 1995 to May 31, 1997 in rulemaking effective September 22, 1994. This extension delayed the implementation of NO<sub>x</sub> RACT in HGA and BPA to allow time for UAM modeling using data from the Coastal Oxidant Assessment for Southeast Texas (COAST), an intensive 1993 field study. These UAM results are critical in determining whether, and to what extent, NO<sub>x</sub> reductions will be needed to attain the ozone standard.

Based on UAM modeling, the TNRCC submitted a petition to the EPA on August 17, 1994, requesting that NO<sub>x</sub> requirements in HGA and BPA be temporarily suspended under the CAA, §182(f). The EPA approved the §182(f) exemption on April 12, 1995, granting a temporary exemption until December 31, 1996 for the following NO<sub>x</sub> requirements: RACT, nonattainment new source review, vehicle inspection/maintenance, and conformity. The approval stipulated that NO<sub>x</sub> RACT must be implemented no later than May 31, 1997.

The schedule submitted in the state's original §182(f) petition for HGA and BPA was based on completion of the UAM COAST modeling for attainment demonstration purposes by May 31, 1996. Now, an adjusted schedule has been developed to be consistent with submittal of the state's phased attainment demonstration State Implementation Plan (SIP) by May 31, 1997. This additional year allows the UAM modeling, using COAST data, to accommodate improvements in the modeling process. Submittal of the UAM modeling in mid-1997 using the more refined COAST data will allow the development of better substantiated control programs and minimize the possibility that earlier modeling could result in unnecessary or even counterproductive control programs, particularly if NO<sub>x</sub> controls are determined to not be needed.

The EPA's approval of the petition to extend the temporary §182(f) NO<sub>x</sub> exemption would

provide additional time necessary to perform the UAM modeling. If UAM modeling results support a more specifically targeted NO<sub>x</sub> control strategy, revisions to the NO<sub>x</sub> RACT rule may be necessary before implementation. In that case, the NO<sub>x</sub> RACT rule would be revised to eliminate any requirements shown by the UAM to be ineffective, and would be submitted to EPA by May 31, 1997. Extending the NO<sub>x</sub> RACT compliance date to May 31, 1999 would provide industry with the necessary lead time to begin implementing the rule after UAM modeling results become known and rule revisions, if needed, are adopted. The state is submitting to EPA a petition to extend the temporary §182(f) NO<sub>x</sub> exemption by one year to December 31, 1997. The petition requests that the NO<sub>x</sub> RACT implementation date be extended two years to May 31, 1999.

The TNRCC is, therefore, proposing to revise the compliance schedules of §§117.510, 117.520, and 117.530, contained in Subchapter D, Administrative Provisions, to extend the final compliance dates from May 31, 1997 to May 31, 1999. If the UAM modeling results from the COAST study indicate that NO<sub>x</sub> reductions do not contribute to attainment of the ozone standard, then the requirements of Chapter 117 may be proposed in rulemaking to address these findings and rescind the rule. Existing §117.560, relating to Rescission, details the procedures to be followed in this contingency.

References to the final compliance date appear in §117.451 (relating to Applicability, Nitric Acid Manufacturing General) and §117.601(a) (relating to Gas-Fired Steam Generation). These rule sections state that for emission units located in ozone nonattainment areas, the existing Chapter 117 emission specifications apply until superseded by the new emission specifications which become effective on the final rule compliance date. The TNRCC is proposing to change references to May 31, 1997 to May 31, 1999 in these sections.

Existing §117.540 (relating to Phased RACT) is not being revised in this proposal. The phased RACT rule was adopted to allow affected sources to petition the agency for additional time past the original May 31, 1995, compliance date to implement the Chapter 117 requirements. The rule section was developed in response to companies' concerns that in spite of good faith efforts to achieve compliance by May 31, 1995, delays could be encountered, and that a procedure was needed to allow a phased approach to implementing the rule requirements. With the proposed extension of the compliance date to May 31, 1999, references to dates in §117.540 will need to be changed. The TNRCC plans to propose these revisions by December, 1995, in order to combine them with separate revisions to §117.540(c) authorizing alternative fuel credits for Chapter 117 compliance.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections as proposed are in effect, there are no significant fiscal implications anticipated for state and local governments as a result of administra-

tion or enforcement of the sections. Economic costs to businesses as a result of this proposal are not readily quantifiable. Extending the rule's final compliance dates will generally result in savings for affected companies which have not yet made large capital commitments to achieve rule compliance.

Mr. Minick also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcement of and compliance with the sections will be improved consistency with EPA requirements and provisions of the FCAA Amendments and potential NO<sub>x</sub> emission reductions in ozone nonattainment areas which are necessary for the timely attainment of the ozone standard. There are no economic costs anticipated for any individual required to comply with the sections as proposed. Economic costs to businesses as a result of this proposal are not easily quantifiable. Extending the rule's final compliance dates will generally result in savings for affected companies which have not yet made large capital commitments to achieve rule compliance.

A public hearing on this proposal will be held October 2, 1995 at 10:00 a.m. in Room 254S of TNRCC Building E, located at 12118 North IH-35, Park Technology Center, Austin. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, a TNRCC staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments not presented at the hearing may be submitted to the TNRCC central office in Austin. The deadline for submission of written comments will be 30 days after the date of publication in the *Texas Register*. Material received by the TNRCC Office of Policy and Regulatory Development by 4:00 p.m. on that date will be considered by the Commission prior to any final action on the proposal. Please mail written comments to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, and reference Rules Tracking Log #95118-101-AI. Please fax written comments to (512) 239-5687. Copies of the proposed rule are available at the central office of the TNRCC, Air Policy and Regulations Division, located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, and at all TNRCC regional offices. For further information, contact Mike Magee at (512) 239-1511.

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.

### Nitric Acid Manufacturing-General

#### • 30 TAC §117.451

The amendment is proposed under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which

provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed amendment implements the Health and Safety Code, §382.017.

*§117.451. Applicability.* The emission limitations specified in §117.455 of this title (relating to Emission Specifications) shall apply to all nitric acid production units in the state, with the exception that for nitric acid production units located in applicable ozone non-attainment areas, the emission limitations of §117.405 of this title (relating to Emission Specifications) shall apply after May 31, 1999 [1997].

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

Issued in Austin, Texas, on August 24, 1995.

TRD-9510766

Lydia Gonzalez-Gromatzky  
Director, Legal Services  
Division  
Texas Natural Resource  
Conservation  
Commission

Proposed date of adoption: December 20, 1995

For further information, please call: (512) 239-1970

### Subchapter D. Administrative Provisions

#### • 30 TAC §§117.510, 117.520, 117.530

The amendments are proposed under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed amendments implement the Health and Safety Code, §382.017.

*§117.510. Compliance Schedule For Utility Electric Generation.* All persons affected by the provisions of §§117.101, 117.103, 117.105, 117.107, 117.109, 117.111, 117.113, 117.115, 117.117, 117.119, and 117.121 of this title (relating to Utility Electric Generation) shall be in compliance as soon as practicable, but no later than May 31, 1999 [1997] (final compliance date). Additionally, all affected persons shall meet the following compliance schedules and submit written notification to the Executive Director:

(1) (No change.)

(2) conduct applicable continuous emissions monitoring system (CEMS) or predictive emissions monitoring systems (PEMS) evaluations and quality assurance procedures as specified in §117.113 of this

title (relating to Continuous Demonstration of Compliance) according to the following schedules:

(A) (No change.)

(B) for equipment and software not required pursuant to 40 CFR 75, no later than May 31, 1999 [1997].

(3) install all nitrogen oxides (NO<sub>x</sub>) abatement equipment, implement all NO<sub>x</sub> control techniques, and submit the results of the CEMS or PEMS performance evaluation and quality assurance procedures to the Texas Natural Resource Conservation Commission no later than May 31, 1999 [1997];

(4) for units operating without CEMS or PEMS, conduct applicable tests for initial demonstration of compliance as specified in §117.111 of this title (relating to Initial Demonstration of Compliance); and submit the results by April 1, 1994, or as early as practicable, but in no case later than May 31, 1999 [1997];

(5) for units operating with CEMS or PEMS and complying with the NO<sub>x</sub> emission limit on a rolling 30-day average, conduct the applicable tests for the initial demonstration of compliance as specified in §117.111 of this title and submit the results of the applicable CEMS or PEMS performance evaluation and quality assurance procedures as specified in §117.113 of this title no later than July 31, 1999 [1997];

(6) for units operating with CEMS or PEMS and complying with the NO<sub>x</sub> emission limit in pounds per hour on a block one-hour average, conduct the applicable tests for the initial demonstration of compliance as specified in §117.111 of this title and submit the results of the applicable CEMS or PEMS performance evaluation and quality assurance procedures as specified in §117.113 of this title by May 31, 1999 [1997];

(7) (No change.)

(8) no later than May 31, 1999 [1997], submit a final control plan for compliance in accordance with §117.115 of this title (relating to Final Control Plan Procedures).

*§117.520. Compliance Schedule For Commercial, Institutional, and Industrial Combustion Sources.* All persons affected by the provisions of §§117.201, 117.203, 117.205, 117.207-117.209, 117.211, 117.213, 117.215, 117.217, 117.219, 117.221, and 117.223 of this title (relating to Commercial, Institutional, and Industrial Sources) shall be in compliance as soon as practicable, but no later than May 31, 1999

[1997] (final compliance date). All affected persons shall meet the following compliance schedules and submit written notification to the Executive Director:

(1) (No change.)

(2) install all NO<sub>x</sub> abatement equipment and implement all NO<sub>x</sub> control techniques no later than May 31, 1999 [1997];

(3) for units operating without continuous emissions monitoring system (CEMS) or predictive emissions monitoring systems (PEMS), conduct applicable tests for initial demonstration of compliance as specified in §117.211 of this title (relating to Initial Demonstration of Compliance); and submit the results by April 1, 1994, or as early as practicable, but in no case later than May 31, 1999 [1997];

(4) for units operating with CEMS or PEMS and complying with the NO<sub>x</sub> emission limit on a rolling 30-day average, conduct the applicable tests for the initial demonstration of compliance as specified in §117.211 of this title and submit the results of the applicable CEMS or PEMS performance evaluation and quality assurance procedures as specified in §117.213 of this title (relating to Continuous Demonstration of Compliance) no later than July 31, 1999 [1997];

(5) for units operating with CEMS or PEMS and complying with the NO<sub>x</sub> emission limit in pounds per hour on a block one-hour average, conduct the applicable tests for the initial demonstration of compliance as specified in §117.211 of this title and submit the results of the applicable CEMS or PEMS performance evaluation and quality assurance procedures as specified in §117.213 of this title by May 31, 1999 [1997]; and

(6) no later than May 31, 1999 [1997], submit a final control plan for compliance in accordance with §117.215 of this title (relating to Final Control Plan Procedures).

*§117.530. Compliance Schedule For Nitric Acid and Adipic Acid Manufacturing Sources.* All persons affected by the provisions of §§117.301, 117.305, 117.309, 117.311, 117.319, and 117.321 of this title (relating to Adipic Acid Manufacturing) or the provisions of §§117.401, 117.405, 117.409, 117.411, 117.413, 117.419, and 117.421 of this title (relating to Nitric Acid Manufacturing -Ozone Nonattainment Areas) shall be in compliance as soon as practicable, but no later than May 31, 1999 [1997] (final compliance date). All affected persons shall meet the following compliance schedules and submit written notification to the Executive Director:

(1) (No change.)

(2) conduct applicable continuous emissions monitoring system (CEMS) or predictive emissions monitoring systems (PEMS) performance evaluation and quality assurance procedures as specified in §117.313 of this title (relating to Continuous Demonstration of Compliance) and §117.413 of this title (relating to Continuous Demonstration of Compliance); provide previous testing documentation for any claimed test waiver as allowed by §117.311(d) of this title (relating to Initial Demonstration of Compliance) or §117.411(d) of this title (relating to Initial Demonstration of Compliance); and conduct applicable initial demonstration of compliance testing as specified in §117.311 and §117.411 of this title, by:

(A) (No change.)

(B) no later than May 31, 1999 [1997], for affected facilities performing process modification or installation of a CEMS or PEMS device as part of the control plan specified in §117.309 and §117.409 of this title.

(3) (No change.)

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

Issued in Austin, Texas, on August 24, 1995.

TRD-9510767

Lydia Gonzalez-Gromatzky  
Director, Legal Services  
Division  
Texas Natural Resource  
Conservation  
Commission

Proposed date of adoption: December 20, 1995

For further information, please call: (512) 239-1970

## Subchapter E. Gas-Fired Steam Generation

### • 30 TAC §117.601

The amendment is proposed under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the TNRC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed amendment implements the Health and Safety Code, §382.017.

#### *§117.601. Gas-Fired Steam Generation.*

(a) Subsections (b), (c), and (d) of this section shall apply only in the Dallas/Fort Worth Air Quality Control Region which consists of Collin, Cooke, Dallas, Denton, Ellis, Erath, Fannin, Grayson, Hood, Hunt, Johnson, Kaufman, Navarro,

Palo Pinto, Parker, Rockwall, Somervell, Tarrant, and Wise counties and in the Houston/Galveston Air Quality Control Region which consists of Austin, Brazoria, Chambers, Colorado, Fort Bend, Galveston, Harris, Liberty, Matagorda, Montgomery, Waller, and Wharton counties. For gas-fired steam generators located in applicable ozone nonattainment areas, only the emission limitations of §117.105 of this title (relating to Emission Specifications), §117.107 of this title (relating to Alternative System-Wide Emission Specifications), §117.205 of this title (relating to Emission Specifications), and §117.207 of this title (relating to Alternative Plant-Wide Emission Specifications) shall apply after May 31, 1999 [1997].

(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 authority to adopt.

Issued in Austin, Texas, on August 24, 1995.

TRD-9510768 Lydia Gonzalez-Gromatzky  
Director, Legal Services  
Division  
Texas Natural Resource  
Conservation  
Commission

Proposed date of adoption: December 20, 1995

For further information, please call: (512) 239-1970

## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### Part I. General Land Office

#### Chapter 1. Executive Administration

##### Vacancies

##### • 31 TAC §1.3

The General Land Office, with the approval of the School Land Board, proposes an amendment to §1.3, concerning fees and charges which may be collected by the School Land Board.

As originally adopted in the February 14, 1992, issue of the *Texas Register* (17 TexReg 1311), §1.3 contains a comprehensive list of all fees to be charged and collected by both the General Land Office and the School Land Board, even though the School Land Board fees more properly belong in Title 31, Part IV (School Land Board). The consolidation of all fees administered by the General Land Office into one section has not had the intended result of clarification and simplification of the process for the public. The proposed amendment will delete §1.3(c) (School Land Board Fees and Charges) from Title 31, Part I (General Land Office) and, with the adoption of a new §155.15, the schedule of fees will be moved to Title 31, Part IV, with other School Land Board admin-

istrative rules.

Christopher K. Price, Deputy Commissioner, Asset Management Division, Texas General Land Office, has determined that for each year of the first five years that the rule will be in effect there will be minimal or no fiscal implications resulting from administration or enforcement of the rule amendment. No additional administrative costs will be incurred as a result of this proposal.

Mr. Price also has determined that the public benefit anticipated as a result of amending the section will be clarification of charges and fees for coastal activities administered by the School Land Board. Mr. Price has determined that for each year of the first five years that the proposed amendment is in effect there will be no significant increase in economic costs to persons or small business for compliance with the rule as proposed.

Comments on the proposed amendment may be submitted to Robert Moreland, Texas General Land Office, Legal Services Division, 1700 North Congress Avenue, Room 630, Austin, Texas, 78701-1495 (Fax: (512) 463-6311). Comments must be received by 5:00 p.m. on Wednesday, October 4, 1995.

The amendment is proposed under the Texas Natural Resources Code, §§33.051, 33.052, 33.063 and 33.064, which authorizes the General Land Office and/or School Land Board to adopt procedural and substantive rules necessary to administer, implement, and enforce the Coastal Public Lands Management Act of 1973.

The Texas Natural Resources Code, Chapter 33, §33.063 is affected by the proposed amendment.

#### §1.3. Fees.

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

(c) School Land Board fees and charges. The School Land Board is authorized and required under the Natural Resources Code, Chapter 33, to collect the fees and charges set forth in this subsection where applicable.

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

(A) Adjacent littoral property—The property, specified in the easement application as owned by the easement applicant, that is contiguous and borders the coastal public land upon which the easement is sought.

(B) Appraised market value of adjacent littoral property—Fair market value of the unimproved adjacent littoral property. This value is the appraised value as determined by the appropriate tax appraisal district unless the School Land Board determines that such an appraisal is not reasonable after consultation with the appraisers of the General Land Office.

((C) Basin—A structure used for commercial or industrial activity that consists of the area of the state land encumbered and any fixtures attached thereto. This definition includes the construction and maintenance of marinas, piers, walkways, docks, dolphins, and wharves and any and all dredged area associated therewith.

((D) Basin formula—The amount of encumbered state land multiplied by the appraised market value of the adjacent littoral property multiplied by the submerged land discount multiplied by the return on investment.

((E) Channel—an excavated or dredged structure on coastal public lands that enhances vessel access to littoral property. This definition applies only to commercial and industrial activity and excludes any structure that would be included in the definition of fill area or basin.

((F) Commercial activity—activity which is designed to enhance or accommodate a venture associated with a revenue generating activity. This definition excludes industrial activity, but includes residential uses if there is revenue generating activity conducted on the premises.

((G) Encumbered state land—the amount of state coastal public land encumbered by the permitted activity and is expressed in number of square feet.

((H) Evaluation fee—a one-time easement evaluation fee assessed upon the granting of the initial easement not to exceed 1.5% of the value of the state land encumbered. The value of the state land encumbered equals the state land encumbered multiplied by the appraised market value of the adjacent littoral property multiplied by the submerged land discount.

((I) Fill area—a structure, excluding riprap, breakwaters, jetties, and groins that permanently and fully encumbers, and entirely displaces the water covering the coastal public land. This activity includes the construction and maintenance of bulkheads.

((J) Fill formula—state land encumbered multiplied by the appraised market value of adjacent littoral property multiplied by the return on investment.

((K) Homeowners association—an association whose individual members, by virtue of holding full and exclusive legal title to the adjacent littoral property area specifically defined in an easement

application, are entitled, as a group, to the privileges of an easement that may be granted by the State of Texas for use of adjacent coastal public land.

[(L) Industrial activity—a use of coastal public land not associated with private activity that facilitates and is ancillary to a manufacturing, processing, or gathering facility.

[(M) Industrial activity formula—industrially encumbered state land multiplied by the appraised market value of the unimproved adjacent littoral property multiplied by the submerged land discount multiplied by the return on investment.

[(N) Industrially encumbered state land—the state coastal public land encumbered by industrial activity expressed in square feet as determined by General Land Office appraisers after consultation with the user.

[(O) Mineral interest holder—holder of a state mineral lease who plans to dredge on state-owned coastal lands outside the state leasehold tract to obtain access to the state leasehold tract.

[(P) New dredging—dredging which is not under current permit with the General Land Office. If the fixed rate schedule is used, the new dredging rate is charged for the first year, and the maintenance dredging fee is charged for each subsequent year of the easement term.

[(Q) Public activity—activity which is performed by a public entity, is not designed to enhance or accommodate a profit-making venture, and is not associated with a revenue generating activity.

[(R) Public entity—city, county, state agency, board or commission, or any other political subdivision of the state. See §155.21 of this title (relating to Application; Nature of Original Lease; Sublease; Termination).

[(S) Regional slip occupancy—the percentage of actual marina boat slips rented in relation to the total number of commercially available slips in the given region as determined by the commissioner of the General Land Office and established October 1 of each year for the year following.

[(T) Residential use: Category I—one single-family residential structure per defined lot or parcel of land; both

land and improvements are typically under the same ownership.

[(U) Residential use: Category II—multi-family residential units per defined lot or parcel of land; land and individual units may be separately owned; includes uses by condominium developments and qualified homeowners associations acting for and on behalf of owners of a multi-family residential development, but does not include time-share developments or any use that includes commercial activities.

[(V) Return on investment—a number used in the basin, fill, and industrial activity formulas that reflects a financial return expectation. The return on investment rate will be set annually by the School Land Board and will be effective at the beginning of each fiscal year.

[(W) Riprap—concrete block, concrete rubble, brick, sack crete or other similar material approved by the General Land Office.

[(X) Structure—as defined in the Natural Resources Code, §33.004.

[(Y) Submerged land discount—60% discount used in formulas when the easement is commercial, 70% discount used in formulas when the easement is industrial.

[(2) Coastal fees and charges. The School Land Board will charge the following coastal lease and coastal easement charges for use of coastal public land, and will charge the following structure registration and permit fees. The School Land Board charge will be based on either the fixed fee schedule or the alternate commercial, industrial, private, and public formulas as delineated in subparagraphs (C) and (D) of this paragraph. The greater of the fixed fee or formula rate will be charged.

[(A) Coastal lease charges. The School Land Board may only grant coastal leases to certain entities, as prescribed by the Natural Resources Code, §33.105 and §33.109.

[(i) Private activity:

[(I) filing fee: \$25;

[(II) annual fee: negotiable/\$5.00 minimum.

[(ii) Commercial activity:

[(I) filing fee: \$50;

[(II) annual fee: negotiable/\$100 minimum.

[(iii) Public activity:

[(I) filing fee: \$25;

[(II) annual fee: no charge.

[(B) Structure registration fee. Structure registration fee is required for private piers or docks that are 100 feet long or less and 25 feet wide or less and require no dredging or filling, as authorized by the Natural Resources Code, §33.115. Though School Land Board approval is not required for construction, the applicant must register the location of the structure. The registration is valid for the life of the structure:

[(i) filing fee: \$25;

[(ii) annual fee: no charge.

[(C) Coastal easement fees:

[(i) fixed fee schedule:

[(I) piers and docks:

[(a-) residential use: Category I—less than or equal to 300 feet in length and less than 2,500 square feet in area:

[(1) filing fee:

\$25;

[(2-) annual

fee: no charge;

[(b-) residential use: Category I—exceeding 300 feet in length and/or larger than 2,500 square feet in area:

[(1) filing fee:

\$50;

[(2-) annual fee: \$.10 per square foot for all area exceeding 300 feet in length and/or larger than 2,500 square feet in area. The greater of the two rates will be charged/\$100 minimum;

[(c-) residential use: Category II:

[(1) filing fee:

\$50;

[(2-) annual fee: 75% of fee calculated for same use as a

commercial activity;	fee: 75% of fee calculated for same use as a commercial activity;	[(ii) alternate commercial, industrial, private, and public rate formulas:
[(-d-) commercial:	[(-c-) commercial	[(I) channel: commercial activity:
[(1) filing fee:	[(1) filing fee:	[(-a) filing fee:
\$50;	\$50;	\$50;
[(-2-) annual	[(-2-) annual	[(-b-) annual fee:
fee: \$.20 per square foot/\$100 minimum;	fee: \$.20 per square foot/\$100 minimum;	commercial basin formula, or, if channel does not provide access for marina, basin formula;
[(II) marinas:	[(V) dredging:	[(-c-) evaluation
[(-a-) Clear Lake:	[(-a-) mineral interest holder:	fee: as defined;
[(1) filing fee:	[(1) filing fee:	[(II) basin: commercial and industrial activity:
\$50;	\$50;	[(-a) industrial activity:
[(-2-) annual	[(-2-) annual	[(1) filing fee:
fee: \$4.00 per boat slip linear foot;	fee: first year fee for new dredging: \$.02 per square foot/\$100 minimum; maintenance dredging after first year of easement: \$.005 per square foot/\$100 minimum;	\$50;
[(-b-) residential	[(-b-) residential	[(-2-) annual
use: Category II:	Category I:	fee: industrial activity formula;
\$50;	[(1) filing fee:	[(-3-) evaluation
[(-2-) annual	[(-2-) annual	fee: as defined;
fee: 75% of fee calculated for same use as a commercial activity;	fee: \$50;	[(-b-) commercial
[(-c-) other:	[(1) filing fee:	activity:
[(1) filing fee:	[(-2-) annual	[(1) filing fee:
\$50;	[(-2-) annual	\$50;
[(-2-) annual	[(-a-) first year	[(-2-) annual
fee: \$3.00 per boat slip linear foot;	fee for new dredging: \$.03 per square foot/\$100 minimum;	fee: basin formula;
[(III) wharf:	[(-b-) maintenance	[(-3-) evaluation
[(-a-) filing fee:	dredging after first year of easement: \$.005 per square foot/\$100 minimum;	fee: as defined;
\$50;	[(-c-) residential	[(III) fill area: all activity:
[(-b-) annual fee:	Category II:	[(-a-) private activity/public activity;
\$.30 per square foot/\$100 minimum;	[(1) filing fee:	[(1) filing fee:
[(IV) breakwaters, jetties, groins, and riprap:	\$50;	\$50;
[(-a-) residential	[(-2-) annual	[(-2-) annual
Category I:	fee: 75% of fee calculated for same use as commercial activity;	fee: \$.10 per square foot or fill formula, whichever is greater/\$25 minimum;
\$25;	[(-d-) commercial	[(-3-) evaluation
[(-2-) annual	[(1) filing fee:	fee: as defined;
fee: \$.03 per square foot/\$10 minimum;	\$50;	[(-b-) commercial/industrial:
[(-b-) residential	[(-2-) annual	[(1) filing fee:
Category II:	fee: first year fee for new dredging: \$.05 per square foot/\$100 minimum; maintenance dredging after first year of easement: \$.01 per square foot/\$100 minimum;	\$50;
\$50;	[(1) filing fee:	
[(-2-) annual		

[(2-) annual fee: \$.20 per square foot, \$100 minimum, or fill formula;

[(3-) evaluation fee: as defined.

[(D) Structure permits:

[(i) fees:

[(I) refundable deposit: \$200;

[(II) annual fee for all structures excluding piers, docks, and walkways will be calculated at \$.60 per square foot per year;

[(III) contract renewal: \$175;

[(IV) new contract issuance: \$325;

[(V) late payment penalty: 25% of past due amount;

[(VI) minimum annual payment: \$175;

[(ii) term: not to exceed five years;

[(iii) permittee may apply for a continuation of the previous fee if the permit was issued prior to July 18, 1983 (the date of the initial rate increase), and if the annual fee will impose an undue financial hardship on a current permit holder.

[(E) Term. The term for all coastal leases and coastal easements not previously specified is negotiable. School Land Board approval is required prior to construction.

[(F) Rental adjustments.

[(i) Methods.

[(I) Fill area and basin. At every five-year interval in the term of the easement, the rental fees determined by either the basin formula, industrial activity formula, or fill formula will be adjusted by redetermining the appraised market value of the adjacent littoral property. The rental payment will be determined by the applicable rate formula used in determining the original rate.

[(II) Channel.

[(a-) Five-year

adjustment. At every five-year interval in the term of a channel easement, the rental fee for the easement will be adjusted. If the basin formula was used to determine the original easement fee, the fee will be adjusted by redetermining the appraised market value of the adjacent littoral property, and inserting the new value into the basin formula. If the channel density formula was used to determine the original easement fee, the fee will be adjusted by redetermination of the average regional slip rate and the regional slip occupancy, effective on the date of the readjustment, and recomputation of the channel density formula with the new values and the channel maintenance discount.

[(b-) Channel maintenance discount. The first year fee for channel easements, determined by either the channel density formula or the basin formula, will be 100% of the value determined by the applicable formula and for the second and all subsequent years of the easement, the rental fee will be 75% of the value determined by the applicable formula including any readjustments.

[(ii) Minimum and maximum adjustment. All rental adjustments determined by reappraisal of the adjacent littoral property can increase by no more than 40% of the previous five years' rental nor by less than 20% of the previous five years' rental. This subsection is subject to School Land Board's discretionary authority.

[(G) Discretionary authority. The School Land Board may reduce or waive any fee set forth herein if such action would be in the best interest of the permanent school fund as determined by the School Land Board.

[(H) Implementation.

[(i) New residential developments. Upon the application for an easement associated with the development of a multi-unit or single-family residential project, the easement application will be processed and fee determined according to the appropriate commercial activity rate. Upon the sale of an individual residential unit associated with the easement, with sufficient infrastructure in place to convert use of the unit to private use (and use of associated easement to private activity), the original easement applicant, upon agreement with the commissioner of the General Land Office, may pay a conversion fee not to exceed 5.0% of the appraised market value of the unit and have the easement fee reduced by the percentage that the sold unit represented to the total number of units associated with the easement. At the time the conversion fee is paid under the provi-

sions herein, the unit will then be considered to be subject to the private activity rates upon renewal of the easement. For units already sold prior to the effective date of this section, conversion to a private activity rate will be granted without the payment of the conversion fee.

[(ii) Additional terms.

The commissioner of the General Land Office may require, as a condition for the granting of an easement set forth in this section, such additional terms that he feels are necessary to secure performance under any such easement.]

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

Issued in Austin, Texas, on August 28, 1995.

YRD-9510882

Garry Mauro  
Commissioner  
General Land Office

Earliest possible date of adoption: October 6, 1995

For further information, please call: (512) 305-9129

◆ ◆ ◆  
Chapter 17. Hearing  
Procedures

• 31 TAC §17.7

The General Land Office (GLO) proposes an amendment to §17.7, concerning administrative penalties for placement of unauthorized structures on state land, pursuant to Texas Natural Resource Code, §§1.302 and §51.3021. The proposed amendment is intended to standardize penalties for similar violations of the statutes relative to the placement of structures on state land and to provide alternative procedures for resolution of issues concerning such structures.

Amended §17.7(a) provides criteria to be taken into account by the commissioner of the GLO (commissioner) when determining the appropriate penalty to be assessed under §51.302 and §51.3021. It further provides for the development of a schedule of minimum penalties to be assessed by the commissioner for routine, non-aggravated violations of relevant statutes. Section 17.7(d) is amended to specifically provide an opportunity to informally resolve issues concerning unauthorized structures or to bring them into compliance with statutory requirements. Subsequent sections are renumbered as appropriate and minor changes were made to clarify procedures relating to the hearings process for formal resolution of issues relative to unauthorized structures.

Christopher K. Price, Deputy Commissioner for Asset Management, Texas General Land Office, has determined that for each year of the first five years that the proposed amendment is in effect the fiscal implications to state government as a result of enforcing or administering the amended sections will be a nominal increase in revenues from penalties. It is



anticipated that the majority of the matters coming before the commissioner under this rule will be resolved through the informal resolution process. Mr. Price has determined that for each year of the first five years that the proposed new rule is in effect there will be no fiscal implications for local governments.

Mr. Price also has determined that for each year of the first five years that the proposed new rule is in effect the benefit to the public will be the enhanced administrative flexibility of the commissioner to determine the appropriate terms and conditions for bringing unauthorized uses of state land into compliance with applicable statutes. Mr. Price believes that the benefit of this enhanced flexibility to serve the public interest will outweigh the impact of any increased penalty revenue. No effect on small businesses is expected to result from adoption of the proposed amendments unless a small business includes the use of an unauthorized structure. Mr. Price has determined that for each year of the first five years that the proposed amendment is in effect there will be no significant economic costs to persons for compliance with the rule as proposed.

Persons wishing to comment on the proposed amendments may submit comments to Robert Moreland, Texas General Land Office, Legal Services Division, 1700 North Congress Avenue, Room 630, Austin, Texas, 78701-1495 (FAX: (512) 463-6311). In order to be considered, comments must be received by 5:00 p.m. on Wednesday, October 4, 1995.

The amendment is proposed under the Texas Natural Resources Code, §51.014, which provides that the commissioner may adopt rules necessary to carry out the provisions of the chapter, concerning land, timber, and surface resources.

The Texas Natural Resources Code, Chapters 33 and 51, will be affected by the proposed rule.

#### *§17.7. Initiation of General Land Office Action.*

(a) The commissioner may recover a penalty of not less than \$50 or more than \$1,000 for each day that a person constructs, owns, operates, possesses, or exercises control over an unauthorized structure or facility on state land.

(1) In determining penalties to be assessed under the provisions of Texas Natural Resources Code, §51.302 and §51.3021, in performing duties and responsibilities imposed under Texas Natural Resources Code, Chapters 33 and 51, the commissioner shall consider:

(A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard and damage, including damage to natural resources, caused thereby;

(B) the degree of cooperation of the owner and operator once that

person was given notice of the violation;

(C) the degree of culpability and the history of previous violations by the owner or operator;

(D) the amount necessary to deter future violations; and

(E) any other matter relevant to a fair and just result.

(2) Penalties shall be assessed, in the discretion of the commissioner, when any violation of Texas Natural Resources Code §51.302 (concerning Prohibition and Penalty) and §51.3021 (concerning Removal of a facility or Structure by commissioner) occurs. The amount of the minimum penalty assessed shall be according to a penalty schedule, approved by the commissioner with the concurrence of the School Land Board, and available for public inspection and review. The commissioner retains the right to assess any penalty amount depending upon the particular circumstances of the matter and in accordance with this subsection.

(3) Prior to a final order of the commissioner assessing a penalty or ordering the removal of an unauthorized facility or structure, the owner or operator shall be entitled to a hearing. The hearing shall be conducted in accordance with the provisions of Texas Government Code, Administrative Procedure Act, §§2001.001 et seq.

(b) (No change.)

(c) An owner or operator is any person who constructs, maintains, owns, or possesses the facility or structure and also includes, in the case of an abandoned facility or structure [includes, for purposes of this chapter], the person who last owned, possessed, constructed, operated, or exercised control over the facility or structure.

(d) At the discretion of the commissioner, before [Before] any formal action is taken [the commissioner] to impose [imposes] a penalty and/or remove [removes] a structure under the provisions of Texas Natural Resources Code, §51.302 and §51.3021, the owner or operator of the structure may be notified that the structure is not in compliance with applicable statutory requirements and may be given a reasonable period of time to bring the structure into compliance. [deputy commissioner shall give written notice to the owner or operator of the structure of facility and any lienholders stating:

[(1) the specific facility or structure that is not authorized by a proper easement, lease, permit, or other instrument

from the state required by the Texas Natural Resources Code or that threatens public health, safety, or welfare;

[(2) the nature of the threat, if alleged, to public health, safety, or welfare;

[(3) that the owner or operator of the facility or structure shall remove the facility or structure:

[(A) not later than the 30th day after the date on which the notice is served, if the facility or structure is on state land and not authorized by a proper lease, easement, permit, or other instrument required by the Texas Natural Resources Code, or

[(B) within a reasonable time specified by the deputy commissioner if the facility or structure is an imminent and unreasonable threat to public health, safety, or welfare;

[(4) the penalty owed to the state for the unauthorized use of state property under the Code, §51.302(b), if any;

[(5) that failure to remove the facility or structure may result in further liability for a penalty under the Code, §51.302(b), in an amount specified, removal by the commissioner, and liability for the costs of removal, or both; and

[(6) that the owner or operator, lienholder, or interested party of the facility or structure may submit, not later than the 30th day after the date on which the notice is served, written request for a hearing.]

(e) To initiate formal action to impose a penalty and/or remove a structure under the provisions of Texas Natural Resources Code, §51.302 and §51.3021, the deputy commissioner shall give written notice to the owner or operator of the structure or facility stating [The notice required by subsection (d) of this section must be given]:

(1) the specific facility or structure that is not authorized by a proper easement, lease, permit, or other instrument from the state required by the Texas Natural Resources Code or that threatens the public health, safety, or welfare; [to the owner or operator:]

[(A) by service in person or by registered or certified mail, return receipt requested; or

[(B) if personal service cannot be obtained or the address of the owner or operator responsible is unknown, by posting a copy of the notice on the facility or structure and by publishing notice in a newspaper with general circulation in the county in which the facility or structure is located two times within ten consecutive days.]

(2) the nature of the threat, if alleged, to public health, safety, or welfare; [to the lienholders by registered or certified mail, return receipt requested.]

(3) that the owner or operator of the facility or structure shall remove the facility or structure:

(A) not later than the 30th day after the date on which the notice is served, if the facility or structure is on state land and not authorized by a proper lease, easement, permit, or other instrument required by the Texas Natural Resources Code; or

(B) within a reasonable time specified by the deputy commissioner if the facility or structure is an imminent and unreasonable threat to public health, safety, or welfare;

(4) that failure to remove the facility or structure may result in liability for a penalty under Texas Natural Resources Code, §51.302(b), in an amount specified, removal by the commissioner and liability for the costs of removal, attachment of a lien to the adjacent littoral property to secure payment of the penalty and costs of removal, or any combination of such remedies;

(5) that the owner or operator, of the facility or structure may submit, not later than the 30th day after the date on which the notice is served, written request for a hearing by serving written notice of such request to: Administrative Hearings Clerk, Texas General Land Office, 1700 North Congress Avenue, Room 630, Austin, Texas 78701-1495.

(f) The notice required by subsection (e) of this section must be given to the owner or operator:

(1) by service in person or by registered or certified mail, return receipt requested; or

(2) if personal service cannot be obtained or the address of the owner or operator responsible is unknown, by posting a copy of the notice on the facility or structure and by publishing notice in a newspaper with general circulation in the county in which the facility or structure is located two times within ten consecutive days.

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

Issued in Austin, Texas, on August 28, 1995.

TRD-9510883

Garry Mauro  
Commissioner  
General Land Office

Earliest possible date of adoption: October 6, 1995

For further information, please call: (512) 305-9129

## Part IV. School Land Board

### Chapter 155. Land Resources

#### Coastal Public Lands

##### • 31 TAC §155.1

The School Land Board (SLB) proposes an amendment to §155.1, concerning general provisions governing coastal public lands. The amendment to §155.1(b) (2) is proposed to provide for the approval by the SLB of a general coastal easement, and minor editorial changes have been made to §155.1(c)(4) and (9).

Subsection (b)(2)(A) and (B) is added to provide for SLB approval of a general coastal easement for projects with minor or negligible impacts to coastal natural resources and to evidence approval of individual projects by a letter of authorization issued in the manner provided in §155.3 of this title (relating to Coastal Easements). Section 155.1(b)(2)(C) is added to provide that letters of authorization may contain such special conditions as the SLB may determine necessary or appropriate to protect the natural resources.

Subsection (c)(4) and (9) is amended to clarify the definitions and the activities described. In §155.1(c)(4), the defined term is changed to the more general "dredging" which is thought to include the terms "channel or channelization" formerly used for purposes of this definition.

Christopher K. Price, Deputy Commissioner, Asset Management Division, Texas General Land Office, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government resulting from administration of the rule. Reduced administrative costs are expected as a result of this proposal.

Mr. Price also has determined that for each of the first five years the rule is in effect the public benefits anticipated as a result of the proposed amendment will be efficient project review, elimination of processing delays, and better protection of state coastal natural resources. Mr. Price has determined that there will be no significant increase in costs to persons required to comply with the rule. Mr. Price has determined that there will be no effect on small businesses resulting from adoption of the proposed amended rule.

Comments on the proposed amendment may be submitted to Robert Moreland, Texas General Land Office, Legal Services Division, 1700 North Congress Avenue, Room 630, Austin, Texas, 78701-1495 (Fax: (512) 463-6311). In order to be considered, comments must be received by 5:00 p.m. on Wednesday, October 4, 1995.

The amendment is proposed under the Texas Natural Resources Code, §33.064, which authorizes the SLB to adopt rules necessary to administer Texas Natural Resources Code, Chapter 33.

The Texas Natural Resources Code,

§33.111, is affected by the proposed amendment.

##### §155.1. General Provisions.

(a) (No change.)

(b) Scope of rules. These rules set forth the practice and procedure for administration by the board in granting a lease, easement, permit, and the registration of a structure on coastal public lands. All grants of interest are subject to these rules and regulations. The board may grant the following interest in coastal public lands for the indicated purposes:

(1) (No change.)

(2) easements for purposes connected with ownership of littoral property. [.]

(A) a general coastal easement may be approved by the board under which projects with minor or negligible natural resource impacts may be authorized;

(B) approval or authorization of minor projects provided above may be evidenced by the issuance of a letter of authorization by the board or the commissioner in the manner provided in §155.3 of this title (relating to Easements);

(C) general coastal easements and letters of authorization may contain special conditions determined by the board to be necessary or appropriate to protect natural resources;

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

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

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

[(4) Channel or channelization—The moving of soil, sand, gravel, shell, or other materials from its natural setting by dredging and thereby, artificially altering the water depth for navigation purposes.]

(4)[(5)] Coastal area—Refers to the geographic area comprising all the counties of Texas having any tidewater shoreline including that portion of the bed and waters of the Gulf of Mexico within the jurisdiction of the State of Texas.

(5)[(6)] Coastal public lands—All or any portion of the state-owned submerged lands, the waters overlying those lands, and all state-owned islands in coastal area.

(6)[(7)] Commercial struc-

ture—Any structure located on coastal public lands which is used directly for the sale of goods, wares, services on or property of any kind and includes any structure on coastal public lands adjacent to littoral property used commercially when said structure is used in conjunction with adjacent littoral commercial property.

(7)[(8)] Commissioner—The commissioner of the General Land Office.

(8)[(9)] Dredged material disposal—The deposition of sand, gravel, shell, or other material generated by a dredging activity [obtained from channelization] onto coastal public lands.

(9) Dredging—The moving of soil, sand, gravel, shell or other materials from its natural setting and thereby artificially altering the water depth, e.g., channels, basins, etc.

(10)-(21)(No change.)

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

Issued in Austin, Texas, on August 28, 1995.

TRD-9510884 Garry Mauro  
Chair  
School Land Board

Earliest possible date of adoption: October 6, 1995

For further information, please call: (512) 305-9129

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• 31 TAC §155.3

The School Land Board (SLB) proposes an amendment to §155.3, relating to the granting of easements on coastal public lands. Section 155.3(f) is being amended to increase the scope of authority delegated to the commissioner of the General Land Office (GLO), or a staff member designated by him, to act on an application for an easement without a meeting of the SLB under certain specified conditions. Section 155.3(g) is being amended to clarify and update the criteria for decisions relative to the placement of various structures on coastal public lands. The changes are intended to focus the evaluation of an application for a coastal easement on impacts or potential impacts to the coastal natural resources. The rule is also being amended to reflect the provision relating to letters of authorization being proposed concurrently by an amendment to §155.1 of this title (relating generally to coastal public lands). Other minor editorial changes are proposed to update and correct the name of the Texas Department of Transportation and to capitalize the name of the Department of the Army Corps of Engineers.

Section 155.3(f) lists the conditions under which decisions regarding applications for coastal easements may be made by the commissioner or a designated staff member. Without a meeting of the SLB, the commis-

sioner, or a designated staff member, may approve, disapprove, or approve with special conditions, an application for a coastal easement which requires the payment of annual fees that do not exceed \$600, which proposes no new dredging or filling, and to which there are written objections.

Christopher K. Price, Deputy Commissioner for Asset Management, Texas General Land Office, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Mr. Price also has determined that for each year of the first five years the rule is in effect the public benefits anticipated as a result of this amendment will be more efficient government and better protection of state coastal natural resources. Mr. Price has also determined that there will be no increased economic cost to persons required to comply with the rule, and that there will be no adverse effect on small business resulting from adoption of the proposed amendment.

Comments on the proposed amendment may be submitted to Robert Moreland, Texas General Land Office, Legal Services Division, 1700 North Congress Avenue, Room 630, Austin, Texas, 78701-1495 (Fax: (512) 463-6311). In order to be considered, comments must be received by 5:00 p.m. on Wednesday, October 4, 1995.

The amendment is proposed under the Texas Natural Resources Code, Chapter 33, §33.064, which authorizes the SLB to adopt procedural and substantive rules necessary for the management of coastal public land.

The Texas Natural Resources Code, §33.111, is affected by the proposed amendment.

§155.3. Easements.

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

(d) Texas Department of [Highways and Public] Transportation. The board may grant an easement according to these rules to the Texas Department of [Highways and Public] Transportation; however, each such easement will be negotiated on a case-by-case basis.

(e) (No change.)

(f) Consideration of application.

(1) Upon receipt of an application form and additional information requested [considered necessary] by the board, the board may circulate it for review and comment to any member agency of the interagency council on Natural Resources and the Environment.

(2) If a Department [department] of the Army Corps of Engineers permit is required for the proposed work, the board may postpone a decision on the easement application pending receipt of comments on the work depicted in the Corps of Engineers public notice.

(3) Unless otherwise authorized by these sections, the board will hold a meeting to evaluate, consider, and hear testimony on an application. Upon receipt of an [any] application and all requested information, the board may issue, deny, or issue with qualifications, an easement contract.

(4) The decision on an application for [decision concerning] an easement which requires the payment of fees that do [whose fee does] not exceed \$600 [\$200] per year, which proposes [requires] no new dredging or filling, and to which there are no written objections, and in which there is no commercial/industrial activity, may be made by the commissioner or any staff member he designates without a meeting of the board.

(5) Upon receipt of all necessary application information, the board, [or] the commissioner, or a staff member designated under paragraph (4) of this subsection, may issue, deny, or issue with qualifications, an easement contract.

(g) Criteria for decision. [The board will review and consider] An [an] application for an easement on coastal public lands will be reviewed to insure conformity with the policies, practices, and procedures in these rules. [and regulations and will evaluate a project] Project proposals [proposal] will be evaluated in accordance with the following [project activity] guidelines:

(1) Adverse impacts to coastal natural resources must be avoided to the extent practicable and minimized where unavoidable. Applicants may be required to provide appropriate mitigation for those impacts which are unavoidable [Dock, pier, and wharf].

[(A) A dock, pier, or wharf should be constructed in a manner which does not constrict water flow and circulation.

[(B) The size and extension of the structure should be limited to that required for the intended use.

[(C) A dock, pier, or wharf should not unduly restrict navigation or public use of the waters.

[(D) A subdivision, motel, or multiple dwelling is encouraged to develop a single joint use moorage facility.

[(E) A project proposal should include facilities for the proper handling of waste, refuse, and petroleum products where applicable, as required by the Texas Water Quality Board.

[(F) The use of a pier, dock, or wharf in preference to a channel will be

encouraged wherever practical.

[(G) The use of a pier or catwalk will be encouraged in preference to solid fills to provide needed access across biologically productive shallows and marshes to navigable water.]

(2) Docks and piers [Channel, boat, or ship basin].

(A) Piers and docks will be limited to the minimum size necessary to serve the purpose of the project and will be constructed in a manner that does not interfere with navigation or other authorized uses [To the extent feasible, project plans should utilize piers or catwalks to reach deeper water areas rather than channels or canals].

(B) Piers and docks will be designed and constructed in a manner that avoids existing marshes, oyster reefs, seagrass vegetation or shallow water capable of supporting these habitats to the extent practicable. Impacts to sensitive habitats that cannot be avoided will be minimized to the extent practicable [A channel or basin should be designed to insure adequate flushing and to prevent the creation of pockets or other hydraulic condition which would cause stagnant water pockets].

(C) When constructed for private/residential use, only one pier, with normal appurtenances, may extend from each defined parcel of littoral property. Pier shall extend perpendicular from a point on the shoreline which is not less than ten feet from the adjacent littoral owner's property line, unless such a design would obstruct navigation or would unreasonably interfere with an adjoining littoral property owner's use of the waterfront [Dredging for navigational access should be well planned to prevent an unnecessary channel. Where several land owners are to be served by a project, peripheral canals leading to a central navigational channel should be considered rather than separate access channels for each waterfront landowner].

[(D) The alignment of a channel or canal should make maximum use of a natural or existing channel. Design and alignment should minimize disruption of natural sheetflow, water flow, and drainage systems.]

[(E) Alignment of a channel or canal should avoid oyster reefs and highly productive wetland areas.]

[(F) A channel proposed to be dredged through highly productive coastal public lands is discouraged and will be approved only in unusual circumstances.]

[(G) Dredging should be conducted in a manner that minimizes turbidity and dispersal of dredged material.]

(3) Dredged areas [material disposal areas].

(A) Propwashing is an unacceptable method of dredging and will not be approved [To the extent possible, all dredged material should be placed on suitable uplands above mean high water].

(B) Projects are to be designed and constructed to the minimum size necessary to serve the project purpose. Joint use of access channels by multiple littoral property owners is to be preferred to individual channels and will be encouraged [A disposal area should be located in a relatively low production area above the mean high water line].

(C) Extension of piers into deeper water is preferred to the dredging of access channels or basins whenever practical [Any toxic material should be disposed of in an upland area behind impervious dikes unless detoxification is undertaken].

(D) A channel or basin should be designed to insure adequate flushing and to prevent the creation of pockets or other conditions which would cause stagnant water pockets [Open water and deep water disposal should be considered as an alternative only if upland alternatives are not feasible. Open and deep water disposal sites, however, should be seriously considered only after careful consultation with concerned agencies].

(E) The alignment of a channel or canal should make maximum use of a natural or existing channel. Design and alignment should minimize disruption of natural sheetflow, water flow, and drainage systems [Consideration of habitat creation and improvement should be made when only minor environmental damage results].

(F) A channel proposed to be dredged through highly productive coastal public lands is discouraged and will be approved only in unusual circumstances.

(G) Dredging should be conducted in a manner that minimizes turbidity and dispersal of dredged material.

(4) Dredged material disposal area [Jetty, groin, and breakwater].

(A) To the extent possible, all dredged material should be placed on and contained within suitable upland sites of relatively low productivity above mean high water [A plan for construction of a jetty, groin, or breakwater should be analyzed to insure that the structure does not create adverse sediment transportation patterns that induce erosion or undesirable shoaling in adjacent areas].

(B) Any toxic material shall be disposed of in an upland area behind impervious dikes unless detoxification is undertaken [In addition to adverse physical effects, care must be taken that a jetty or groin does not unduly interfere with public use].

(C) Open water and deep water disposal should be considered as an alternative only if upland alternatives are not feasible. Open and deep water disposal sites, however, should be seriously considered only after careful consultation with concerned agencies.

(D) Consideration of habitat creation and improvement should be made when only minor environmental damage results.

(5) Jetty, groin, and breakwater [Bulkhead and seawall].

(A) No new groins will be authorized except under the most compelling circumstances upon request by a city, county, or other public entity for a public purpose [Except in special circumstances, a bulkhead or seawall should be located no further seaward than the mean of the high water line, and designed so that reflected wave energy does not destroy stable marine bottom or constitute a safety hazard].

(B) Plans for construction of a jetty, groin, or breakwater must be analyzed to insure that the structure does not create adverse sediment transportation patterns that induce erosion or undesirable shoaling in adjacent areas [Where possible, sloping riprapping should be used rather than a vertical seawall or bulkhead].

(C) In addition to adverse physical effects, care must be taken that

a jetty, groin, or breakwater does not unduly interfere with public use [Bulkhead construction should avoid hard angle turns that may collect trash or cause a shoaling or flushing problem].

[(D) An application for the construction of a bulkhead on a significant coastal public marsh or grassflat, where such will lead to the destruction of this resource, will normally be denied. To avoid this, extreme care should be taken as to the location and type of construction planned for bulkheads in a wetland area.]

(6) Shoreline stabilization projects [Marina].

(A) Vegetative cover is the preferred method of shoreline stabilization and shall be used where its use is practical. Impacts to sensitive habitat will be avoided whenever possible and minimized and mitigated when unavoidable [A marina should be located in an area where maximum physical advantages exist and where least dredging and maintenance will be required].

(B) Riprap is an acceptable method of shoreline stabilization if composed of interlocking brick, rock large enough not to be displaced by storms, or concrete rubble which is free of protruding rebar. Where possible, sloping riprapping should be used rather than a vertical seawall or bulkhead. Riprap material may extend seaward from the shoreline only as far as required to protect the shoreline [Plans for a marina should minimize the disruption of currents and the need for excavation of the shore area].

(C) The use of tires, automobile bodies or parts, appliances, trash and other unconsolidated material is not acceptable and shall not be approved [Open dockage extending to deep water should be considered as an alternative to dredging for navigational access where feasible].

(D) Except in special circumstances, a bulkhead or seawall should be located no further seaward than the mean of the high water line, and designed so that reflected wave energy does not destroy stable marine bottom or constitute a safety hazard [A turning basin or navigation channel should be designed to prevent long-term degradation of water quality. A dead end or deep canal without adequate flushing should be avoided].

(E) An application for the construction of a bulkhead on a significant coastal public marsh or grassflat, where such will lead to the destruction of this resource, will normally be denied. To avoid this, extreme care should be taken as to the location and type of construction planned for bulkheads in a wetland area [Each marina shall provide adequate facilities to its users for the reception of waste and/or garbage. Failure to insure that the users of a marina have access to facilities necessary for the proper and lawful disposal of waste and/or garbage on an ongoing basis shall subject both the easement to termination and the easement holder to any applicable civil and criminal penalties].

(7) Marinas [Landfill].

(A) Marinas should be located in areas where maximum physical advantages exist and where the least dredging and maintenance will be required. Plans for a marina should minimize the disruption of currents and the need for excavation of the shore area. Dead end or deep canals without adequate flushing should be avoided [A landfill proposed in marshes and submerged grass bed areas normally will be denied. Consideration will only be given to a landfill proposal for a water dependent use or public use on relatively unproductive coastal public lands].

(B) Each marina shall provide adequate facilities to its users for the reception of waste and/or garbage. Failure to insure that the users of a marina have access to facilities necessary for the proper and lawful disposal of waste and/or garbage on an ongoing basis may subject the easement to termination and the easement holder to any applicable civil and criminal penalties [A shoreline fill should be designed and located so that significant damage to existing ecological values or natural resources, or alternation of natural currents will not occur].

[(C) The perimeter of fills should be provided with vegetation, retaining walls, riprap, or other mechanisms for erosion prevention.

[(D) Fill material should be of such quality that it will not cause water quality degradation. Submerged land should not be considered for a sanitary landfill or the disposal of solid waste.]

(8) Landfills.

(A) Landfills proposed in marshes and submerged grass bed areas normally will be denied. Consideration

will be given to a landfill proposal for a water dependent use or public use on relatively unproductive coastal public lands.

(B) A shoreline fill should be designed and located so that significant damage to existing ecological values or natural resources, or alternation of natural currents will not occur.

(C) The perimeter of fills should be provided with vegetation, retaining walls, riprap, or other mechanisms for erosion prevention.

(D) Fill material should be of such quality that it will not cause water quality degradation. Submerged land should not be considered for a sanitary landfill or the disposal of solid waste.

(h) Consideration of application by mineral interest holder. The board will review and consider an application for a channel easement to a mineral interest holder on coastal public lands to insure conformity with the policies, practices, and procedures in these rules and regulations. Environmental recommendations for certain development and production activities will be provided to the mineral interest holder on bay tracts and certain other tracts in the notice of bids booklet published by the General Land Office. Updates of these recommendations will be furnished on request. Development activities conforming with these environmental recommendations normally will receive favorable consideration by the General Land Office.

(i) Approval [Application] criteria. An easement, if granted by the board, will be approved subject to these rules [and regulations] in addition to such terms and conditions [those] as may be prescribed in the contractual agreement. The board may waive a rule at its discretion. All structures on coastal public lands will be subject to inspection at any time by the board or their authorized representatives. Any easement contract will be for a specific purpose. If a change in the contractual agreement is desired, an amendment application should be filed [with the board]. An applicant, by accepting an easement to occupy or otherwise place a structure on coastal public lands or water surface areas, agrees and consents to comply with and be bound by the following additional terms and conditions:

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

(5) that the disposal or discharge of any waste or garbage into state waters from any marina, pier, dock, wharf, or any other structure located on coastal public lands is strictly prohibited.[:]

[(6) that the applicant, at its own expense, shall post at least one sign for each structure located on coastal public lands, at a location with the highest apparent pedestrian traffic, with letters at least one inch in size, which shall read "Any dumping or discharge of waste or garbage into state waters is strictly prohibited and will subject any violator to the full penalty provided by law."]

(j)-(l) (No change.)

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

Issued in Austin, Texas, on August 28, 1995.

TRD-9510885 Garry Mauro  
Chairman  
School Land Board

Earliest possible date of adoption: October 6, 1995

For further information, please call: (512) 305-9129

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• 31 TAC §155.15

The School Land Board (SLB) proposes new §155.15, concerning fees and charges which may be collected by the SLB.

As originally adopted in the February 14, 1992, issue of the *Texas Register* (17 TexReg 1311), §1.3 of this title contains a comprehensive list of all fees to be charged and collected by both the General Land Office and the SLB, even though the SLB fees found in §1.3(c) more properly belong in Title 31, Part IV (School Land Board). The consolidation of all fees administered by the General Land Office into one section has not had the intended result of clarification and simplification of the process for the public. Concurrent with this proposed new rule, therefore, the General Land Office proposes to delete §1.3(c) (School Land Board Fees and Charges) from Title 31, Part I (General Land Office) and, with the adoption of this new §155.15, to move the schedule of fees to Title 31, Part IV with other SLB administrative rules.

Christopher K. Price, Deputy Commissioner, Asset Management Division, Texas General Land Office, has determined that for each year of the first five years that the rule will be in effect there will be minimal or no fiscal implications resulting from administration or enforcement of the rule. No additional administrative costs will be incurred as a result of this proposal.

Mr. Price also has determined that the public benefit anticipated as a result of the new rule will be clarification of charges and fees for coastal activities administered by the SLB. Mr. Price has determined that for each year of the first five years that the proposed amendment is in effect there will be no significant increase in economic costs to persons or small business for compliance with the rule as proposed.

Comments on the proposed new section may be submitted to Robert Moreland, Texas General Land Office, Legal Services Division, 1700 North Congress Avenue, Room 630, Austin, Texas, 78701-1495 (Fax: (512) 463-6311). Comments must be received by 5:00 p.m. on Wednesday, October 4, 1995.

The new rule is proposed under the Texas Natural Resources Code, §§33.051, 33.052, 33.063, and 33.064, which authorize the SLB to adopt procedural and substantive rules necessary to administer, implement, and enforce the Coastal Public Lands Management Act of 1973.

The Texas Natural Resources Code, §33.063, is affected by the proposed new rule.

§155.15. Fees.

(a) General.

(1) Form of payment. Fees may be paid by cash, check or other legal means acceptable to the commissioner.

(2) Time for payment. Payment is generally required in advance of issuance of permits, leases and other documents and/or delivery of services and/or materials by the General Land Office.

(3) Dishonor or nonpayment by other means. In the event a fee is not paid due to dishonor, nonpayment, or otherwise, the General Land Office shall have no further obligation to issue permits, leases and other documents and/or provide services and/or materials to the permittee, lessee, or applicant.

(b) School Land Board fees and charges. The School Land Board is authorized and required under the Natural Resources Code, Chapter 33, to collect the fees and charges set forth in this subsection where applicable.

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

(A) Adjacent littoral property-The property, specified in the easement application as owned by the easement applicant, that is contiguous and borders the coastal public land upon which the easement is sought.

(B) Appraised market value of adjacent littoral property-Fair market value of the unimproved adjacent littoral property as determined by the appropriate tax appraisal district.

(C) Basin-A structure used for commercial or industrial activity that consists of the area of the state land encum-

bered and any fixtures attached thereto. This definition includes the construction and maintenance of marinas, piers, walkways, docks, dolphins, and wharves and any and all dredged area associated therewith.

(D) Basin formula-The amount of encumbered state land multiplied by the appraised market value of the adjacent littoral property multiplied by the submerged land discount multiplied by the return on investment.

(E) Dredged area-An excavated area, including channels and basins, on coastal public lands. This definition excludes any structure that would be included in the definition of fill area or basin.

(F) Commercial activity-Activity which is designed to enhance or accommodate a venture associated with a revenue generating activity. This definition excludes industrial activity, but includes residential uses if there is revenue generating activity conducted on the premises.

(G) Encumbered state land-The amount of state coastal public land encumbered by the permitted activity and is expressed in number of square feet.

(H) Encumbered open area-That portion of a project in which the design or use of the project impedes public access to coastal public lands and is not otherwise defined as a dredged area or other structure.

(I) Evaluation fee-A one-time fee assessed upon the granting of a commercial instrument. In the case of multiple-purpose easement applications, only one evaluation fee will be assessed.

(J) Fill area-A structure, excluding riprap, concrete stairs, breakwaters, jetties, and groins that permanently and fully encumbers, and entirely displaces the water covering the coastal public land. This activity includes the construction and maintenance of bulkheads.

(K) Fill formula-State land encumbered multiplied by the appraised market value of adjacent littoral property multiplied by the return on investment.

(L) Homeowners association-An association whose individual members, by virtue of holding full and exclusive legal title to the adjacent littoral property area specifically defined in an easement application, are entitled, as a

group, to the privileges of an easement that may be granted by the State of Texas for use of adjacent coastal public land.

(M) Industrial activity-A use of coastal public land not associated with private activity that facilitates and is ancillary to a manufacturing, processing, or gathering facility.

(N) Mineral interest holder-Holder of a state mineral lease who plans to dredge on state-owned coastal lands outside the state leasehold tract to obtain access to the state leasehold tract.

(O) New dredged area-An excavated area which is not under current permit with the General Land Office. The new dredged area rate is charged for the first year, and the fee for maintaining the dredged area is charged for each subsequent year of the easement term.

(P) Public activity-Activity which is performed in the public interest by a public entity or a private non-profit organization, is not designed to enhance or accommodate a profit-making venture, and is not associated with a revenue generating activity.

(Q) Public entity-City, county, state agency, board or commission, or any other political subdivision of the state. See §155.21 of this title (relating to Application; Nature of Original Lease; Sublease; Termination).

(R) Residential use, Category I-One single-family residential structure per defined lot or parcel of land; both land and improvements are typically under the same ownership.

(S) Residential use, Category II-Multi-family residential units per defined lot or parcel of land; land and individual units may be separately owned; includes uses by condominium developments and qualified homeowners associations acting for and on behalf of owners of a multi-family residential development, but does not include time-share developments or any use that includes commercial activities.

(T) Resource Impact Fee-A one-time fee assessed for proposed projects that impact seagrass, emergent marsh, or oyster reef, for which there is no separate mitigation requirement.

(U) Return on investment-A number used in the basin, fill, and industrial

activity formulas that reflects a financial return expectation. The return on investment rate will be set annually by the School Land Board and will be effective at the beginning of each fiscal year.

(V) Shoreline stabilization project-Vegetative cover or rip-rap consisting of concrete block, concrete rubble, rock, brick, sack crete or similar material approved by the General Land Office utilized to control shoreline erosion.

(W) Structure-As defined in the Natural Resources Code, §33.004.

(X) Submerged land discount-60% discount used in formulas when the easement is commercial, 70% discount used in formulas when the easement is industrial.

(2) Coastal fees and charges. The School Land Board will charge the following coastal lease and coastal easement fees for use of coastal public land, and will charge the following structure registration and permit fees. The School Land Board charge will be based on either the fixed fee schedule or the alternate commercial, industrial, residential, and public formulas as delineated in subparagraphs (C) and (D) of this paragraph. The greater of the fixed fee or formula rate will be charged. Commercial, industrial, residential, and public fee schedules:

(A) Coastal lease charges. The School Land Board may only grant coastal leases to certain entities, as prescribed by the Natural Resources Code, §33.105 and §33.109.

(i) Private activity, Non-profit, scientific, or educational activity authorized by §155.2(a)(3) and (4) of this title (relating to Leases):

(I) filing fee: \$25;

(II) annual fee: negotiable/\$5.00 minimum.

(ii) Public activity authorized by §155.2(a)(1) and (2):

(I) filing fee: \$25;

(II) annual fee: no charge.

(iii) Public activity authorized by §155.2(a)(1) and (b)(4):

(I) sub-lease processing fee: \$50;

(II) annual fee: negotiated percentage of the activity's gross annual revenues.

(B) Structure registration fee. Structure registration fee is required for private piers or docks that are 100 feet long or less and 25 feet wide or less and require no dredging or filling, as authorized by the Natural Resources Code, §33.115. Though School Land Board approval is not required for construction, the applicant must register the location of the structure. The registration is valid for the life of the structure:

(i) filing fee: \$25;

(ii) annual fee: no charge;

(iii) assignment fee: \$25;

(iv) amendment fee: \$25.

(C) Coastal easement fees:

(i) assignment fee: \$50;

(ii) amendment fee: \$50;

(iii) late payment fee: 10% of past due amount/\$25 minimum.

(I) piers and docks:

(-a-) residential

use: Category I:

(-1-) filing fee: \$25;

(-2-) annual fee: \$.03 per square foot/\$25 minimum;

(-b-) residential

use: Category II:

(-1-) filing fee: \$50;

(-2-) annual fee: 75% of fee calculated for same use as a commercial activity/\$100 minimum;

(-c-) commercial:

(-1-) filing fee: \$50;

(-2-) evaluation fee: \$50;

(-3-) annual fee: \$.20 per square foot/\$100 minimum;

(-d-) Other, private non-profit use:

\$50;	(-1-) filing fee:	\$50;	(-1-) filing fee:	(-2-) annual fee:
				75% of fee calculated for same use as commercial activity/\$100 minimum;
	(-2-) annual fee:		(-2-) annual fee:	(-d-) commercial activity:
negotiable/\$100 minimum.		75% of fee calculated for same use as a commercial activity/\$100 minimum;		
	(II) marinas:		(-c-) commercial activity:	
	(-a-) Clear Lake:			(-1-) filing fee:
				\$50;
\$50;	(-1-) filing fee:	\$50;	(-1-) filing fee:	(-2-) evaluation fee: \$50;
fee: \$50;	(-2-) evaluation	fee: \$50;	(-2-) evaluation	(-3-) annual fee:
\$4.00 per boat slip linear foot;	(-3-) annual fee:	\$3.20 per square foot/\$100 minimum;	(-3-) annual fee:	(-A-) first year fee for a new dredged area: \$.05 per square foot/\$100 minimum;
use: Category II:	(-b-) residential		(V) dredged area:	(-B-) fee for maintaining a dredged area after first year of easement: \$.01 per square foot/\$100 minimum;
			(-a-) mineral interest holder:	
\$50;	(-1-) filing fee:			
			(-1-) filing fee:	
	(-2-) annual fee:	\$50;	(-2-) evaluation	(VI) Open encumbered area:
75% of fee calculated for same use as a commercial activity;				Category I:
	(-c-) other:	fee: \$50	(-3-) annual fee:	(-a-) residential-
\$50.00;	(-1-) filing fee:		(-A-) first year fee for a new dredged area: \$.02 per square foot/\$100 minimum;	(-1-) filing fee:
				none;
fee: \$50;	(-2-) evaluation		(-B-) fee for maintaining a dredged area after first year of easement: \$.005 per square foot/\$100 minimum;	(-2-) annual fee:
				none;
	(-3-) annual fee:		(-b-) residential-	(-b-) residential-
\$3.00 per boat slip linear foot;				Category II:
	(III) wharf:		(-b-) residential-	
	(-a-) filing fee:	Category I:		(-1-) filing fee:
\$50;				\$50;
	(-b-) evaluation		(-1-) filing fee:	(-2-) annual fee:
fee: \$50;		\$50;		75% of fee calculated for same use as commercial activity/\$100 minimum;
	(-c-) annual fee:		(-2-) annual fee:	(-c-) commercial activity:
\$0.30 per square foot/\$100 minimum;				
	(IV) breakwaters, jetties, and groins:		(-A-) first year fee for a new dredged area: \$.03 per square foot/\$25 minimum;	(-1-) filing fee:
				\$50;
Category I:	(-a-) residential		(-B-) fee for maintaining a dredged area after first year of easement: \$.005 per square foot/\$100 minimum;	(-2-) evaluation fee: \$50;
\$25;	(-1-) filing fee:		(-c-) residential-	(-3-) annual fee:
				\$0.03 per square foot/\$100 minimum;
	(-2-) annual fee:	Category II:		(-d-) Other, private non-profit use:
\$0.20 per square foot/\$25 minimum;			(-1-) filing fee:	
	(-b-) residential-			
Category II:		\$50;		(-1-) filing fee:



fee: \$50;

(-2-) evaluation

(-3-) annual fee: negotiable/\$100 minimum.

(VII) basin: commercial and industrial activity:

(-a-) industrial activity:

(-1-) filing fee: \$50;

(-2-) annual fee: basin formula, industrial activity; fee: \$50;

(-3-) evaluation activity: \$50;

(-1-) filing fee: basin formula, commercial activity; fee: \$50;

(-2-) annual fee: basin formula, commercial activity; fee: \$50;

(-3-) evaluation activity: \$50;

(VIII) fill area: all activity:

(-a-) commercial/industrial:

(-1-) filing fee: \$50;

(-2-) annual fee: \$.20 per square foot, \$100 minimum, or fill formula; fee: \$50;

(-3-) evaluation activity/public activity: \$50;

(-1-) filing fee: \$50;

(-2-) annual fee: \$.10 per square foot or fill formula, whichever is greater/\$25 minimum. \$100.

(IX) Shoreline stabilization project:

(-a-) All activities authorized by §155.1(b)(2)(A)-(C) of this title (relating to General Provisions);

(-1-) filing fee: \$5;

(-2-) annual fee: none.

(-b-) Others:

(-1-) filing fee: \$25;

(-2-) annual fee: negotiable/\$.03 per square foot minimum.

(X) Boat ramps, concrete stairs, concrete slabs:

(-a-) residential-Category I:

(-1-) filing fee: \$25

(-2-) annual fee: \$.03 per square foot/\$25 minimum;

(-b-) residential-Category II:

(-1-) filing fee: \$50;

(-2-) annual fee: 75% of fee calculated for same use as a commercial activity/\$100 minimum;

(-c-) commercial activity:

(-1-) filing fee: \$50;

(-2-) evaluation fee: \$50;

(-3-) annual fee: \$.20 per square foot/\$100 minimum;

(-d-) Other, private non-profit use:

(-1-) filing fee: \$50;

(-2-) annual fee: \$100.

(D) Structure (cabin) permits:

(i) fees:

(I) refundable deposit: \$200;

(II) annual fee for all structures excluding piers, docks, and walkways will be calculated at \$.60 per square foot per year;

(III) contract renewal: \$175;

(IV) new contract issuance: \$325;

(V) late payment fee: 25% of past due amount;

(VI) minimum annual payment: \$175;

(ii) permittee may apply for a continuation of the previous fee if the permit was issued prior to July 18, 1983 (the date of the initial rate increase), and if the annual fee will impose an undue financial hardship on a current permit holder.

(E) Resource Impact Fee:

(i) Public use piers and residential piers constructed within guidelines: exempt;

(ii) All others: \$100 plus \$1.00 per square foot of impacted area.

(F) Term. The term for all coastal leases and coastal easements is negotiable. School Land Board approval is required prior to construction.

(G) Rental adjustments-all commercial and industrial easements. At every five-year interval in the term of commercial and industrial easements, the rental fee for the easement will be subject to adjustment. The adjustment, if any, will be in accordance with the then current Fee Schedule as adopted by the School Land Board.

(H) Discretionary authority. The School Land Board may reduce or waive any fee set forth herein if such action would be in the public's best interest as determined by the School Land Board.

(I) Implementation.

(i) New residential developments. Upon the application for an easement associated with the development of a multi-unit or single-family residential pro-

ject, the easement application will be processed and fee determined according to the appropriate commercial activity rate. Upon the sale of an individual residential unit associated with the easement, with sufficient infrastructure in place to convert use of the unit to individual use (and use of associated easement to private activity), the original easement applicant, upon agreement with the commissioner of the General Land Office, may pay a \$50 conversion fee. The easement fee may then be reduced by the percentage that the sold unit represented to the total number of units associated with the easement. At the time the conversion fee is paid under the provisions herein, the unit will then be considered to be subject to the residential activity rates upon renewal of the easement. For units already sold prior to the effective date of this section, conversion to a residential activity rate will be granted without the payment of the conversion fee.

(ii) Additional terms. The commissioner of the General Land Office may require, as a condition for the granting of an easement set forth in this section, such additional terms that he feels are necessary to secure performance under any such easement.

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

Issued in Austin, Texas, on August 28, 1995.

TRD-9510881      Garry Mauro  
                         Chair  
                         School Land Board

Earliest possible date of adoption: October 6, 1995

For further information, please call: (512) 305-9129



# WITHDRAWN RULES

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

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## TITLE 31. NATURAL RE- SOURCES AND CON- SERVATION

### Part IV. School Land Board

#### Chapter 155. Land Resources

##### Coastal Public Lands

###### • 31 TAC §155.3

The School Land Board has withdrawn from consideration for permanent adoption a proposed amendment to §155.3, which appeared in the May 23, 1995, issue of the *Texas Register* (20 TexReg 3821). The effective date of this withdrawal is August 28, 1995.

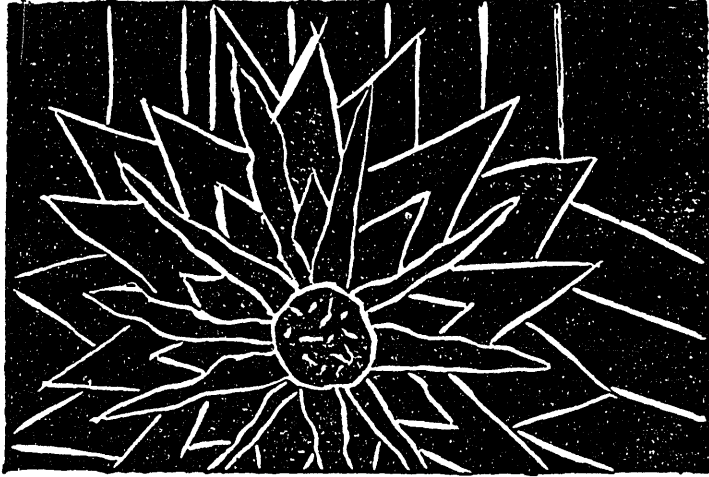
Issued in Austin, Texas, on August 28, 1995.

TRD-9510886      Garry Mauro  
                         Chairman  
                         School Land Board

Effective date: August 28, 1995

For further information, please call: (512)  
305-9129





Name: Kay Walters  
Grade: 11  
School: Corrigan/Camden High School, Corrigan/Camden ISD



Name: Mary Ann Ellis  
Grade: 11  
School: Corrigan/Camden High School, Corrigan/Camden ISD

# 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 16. ECONOMIC REGULATION

### Part I. Railroad Commission of Texas

#### Chapter 3. Oil and Gas Division

#### Conservation Rules and Regu- lations

##### • 16 TAC §3.14

The Railroad Commission of Texas adopts amendments to §3.14, concerning the plugging of wells with changes to the proposed text as published in the April 18, 1995, issue of the *Texas Register* (20 TexReg 2761).

Adoption of the proposed amendments will reduce the regulatory burden on operators of wells more than 25 years old by eliminating the prior notice and approval requirement for annual fluid level tests. Approval is no longer necessary before conducting certain hydraulic pressure tests though prior notice is still required. Alternate methods of testing will still require prior notice and approval. The notice period for the tests requiring prior notice has been reduced from three days to two days. All test results are to be filed with the district except the fluid level tests which will now be filed in Austin.

One comment suggests treating hydraulic pressure tests like fluid level tests for notification and filing purposes because pressure tests are routine and well documented by pressure charts. The commission disagrees. Though routine and well documented, pressure tests must be conducted properly to be effective tools for preventing pollution. The only way to assure that the well is properly tested is for the district to have the option of witnessing the test. If conducted in accordance with the specifications in the rule, a hydraulic pressure test requires prior notice but not prior approval.

Two comments suggested that to minimize confusion, all filings should be made in either the Austin office or the district office instead of requiring the filing of fluid level tests in Austin and all other test results with the district office. The commission disagrees. Fluid level tests require a minimum of clerical effort to process but are filed in large quantities each year. Hydraulic pressure and other me-

chanical integrity tests are filed much less frequently but require specialized knowledge to process and interpret. Filing all test results with the district offices would place an unreasonable strain on the district office's limited resources. If all tests were filed in Austin, the district personnel who witnessed the tests and those with the specialized knowledge to interpret the tests would not be available to interpret and analyze the results.

One comment suggests eliminating the notification requirement for all tests. The commission disagrees. Without notice and opportunity to witness the test, the commission loses the ability to assure that the test has been done properly and that the proper interval has been tested.

One comment suggests that section (b)(2)(F), requiring MITs every five years, be eliminated. The commission agrees partly. The problem addressed in (b)(2)(F) could be more efficiently handled by evoking the commission's authority under (b)(2)(E) on a case by case basis but any well more than 25 years old that passes a hydraulic pressure test should be exempted from mechanical integrity testing for five years.

One comment suggests amending (b)(2)(E) so that it applies only to those wells with "production casing" more than 25 years old and not to all wells more than 25 years old. This would allow an operator to reenter a well bore more than 25 years old and set new production casing without triggering the testing requirements of section (b)(2)(E). The commission disagrees. This problem can already be remedied administratively.

One comment suggests adding the words, "fluid level" in the second sentence of (b)(2)(E). The commission agrees. Apparently those words were erroneously omitted when the proposed rule language was published.

One comment suggests eliminating (b)(2)(E)(i)-(iv) because the time limits will have passed by the time this rule is amended. The commission agrees. The time limits have expired and there is no reason to impose new time limits.

The Glasscock County Underground Water Conservation District, The Permian Basin Petroleum Association, The North Texas Oil & Gas Association, Phillips Petroleum Company, The Texas Mid-Continent Oil & Gas Association and The West Central Texas Oil & Gas Association generally support these

amendments. There were no comments opposing the proposed amendments. The following sections of the Texas Natural Resources Code are affected by the adoption of the amendments: §§91.001, 91.012, and 91.101.

The Railroad Commission adopts the amendments pursuant to the Texas Natural Resources Code, Title 3, Chapters 85, 89 and 91 that provide the commission with the authority to prevent pollution.

##### §3.14. Plugging.

(a) (No change.)

(b) Plugging: commencement of operations, extensions, and responsibility.

(1) (No change.)

(2) Plugging operations on each dry or inactive well must be commenced within a period of one year after drilling or operations cease and shall proceed with due diligence until completed. For good cause, a reasonable extension of time in which to start the plugging operations may be granted pursuant to the following procedures.

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

(E) All wells more than 25 years old that become inactive and subject to the provisions of this paragraph shall be plugged or tested annually to determine whether the well poses a potential threat of harm to natural resources, including surface and subsurface water, oil and gas. In general, a fluid level test is a sufficient test for purposes of this subparagraph. However, the commission or its delegate may require alternate methods of testing, and more frequent tests, if it is necessary to ensure the well does not pose a potential threat of harm to natural resources. Wells that are returned to continuous production, as evidenced by three consecutive months of production, within a year after the well becomes inactive need not be tested. Alternate methods of testing may be approved by the commission or its delegate by written application and upon a showing that such a test will provide information sufficient to

determine that the well does not pose a threat to natural resources. No test other than a fluid level test shall be conducted without prior approval from the district office. However, a hydraulic pressure test may be conducted without prior approval from the district office, provided that the production casing is tested to a depth of at least 250 feet below the base of usable quality water, or 100 feet below the top of cement behind the production casing, whichever is deeper and provided that the minimum test pressure is greater than or equal to 250 psig for a period of at least 30 minutes. A hydraulic pressure test, so conducted, will exempt the well from further testing for five years from the date of the test unless the Commission or its delegate determines that more frequent testing is necessary to ensure that the well does not pose a potential threat of harm to natural resources. The district office shall be notified at least two days before any test other than a fluid level test is conducted. Mechanical integrity test results shall be filed with the district office and fluid level test results shall be filed with the commission in Austin. Test results shall be filed on a commission-approved form, within 30 days of the completion of the test.

(3) (No change.)

(c)-(j) (No change.)

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

Issued in Austin, Texas, on August 22, 1995.

TRD-9510943 Mary Ross McDonald  
Assistant Director, Legal  
Division, Gas  
Utilities/LP Gas  
Railroad Commission of  
Texas

Effective date: September 20, 1995

Proposal publication date: April 18, 1995

For further information, please call: (512) 463-7008



**TITLE 34. PUBLIC FINANCE**  
**Part IV. Employees Retirement System of Texas**

**Chapter 87. Deferred Compensation**

• 34 TAC §87.7, §87.21

The Employees Retirement System of Texas adopts amendments to §87.7 and §87.21, concerning vendor participation and remedies, without changes to the proposed text as published in the July 18, 1995, issue of the *Texas Register* (20 TexReg 5206).

These amendments make changes in plan rules dealing with the collateralization requirements of banks and savings and loan associations necessitated by legislation enacted by the 74th Legislature.

The amendments remove collateralization requirements previously imposed on banks and savings and loan associations, and will still allow collateralization requirements to be imposed on banks and savings and loan associations if deemed necessary by the plan administrator, such as when pass-through deposit insurance becomes unavailable.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Government Code, Title 6, Subtitle A, Chapter 609, §609.508, which provides authorization for the board to adopt rules, regulations, plans, and procedures to carry out the purposes of this Act.

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

Issued in Austin, Texas, on August 29, 1995.

TRD-9510922 Charles D. Travis  
Executive Director  
Employees Retirement  
System of Texas

Effective date: September 19, 1995

Proposal publication date: July 18, 1995

For further information, please call: (512) 867-3336



**TITLE 37. PUBLIC SAFETY AND CORRECTIONS**  
**Part III. Texas Youth Commission**

**Chapter 83. Contracted Youth Services**

• 37 TAC §83.45

The Texas Youth Commission (TYC) adopts an amendment to §83.45, concerning incident reporting by contract programs, without changes to the proposed text as published in the July 28, 1995, issue of the *Texas Register* (20 TexReg 5606).

The justification for amending the section is to provide more efficient incident reporting by residential contract staff.

The amendment will clarify time frames for notification and reporting of serious incidents involving TYC youth.

No comments were received regarding adoption of the amendment.

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

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

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

Issued in Austin, Texas, on August 28, 1995.

TRD-9510871 Steve Robinson  
Executive Director  
Texas Youth Commission

Effective date: September 18, 1995

Proposal publication date: July 28, 1995

For further information, please call: (512) 483-5244



# TABLES AND GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

Figure: 4 TAC §19.3(1)

Common Name	Scientific Name	Limitation per Pound
balloonvine	<i>Cardiospermum</i>	
	<i>Halicacabum (L.)</i>	prohibited
field bindweed	<i>Convolvulus arvensis</i>	prohibited
hedge bindweed	<i>Calystegia sepium</i>	prohibited
cocklebur	<i>Xanthium spp.</i>	prohibited
itchgrass	<i>Rottboellia cochinchinensis</i>	prohibited
nutgrass	<i>Cyperus rotundus and Cyperus esculentus</i>	prohibited
nutgrass tubers	<i>Cyperus spp.</i>	prohibited
serrated tussock	<i>Nassella trichotoma</i>	prohibited
tropical soda apple	<i>Solanum viarum Dunal</i>	prohibited

Figure 1: 30 TAC §101.1

$$\text{VOC } T_{bc/cc} = \frac{\text{VOC}_{bc} + (2 \times \text{VOC}_{cc})}{3}$$

where:

Figure 2: 30 TAC §101.1

$$\text{VOC } T_{3\text{-stage}} = \frac{\text{VOC}_{bc} + \text{VOC}_{mc} + (2 \times \text{VOC}_{cc})}{4}$$

where:

Figure 1: 30 TAC §115.10

$$\text{VOC } T_{bc/cc} = \frac{\text{VOC}_{bc} + (2 \times \text{VOC}_{cc})}{3}$$

where:

Figure 2: 30 TAC §115.10

$$\text{VOC } T_{3\text{-stage}} = \frac{\text{VOC}_{bc} + \text{VOC}_{mc} + (2 \times \text{VOC}_{cc})}{4}$$

where:



Figure 1: 30 TAC §115.421(a) (7)

<u>Affected Operation</u>	VOC Emission Limitation	
	pounds per gallon	kg per liter
	[of solids] <u>of coating</u>	[of solids] <u>of coating</u>
sheet basecoat (exterior and interior) and over-varnish	<u>2.8</u> [4.5]	<u>0.34</u> [0.54]
two-piece can exterior (base-coat and over-varnish)	<u>2.8</u> [4.5]	<u>0.34</u> [0.54]
two- and three-piece can interior body spray, two-piece can exterior end (spray or roll coat)	<u>4.2</u> [9.8]	<u>0.51</u> [1.17]
three-piece can side-seam spray	<u>5.5</u> [22]	<u>0.66</u> [2.64]
end sealing compound	<u>3.7</u> [7.4]	<u>0.44</u> [0.89]

Figure 2: 30 TAC §115.421(b) (7)

<u>Affected Operation</u>	VOC Emission Limitation	
	pounds per gallon	kg per liter
	[of solids] <u>of coating</u>	[of solids] <u>of coating</u>
sheet basecoat (exterior and interior) and over-varnish	<u>2.8</u> [4.5]	<u>0.34</u> [0.54]
two-piece can exterior (base-coat and over-varnish)	<u>2.8</u> [4.5]	<u>0.34</u> [0.54]
two- and three-piece can interior body spray, two-piece can exterior end (spray or roll coat)	<u>4.2</u> [9.8]	<u>0.51</u> [1.17]
three-piece can side-seam spray	<u>5.5</u> [22]	<u>0.66</u> [2.64]
end sealing compound	<u>3.7</u> [7.4]	<u>0.44</u> [0.89]

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 1400, FINDIT 771-9800  
 230-3-7 Findit 771-9800  
 1 House sized apartment  
 Westheimer, 2 Bdrm 1375  
 3 Bdrm 1450 FINDIT 71-9800  
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 KLEIN 150, KUYK  
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 100-100000  
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Name: Maricela Contreras  
 Grade: 9  
 School: Corrigan/Camden High School, Corrigan/Camden ISD



Name: Karla Cordova  
Grade: 11  
School: Klein Forest High School, Klein ISD



Name: Kyle Hamon  
Grade: 11  
School: Klein Forest High School, Klein ISD

# OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the **Texas Register**.

**Emergency meetings and agendas.** Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

**Posting of open meeting notices.** All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the **Texas Register**.

**Meeting Accessibility.** Under the Americans with Disabilities Act, an individual with a disability must have an 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 summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

## Texas Department of Agriculture

Wednesday, September 13, 1995, 10:30 a.m.

Board Room, Texas Sheep and Goat Raisers, 233 West Twohig

San Angelo

Texas Sheep and Goat Commodity Board

### AGENDA:

Opening remarks and welcome

Review and approval on minutes of last meeting

Review and approval of fiscal affairs

Reports of officers and directors

Discussion and action: New business—Review of telephone messages; review proposal for assistance with reprinting publication; request to convert pilot program to new "hot spots" format; review "hot spots" procedures and new proposals.

Unfinished business—Review status on various projects; Castleberry referral to Attorney General's Office; Progress of Coyotes in Texas Symposium; reprinting publication; reports from "hot spot hunting" projects; review reports from Gary Nunley on animal damage control; scheduling of next meeting.

Discussion: Other business

Adjourn

Contact: Minnie Savage, 233 West Twohig, San Angelo, Texas 76902-3543, (915) 659-8777.

Filed: August 30, 1995, 9:45 a.m.

TRD-9510944

## Texas Commission on the Arts

Friday, September 8, 1995, 9:00 a.m.

Embassy Suites Hotel, 1800 South Second Street

McAllen

Revised Agenda

Commission Meeting

### AGENDA:

The commission will no longer meet in executive session.

Contact: Deborah Cole, P.O. Box 13406, Austin, Texas 78711-3406, (512) 463-5535.

Filed: August 31, 1995, 9:51 a.m.

TRD-9511044

## State Bar of Texas

Thursday-Friday, September 7-8, 1995, 8:30 a.m.

Texas Law Center, 1414 Colorado, Suite 206

Austin

Texas Commission for Lawyer Discipline

### AGENDA:

Call to order/introductions/review and discuss: minutes of prior meetings; matters

unresolved from prior meetings; statistical reports; commission's compliance with State Bar Act, Texas Rules of Disciplinary Procedure, orders of the Supreme Court of Texas; budget and operations of the commission and General Counsel's Office; matters concerning district grievance committees; Special Counsel Program; mediation of disciplinary cases; presentation by trial staff re docket/closed session to discuss authorization to make accept or reject offers or take other appropriate action concerning pending litigation and matters pending before evidentiary panels of grievance committees; discuss assignment of special counsel; discuss personnel matters/public session reconvened to discuss and take appropriate action regarding matters discussed during closed session; discuss future meetings of the commission; discuss other matters as appropriately come before the commission; receive public comment/adjourn.

Contact: Anne McKenna, P.O. Box 12487, Austin, Texas 78711, 1-800-204-2222.

Filed: August 30, 1995, 4:19 p.m.

TRD-9511018

## Texas Boll Weevil Eradication Foundation

Wednesday, August 30, 1995, 10:00 a.m.

Farm Credit Bank Building, Trinity Room, 6210 Highway 290E at I-35

Austin

Emergency Meeting

### AGENDA:

Call to order

Opening remarks and introductions

Recess board meeting

Executive session: To consult with attorney in accordance with Texas Government Code, §551.071.

Adjourn executive session

Reconvene board meeting

Discussion and action: Take action on executive session; possible settlement of High Plains assessment concerns, High Plains program plan and budget.

Discussion: Other business

Adjourn

Reason for emergency: Emergency meeting to consider possible settlement to avoid imminent litigation and recent threat of injunction to obstruct pest eradication program.

Contact: Frank Myers, P.O. Box 5089, Abilene, Texas 79608-5089, 1-800-687-1212 or (915) 672-2800.

Filed: August 29, 1995, 3:31 p.m.

TRD-9510916

Wednesday, September 6, 1995, 9:30 a.m.

Boll Weevil Foundation Office, 619 South International Boulevard

Weslaco

Technical Committee

AGENDA:

Welcome, purpose and approval of minutes

Program update

Secondary pests

Technical basis for modifying Boll Weevil Eradication Program

Mexico

Producer involvement and leadership

Open Discussion

Adjourn

Contact: Frank Myers, P.O. Box 5089, Abilene, Texas 79608-5089, 1-800-687-1212 or (915) 672-2800.

Filed: August 29, 1995, 1:28 p.m.

TRD-9510910

◆ ◆ ◆  
**Texas Board of Chiropractic  
Examiners**

Friday, September 8, 1995, 10:30 a.m.

333 Guadalupe, Tower III, Suite 825

Austin

Board Member Training

AGENDA:

Board member training.

Contact: Patte B. Kent, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701, (512) 305-6700.

Filed: August 29, 1995, 4:18 p.m.

TRD-9510923

Friday, September 8, 1995, 1:00 p.m.

333 Guadalupe, Tower III, Room 102

Austin

Board Meeting

AGENDA:

Consideration, discussion, any appropriate action and/or approval of: 1) minutes of the July 25, 1995 board meeting, 2) report of president, 3) report of executive director, 4) committee reports: a. Enforcement Committee, 1) Enforcement actions-fiscal year 1995, 5) committee appointments and/or restructure of committees, 6) fee structure as required in the Appropriations Act approved by the 74th Texas Legislature, 7) proposed appointees to the Advisory Commission, 8) meeting dates for fiscal year 1996, 9) chiropractic colleges whose graduates are eligible for examination and licensure under the provisions of Texas Civil Statutes, Article 4512b, §20 (§71.5, Texas Administrative Code), 10) request to chiropractic associations for appointees to Peer Review Committee, 11) Executive session: The board may from time to time meet in executive session to consult with its attorneys regarding matters authorized by §551.071 of the Government Code, including the Texas Board of Chiropractic Examiners v. Michael D. Chrane. The board may also consult with its attorneys regarding personnel matters authorized by §551.074 of the Government Code, including the annual performance evaluations of the executive director and the agency staff, 12) legal advice in the cause styled Texas Board of Chiropractic Examiners v. Michael D. Chrane, 13) items to be considered for future agenda. Adjourn.

Contact: Patte B. Kent, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701, (512) 305-6700.

Filed: August 30, 1995, 4:18 p.m.

TRD-9511012

◆ ◆ ◆  
**Texas Department of Criminal  
Justice**

Thursday, September 7, 1995, 1:30 p.m.

Rio Grande Ballroom, Holiday Inn Riverwalk, 110 Lexington

San Antonio

Judicial Advisory Council Meeting

AGENDA:

Substance Abuse Felony Punishment Facility update; and Treatment Alternatives to Incarceration Program update.

Contact: Elizabeth Colvin, 209 West 14th Street, Suite 400, Austin, Texas 78701, (512) 305-8584.

Filed: August 30, 1995, 11:37 a.m.

TRD-9510967

Thursday, September 7, 1995, 2:15 p.m.

Rio Grande Ballroom, Holiday Inn Riverwalk, 110 Lexington

San Antonio

Judicial Advisory Council Meeting

AGENDA:

State jails update.

Contact: Elizabeth Colvin, 209 West 14th Street, Suite 400, Austin, Texas 78701, (512) 305-8584.

Filed: August 30, 1995, 11:37 a.m.

TRD-9510968

Thursday, September 7, 1995, 3:00 p.m.

Rio Grande Ballroom, Holiday Inn Riverwalk, 110 Lexington

San Antonio

Judicial Advisory Council Meeting

AGENDA:

Regional training update; and training hours update.

Contact: Elizabeth Colvin, 209 West 14th Street, Suite 400, Austin, Texas 78701, (512) 305-8584.

Filed: August 30, 1995, 11:37 a.m.

TRD-9510969

Thursday, September 7, 1995, 3:45 p.m.

Rio Grande Ballroom, Holiday Inn Riverwalk, 110 Lexington

San Antonio

Judicial Advisory Council Meeting

AGENDA:

Funding distribution update.

Contact: Elizabeth Colvin, 209 West 14th Street, Suite 400, Austin, Texas 78701, (512) 305-8584.

Filed: August 30, 1995, 11:37 a.m.

TRD-9510970

Friday, September 8, 1995, 9:00 a.m.

Rio Grande Ballroom, Holiday Inn Riverwalk, 110 Lexington

San Antonio

Judicial Advisory Council Meeting

AGENDA:

Greeting; introduction of guest/staff; approval of minutes; overview of TDCJ Substance Abuse Department, including SAFFP, TTC, IPTC; and organizational structure by Carl Jeffries, deputy executive director, TDCJ; Probation Advisory Committee report, section reports and updates; field services, special services, information management, administrative services, training and staff development, and legal update; division director's update; next meeting date scheduled; and adjournment.

Contact: Elizabeth Colvin, 209 West 14th Street, Suite 400, Austin, Texas 78701, (512) 305-8584.

Filed: August 30, 1995, 11:38 a.m.

TRD-9510971

◆ ◆ ◆  
**Texas Commission for the  
Deaf and Hearing Im-  
paired**

Saturday, September 9, 1995, 9:00 a.m.  
4800 North Lamar Boulevard, Suite 250  
Austin

Board for Evaluation of Interpreters (BEI)  
AGENDA:

Call to order; determination of quorum; welcome new board member; reading of minutes; public comments; reports: officers/committees/staff: 1. Chair, 2. Vice chair, 3. Secretary, 4. Staff, 5. TSID representative; discussion of BEI rules-Joe Thrash, Assistant Attorney General; executive session: Review of applicant and candidate testing materials; new business: 1. Certification/recertification/revocation, 2. Calendar, 3. New evaluators; unfinished business: 1. Level V-V intermediary materials, 2. Status of work groups; announcements: adjournment 5:00 p.m.

Contact: Loyce Kessler, 4800 North Lamar Boulevard, #310, Austin, Texas 78756, (512) 451-8494.

Filed: August 29, 1995, 12:23 p.m.

TRD-9510909

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**Texas Education Agency**

Thursday, September 7, 1995, 10:30 a.m.  
Room 1-104, William B. Travis Building,  
1701 North Congress Avenue

Austin

State Board of Education (SBOE) Committee of the Whole

AGENDA:

Public testimony; commissioner's overview of the September 1995 State Board of Education (SBOE) meeting; discussion of pro-

posed amendments to SBOE operating rules to accommodate the sunset review process mandated by Senate Bill 1, 74th Texas Legislature, 1995; discussion of the Articles of Incorporation and the Bylaws of the Texas Permanent School Fund Management Company, Inc.; and discussion of pending litigation, this discussion will be held in executive session in accordance with §551.071(1)(A), Texas Government Code, and will include a discussion of Edgewood ISD et al v. Meno and related school finance litigation, Angel G. et al v. Meno, et al, T.E.A. et al v. Gary W. Leeper et ux, et al relating to home schooling, Maxwell et al v. Pasadena ISD relating to Texas Assessment of Academic Skills (TAAS) testing, and Casias, et al v. Moses, et al relating to accountability intervention. NOTE: The Committee of the Whole will meet in Room 1-103 to discuss pending litigation.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9701.

Filed: August 30, 1995, 4:18 p.m.

TRD-9511017

Thursday, September 7, 1995, 1:00 p.m.  
Room 1-104, William B. Travis Building,  
1701 North Congress Avenue

Austin

Joint Meeting of the State Board of Education (SBOE) Committees on School Finance and Students

AGENDA:

Discussion of proposed new 19 TAC Chapter 66, State Adoption and Distribution of Instructional Materials; Proclamation 1995 of the SBOE advertising for bids on instructional materials.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9701.

Filed: August 30, 1995, 4:24 p.m.

TRD-9511025

Thursday, September 7, 1995, 1:00 p.m. or upon adjournment of the joint meeting of the Committees on School Finance/Students which convenes at 1:00 p.m.

Room 1-104, William B. Travis Building,  
1701 North Congress Avenue

Austin

State Board of Education (SBOE) Committee on School Finance

AGENDA:

Public testimony; school finance update; proposed repeal/readoption of 19 TAC Chapter 67, State Adoption and Distribution of Instructional Materials; proposed new 19 TAC Chapter 66, State Adoption and Distri-

bution of Instructional Materials; proposed repeal/readoption of 19 TAC Chapter 129, Student Attendance; proposed repeal/readoption of 19 TAC Chapter 157, Subchapter C, Hearings Held Under the Texas Driver and Traffic Safety Education Act; request for permission to allow the TEA to accept federal funds for the Texas Military Initiative/Troops to Teachers Program; per capita apportionment for the 1995-1996 school year; approval of reimbursement of subsidies for the advanced placement examinations for students in financial need; Proclamation 1995 of the SBOE advertising for bids on instructional materials.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9701.

Filed: August 30, 1995, 4:21 p.m.

TRD-9511021

Thursday, September 7, 1995, 1:00 p.m. or upon adjournment of the joint meeting of the Committees on Students and School Finance which convenes at 1:00 p.m.

Room 1-100, William B. Travis Building,  
1701 North Congress Avenue  
Austin

State Board of Education (SBOE) Committee on Students

AGENDA:

Public testimony; proposed repeal/readoption of 19 TAC Chapter 101, Assessment; proposed repeal of 19 TAC Chapter 157, Subchapter A, Hearings Concerning Students with Disabilities under the Individuals with Disabilities Education Act; proposed repeal of 19 TAC Chapter 169, Relationship with University Interscholastic League; proposed amendment to 19 TAC §89.113, Eligibility for a Texas Certificate of High School Equivalency; recommendation of appropriate grade level for assessing science and social studies; addition of physical education and health education to the essential knowledge and skills clarification process; 19 TAC Chapter 66, State Adoption and Distribution of Instructional Materials; update on the clarification of essential knowledge and skills process; Proclamation 1995 of the SBOE advertising for bids on instructional materials; and discussion of issues related to textbook adoptions.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9701.

Filed: August 30, 1995, 4:21 p.m.

TRD-9511020

Thursday, September 7, 1995, 1:00 p.m.  
Room 1-111, William B. Travis Building,  
1701 North Congress Avenue

Austin

State Board of Education (SBOE) Committee on Personnel

**AGENDA:**

Public testimony; proposed new 19 TAC Chapter 157, Subchapter D, Independent Hearing Examiners; proposed amendment to 19 TAC §61.61, Training for School Board Members; discussion of proposed school board member training requirements; request for approval of additional certificate programs for University of Houston-Victoria and Texas A&M International University; request for approval for centers for professional development and technology; recommendation for appointment to the Randolph Field Independent School District Board of Trustees; discussion of proposed application and criteria for selection of open-enrollment charters; discussion of ongoing communications activities; accountability system for educator preparation preliminary accreditation status report; report on the formative evaluation of the centers for professional development and technology; status report on the accreditation, interventions, and sanctions of school districts.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9701.

Filed: August 30, 1995, 4:20 p.m.

TRD-9511019

Friday, September 8, 1995, 8:30 a.m.

Room 1-109, William B. Travis Building, 1701 North Congress Avenue

Austin

State Board of Education (SBOE) Committee on the Permanent School Fund (PSF)

**AGENDA:**

Public testimony; approve a finding that the Texas PSF will meet income expectations for the next biennium in order that funding for the payment for external managers be authorized; approval of the request for proposal for external financial audit of the Texas PSF pursuant to authority granted by Texas Education Code, §43.006; amendment to investment procedures manual to incorporate currency hedging strategies consistent with procedures mandated by the hiring of international external portfolio managers; recommended approval of purchases/sales in the investment portfolio of the PSF for July and August; discussion of the articles of incorporation and the bylaws of the Texas PSF Management Company, Inc.; discussion of the contract for the investment of funds under control and management of the SBOE, including the Texas PSF, as designated by the board; review of PSF securities transactions and the investment portfolio; and report of the PSF executive administrator.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9701.

Filed: August 30, 1995, 4:22 p.m.

TRD-9511023

Friday, September 8, 1995, 8:30 a.m.

Room 1-104, William B. Travis Building, 1701 North Congress Avenue

Austin

State Board of Education (SBOE) Committee on Long-Range Planning

**AGENDA:**

Public testimony; Long-Range Plan for Public Education, 1996-2000; discussion of federal governmental relations activities.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9701.

Filed: August 30, 1995, 4:22 p.m.

TRD-9511022

Friday, September 8, 1995, 1:00 p.m.

Room 1-104, William B. Travis Building, 1701 North Congress Avenue

Austin

State Board of Education (SBOE)

**AGENDA:**

Approval of July 7, 1995 SBOE minutes; public testimony; SBOE resolutions; approval of consent agenda; proposed amendments to SBOE operating rules to accommodate the sunset review process mandated by Senate Bill 1, 74th Legislature, 1995; 19 TAC Chapter 157, Subchapter D, Independent Hearing Examiners; 19 TAC §61.61, Training for School Board Members; additional certificate programs for University of Houston-Victoria/Texas A&M International University; centers for professional development and technology; Randolph Field ISD board of trustees; 19 TAC Chapter 101, Assessment; 19 TAC Chapter 157, Subchapter A, Hearings Concerning Students with Disabilities Under the Individuals with Disabilities Education Act; 19 TAC Chapter 169, Relationship with University Interscholastic League; 19 TAC §89.113, Eligibility for a Texas Certificate of High School Equivalency; recommendation of appropriate grade level for assessing science and social studies; addition of Physical Education and Health Education to the Essential Knowledge and Skills Clarification Process; 19 TAC Chapter 67, State Adoption and Distribution of Instructional Materials; 19 TAC Chapter 129, Student Attendance; 19 TAC Chapter 157, Subchapter C, Hearings Held Under the Texas Driver and Traffic Safety Education Act; permission to allow TEA to accept federal funds for the Texas Military Initiative/Troops to Teachers Program; per capita apportionment for

1995-1996; approve a finding that the Texas Permanent School Fund (PSF) will meet income expectations for the next biennium in order that payment for external managers be authorized; request for proposal for external financial audit and the Texas PSF pursuant to Texas Education Code, §43.006; amendment to investment procedures manual to incorporate currency hedging strategies consistent with procedures mandated by the hiring of international external portfolio managers; recommended approval of purchases/sales in the investment portfolio of the PSF for July and August; information on agency administration.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9701.

Filed: August 30, 1995, 4:23 p.m.

TRD-9511024

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**State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments**

Friday, September 15, 1995, 1:00 p.m.

Peach Room, Austin North Hilton and Towers, 6000 Middle Fiskville Road

Austin

Application Subcommittee

**AGENDA:**

The subcommittee will discuss and possibly act on the approval or denial of applications of Gilbert Ritchey, James Cohenour, and Thomas Hernandez.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6484. For ADA assistance, contact Richard Butler (512) 458-6410 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: August 30, 1995, 2:25 p.m.

TRD-9510975

Friday, September 15, 1995, 1:30 p.m.

Peach Room, Austin North Hilton and Towers, 6000 Middle Fiskville Road

Austin

Continuing Education Subcommittee

**AGENDA:**

The subcommittee will discuss and possibly act on the continuing education of Alan Farris; and the process for submitting and documenting continuing education.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6484. For ADA assistance, contact Richard Butler (512) 458-6410 or T.D.D.



(512) 458-7708 at least two days prior to the meeting.

Filed: August 30, 1995, 2:35 p.m.

TRD-9510984

Friday, September 15, 1995, 2:00 p.m.

Peach Room, Austin North Hilton and Towers, 6000 Middle Fiskville Road

Austin

Complaints Subcommittee

AGENDA:

The subcommittee will discuss and possibly act on the following complaints: FD/94-0005; FD/94-0019B; FD/94-0029A; FD/95-0018; FD/95-0021; FD/95-0022; FD/95-0027; FD/95-0029; FD/95-0030; FD/95-0031; FD/95-0032; and FD/95-0033.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6484. For ADA assistance, contact Richard Butler (512) 458-6410 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: August 30, 1995, 2:25 p.m.

TRD-9510976

Friday, September 15, 1995, 3:30 p.m.

Peach Room, Austin North Hilton and Towers, 6000 Middle Fiskville Road

Austin

Ethics Subcommittee

AGENDA:

The subcommittee will discuss and possibly act on details of the committee's purpose and time lines.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6484. For ADA assistance, contact Richard Butler (512) 458-6410 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: August 30, 1995, 2:25 p.m.

TRD-9510977

Friday, September 15, 1995, 4:30 p.m.

Peach Room, Austin North Hilton and Towers, 6000 Middle Fiskville Road

Austin

Rules Subcommittee

AGENDA:

The subcommittee will discuss and possibly act on proposed rules and changes in statute effective September 1, 1995.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6484. For ADA assistance, contact Richard Butler (512) 458-6410 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: August 30, 1995, 2:25 p.m.

TRD-9510978

Saturday, September 16, 1995, 8:30 a.m.

Peach Room, Austin North Hilton and Towers, 6000 Middle Fiskville Road

Austin

AGENDA:

The committee will discuss and possibly act on: approval of the minutes from the April 29, 1995 meeting; subcommittee reports (application; complaints; continuing education; ethics; and rules); fitting and dispensing of hearing instruments examination; committee president report; executive director's report; and setting of the next meeting date.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6484. For ADA assistance, contact Richard Butler (512) 458-6410 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: August 30, 1995, 2:25 p.m.

TRD-9510979

## Texas Department of Insurance

Wednesday, September 13, 1995, 9:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

454-95-0900.D

In Re: American Consumer Alliance, Inc.; Association Disapproval

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: August 31, 1995, 8:44 a.m.

TRD-9511029

## Lamar University System

Tuesday, August 29, 1995, 2:00 p.m.

Lamar University, Port Arthur Student Center, 1500 Proctor

Port Arthur

Emergency Revised Agenda

Board of Regents

AGENDA:

Convene Executive Committee

Reason for emergency: A reasonably unforeseeable situation may take place in that

there may not be a quorum for the posted meeting of the Lamar University Board of Regents meeting. Therefore, pursuant to the Lamar University System Policy Manual and in accordance with the Texas Government Code, Open Meetings Act, §551.045, a meeting of the Lamar University System Board of Regents Executive Committee will be held to act on the matters posted.

Contact: Joseph E. Champagne, P.O. Box 11900, Beaumont, Texas 77710, (409) 880-2304.

Filed: August 29, 1995, 11:49 a.m.

TRD-9510907

## Texas Natural Resource Conservation Commission

Monday, October 16, 1995, 10:00 a.m.

Building F, Room 31034, 12015 Park 35 Circle

Austin

Office of Hearings Examiners

AGENDA:

Notice of public hearing on assessment of administrative penalties and requiring certain actions of Magnum Corporation, TNRCC Docket Number 95-0903-PST-E.

Contact: Kerry Sullivan, Mail Code 102, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: August 31, 1995, 9:37 a.m.

TRD-9511042

## Board of Nurse Examiners

Tuesday, September 12, 1995, 3:30 p.m.

Beaumont Hilton, Presidential Suite, 2355 IH-10 South

Beaumont

Executive Committee

AGENDA:

Call to order

Roll call

Minutes of May 9, 1995 meeting

1. Old business

1.1. August retreat

2. New business

2.1. Board meeting agendas

2.2. Role of executive director

2.3. Role of president

2.4. Role of Executive Committee

Adjourn

Contact: Erlene Fisher, Box 140466,  
Austin, Texas 78714. (512) 835-8675.

Filed: August 30, 1995, 10:21 a.m.

TRD-9510961

**Tuesday, September 12, 1995, 5:00 p.m.**  
Beaumont Hilton, Presidential Suite, 2355  
IH-10 South

Beaumont

Search Committee

AGENDA:

The Search Committee of the Board of  
Nurse Examiners will meet at 5:00 p.m.,  
Tuesday, September 12, 1995, in executive  
session for the purpose of discussing per-  
sonnel matters.

Contact: Erlene Fisher, Box 140466,  
Austin, Texas 78714. (512) 835-8675.

Filed: August 30, 1995, 10:21 a.m.

TRD-9510962

**Wednesday, September 13, 1995, 8:00  
a.m.**

Beaumont City Hall, 801 Main Street

Beaumont

Revised Agenda

AGENDA:

Under 8. Old business, add 8.5. Consider  
adoption of repeal and new rules Chapter  
213. Practice and Procedure.

Contact: Erlene Fisher, Box 140466,  
Austin, Texas 78714. (512) 835-8675.

Filed: August 30, 1995, 10:21 a.m.

TRD-9510963

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**Texas State Board of Phar-  
macy**

**Wednesday, September 13, 1995, 1:00  
p.m.**

One Capitol Square, 300 West 15th Street,  
Fifth Floor, Room 502

Austin

Disciplinary Hearing

AGENDA:

The State Office of Administrative Hearings  
will conduct a disciplinary hearing in the  
matter of Texas State Board of Pharmacy  
vs. Michael Lee Claussen, R.Ph. TSBP  
#29817 Case #L-95-006.

Contact: Carol Fisher, 8505 Cross Park  
Drive #110, Austin, Texas 78754-4594,  
(512) 832-0661.

Filed: August 29, 1995, 3:32 p.m.

TRD-9510917

**Public Utility Commission of  
Texas**

**Wednesday, September 6, 1995, 9:00 a.m.**

7800 Shoal Creek Boulevard

Austin

AGENDA:

There will be an open meeting for discus-  
sion, consideration, and possible action on:  
P.14359 publication of amendments to rules  
23.11, 23.12, 23.21, 23. 43, 23.54, and  
23.58; P.14437 publication of an amend-  
ment to rule 23.11; P. 14466 publication of  
an amendment to rule 23.57; P.14557 publi-  
cation of a new rule 23.96; P.14558 publi-  
cation of an amendment to 23.12; P.14559  
publication of an amendment to 23.54;  
D.13732 Office of Public Utility Counsel to  
Inquire into the Reasonableness of the Rates  
and Services of Contel of Texas, Inc.; D.  
13949 West Texas Utilities for Approval of  
Deferred Accounting Treatment of Certain  
Oklauiou Related Costs; request to publish  
questions concerning revisions to the Earn-  
ings reports and related reporting require-  
ments; staff report on evaluation of cus-  
tomer complaints related to Entergy  
Corporation and Gulf States Utilities Com-  
pany; commission rules on transmission ac-  
cess and pricing and stranded investment;  
procedures for administrative certification  
of Electric Cooperative deregulation; pay  
telephone registration; FCC in response to a  
notice of proposed rulemaking relating to  
Universal Service (FCC Docket 80-286);  
agency restructuring; agency administrative  
procedures; budget and fiscal matters ad-  
journalment for closed session to consider  
litigation and personnel matters; reconvene  
for discussion and decisions on matters con-  
sidered in closed session.

Contact: Paula Mueller, 7800 Shoal Creek  
Boulevard, Austin, Texas 78757. (512)  
458-0241.

Filed: August 29, 1995, 2:01 p.m.

TRD-9510913

**Wednesday, September 6, 1995, 1:30 p.m.**

7800 Shoal Creek Boulevard

Austin

Hearings Division

AGENDA:

A prehearing conference is scheduled for  
the above date and time in Docket Number  
14499: Petition of Southwestern Public Ser-  
vice Company for findings of special cir-  
cumstances and for associated waivers.

Contact: Paula Mueller, 7800 Shoal Creek  
Boulevard, Austin, Texas 78757. (512)  
458-0100.

Filed: August 29, 1995, 2:01 p.m.

TRD-9510912

**Friday, September 8, 1995, 9:00 a.m.**

7800 Shoal Creek Boulevard

Austin

Hearings Division

AGENDA:

A prehearing conference will be held on the  
above date and time in Docket Number  
14454: Petition of Lamb County Electric  
Cooperative, Inc., for a cease and desist  
order against Southwestern Public Service  
Company.

Contact: Paula Mueller, 7800 Shoal Creek  
Boulevard, Austin, Texas 78757. (512)  
458-0100.

Filed: August 29, 1995, 3:39 p.m.

TRD-9510918

**Monday, October 9, 1995, 9:00 a.m. (Re-  
scheduled from: Monday, September 11,  
1995, 9:00 a.m.)**

7800 Shoal Creek Boulevard

Austin

Hearings Division

AGENDA:

A rescheduled hearing on the merits will be  
held on the above date and time in Docket  
Number 14447: Petition of MCI Telecom-  
munications Corporation for an investiga-  
tion of the practices of Southwestern Bell  
Telephone Company regarding the 214  
numbering plan area and request for a cease  
and desist order against Southwestern Bell  
Telephone Company.

Contact: Paula Mueller, 7800 Shoal Creek  
Boulevard, Austin, Texas 78757. (512)  
458-0100.

Filed: August 30, 1995, 4:18 p.m.

TRD-9511014

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**Texas County and District  
Retirement System**

**Thursday-Friday, September 7-8, 1995,  
9:00 a.m. and 8:30 a.m., respectively.**

Doubletree Guest Quarters, 303 West 15th  
Street

Austin

Board of Trustees

AGENDA:

Opening of regular board meeting.

Review and approval of: June and July  
1995 board minutes; service and disability  
retirements; escheatment of terminated ac-  
counts; write-off of uncollectible benefit  
payments made in error; administrative ex-  
pense budget provision and Endowment

Fund transfer; subdivision applications for participation; financial statements; statutory reduction in credits—El Paso Water Authority.

Consider and act on: Matters pertaining to the leasing, furnishing and construction of office building; selection of independent financial auditor and independent investment performance auditor; engagement of special counsel for review of fiduciary responsibility; proposed Board of Trustees by-laws; investment asset allocation recommendations; corporate resolution with Boston Safe Deposit and Trust Company; administrative and investment policies, practices; budgets and personnel.

Reports from: Actuary, investment officer, Investment Committee, legal counsel, chairman and director. Set date of December meeting. Adjournment.

Contact: Terry Horton, 400 West 14th Street, Austin, Texas 78701, (512) 476-6651.

Filed: August 29, 1995, 11:00 a.m.

TRD-9510904

### **Texas Municipal Retirement System**

Thursday, September 14, 1995, 9:00 a.m.

The Hyatt Regency, 208 Barton Springs Road

Austin

Special Workshop Meeting, Board of Trustees

#### **AGENDA:**

Workshop meeting for Board of Trustees and staff to discuss goals, objectives, and strategies for the system and receive reports from staff and consultants on current issues. No action will be taken on any item discussed during this meeting.

Contact: Gary W. Anderson, P.O. Box 149153, Austin, Texas 78714-9153, (512) 476-7577.

Filed: August 30, 1995, 4:18 p.m.

TRD-9511015

Friday, September 15, 1995, 9:00 a.m.

1200 North IH-35

Austin

Regular Meeting, Board of Trustees

#### **AGENDA:**

To hear and approve minutes of the June 30, 1995, meeting; review and approve Service Retirements, Disability Retirements; review and approve Supplemental Death Benefits payments; consider Extended Supplemental Death Benefits coverage; review

and act on financial statements; consider and act on proposed by-laws for the Board of Trustees; consider and act on proposal by consulting actuaries to conduct comprehensive benefit analysis; consider and act on amendment to investment policy pursuant to House Bill 2168; consider and act on proposal for audit services for year-ending December 31, 1995; reports by staff and director; report by legal counsel; consider any business to come before the board.

Contact: Gary W. Anderson, P.O. Box 149153, Austin, Texas 78714-9153, (512) 476-7577.

Filed: August 30, 1995, 4:18 p.m.

TRD-9511016

### **Teacher Retirement System of Texas**

Tuesday, September 12, 1995, Noon.

1000 Red River, Room 420E

Austin

Medical Board

#### **AGENDA:**

Discussion of 1) the files of members who are currently applying for disability retirement and 2) the files of disability retirees who are due a re-examination report.

Contact: Don Cadenhead, 1000 Red River, Austin, Texas 78701-2698, (512) 397-6400.

Filed: August 31, 1995, 9:26 a.m.

TRD-9511039

### **The Texas A&M University System, Board of Regents**

Friday, September 1, 1995, 3:00 p.m. (or upon adjournment of the meeting of the Committee for Land and Mineral Resources)

Texas A&M University, MSC, Room 292, Joe Rouff Boulevard

College Station

Revised Agenda

Board of Regents

#### **AGENDA:**

In addition to the agenda that was posted on August 25, 1995, to be published in the September 1, 1995 issue, Docket Number 9510790, the following items will be considered for board action: Authorization for the Director of Texas Engineering Extension Service to pursue litigation or other legal resolutions in regard to TEST, Inc. and associated trademark infringement and approval to settle all matters relating to will contests and other contested issues affecting and relating to the estates of Helen Patricia

Link, J. W. Link and Helen Wicks Link and to take all other actions and enter into all agreements necessary to effectuate the settlement.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 945-9600.

Filed: August 29, 1995, 12:23 p.m.

TRD-9510908

### **Texas Workforce Commission**

Tuesday, September 6, 1995, 9:00 a.m.

Room 644, TEC Building, 101 East 15th Street

Austin

#### **AGENDA:**

Prior meeting notes; consideration and possible approval of bid for interior and exterior renovations at the Houston Spring Branch TEC building; consideration and possible approval of bid for interior and exterior renovations at the Houston Austin Street agency-owned building; consideration and possible approval of bid for interior and exterior renovations at the Houston Beechnut agency-owned building; staff reports; internal procedures of commission appeals; consideration and action on higher level appeals in unemployment compensation cases listed on Commission Docket 36; and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: August 29, 1995, 4:09 p.m.

TRD-9510921

### **Regional Meetings**

Meetings Filed August 29, 1995

The Central Plains Center for MHMR and SA Board of Trustees met at 208 South Columbia, Plainview, September 1, 1995, at 4:00 p.m. Information may be obtained from Gail P. Davis, 2700 Yonkers, Plainview, Texas 79072, (806) 293-2636. TRD-9510905.

The Millersview-Doole Water Supply Corporation Board of Directors will meet one block west of FM Highway 765 and FM Highway 2134, Millersview, September 5, 1995, at 8:00 p.m. Information may be obtained from Glenda M. Hampton, P.O. Box E, Millersview, Texas 76862-1005, (915) 483-5438. TRD-9510914.

**Meetings Filed August 30,  
1995**

The Austin-Travis County MHMR Center Public Relations Committee will meet at 1430 Collier Street, Austin, September 6, 1995, at 12:30 p.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141. TRD-9510935.

The Kendall Appraisal District Appraisal Review Board will meet at 121 South Main Street, Boerne, September 18, 1995, at 9:00 a.m. Information may be obtained from Mick Mikulenska or Tammy Johnson, P.O. Box 788, Boerne, Texas 78006, (210) 249-8012, Fax: (210) 249-3975. TRD-9510936.

The Kendall Appraisal District Appraisal Review Board will meet at 121 South Main Street, Boerne, September 19, 1995, at 9:00 a.m. Information may be obtained from Mick Mikulenska or Tammy Johnson, P.O. Box 788, Boerne, Texas 78006, (210) 249-8012, Fax: (210) 249-3975. TRD-9510937.

The Kendall Appraisal District Appraisal Review Board will meet at 121 South Main Street, Boerne, September 20, 1995, at 9:00 a.m. Information may be obtained from Mick Mikulenska or Tammy Johnson, P.O. Box 788, Boerne, Texas 78006, (210) 249-8012, Fax: (210) 249-3975. TRD-9510938.

The Kendall Appraisal District Appraisal Review Board will meet at 121 South Main Street, Boerne, September 21, 1995, at 9:00 a.m. Information may be obtained from Mick Mikulenska or Tammy Johnson, P.O. Box 788, Boerne, Texas 78006, (210) 249-8012, Fax: (210) 249-3975. TRD-9510939.

The Limestone County Appraisal District Board of Directors will meet at 200 State Street, LCAD Office, Ground Floor, County Courthouse, Groesbeck, September 12, 1995, at 1:30 p.m. Information may be obtained from Karen Wietzikoski, P.O. Drawer 831, Groesbeck, Texas 76642, (817) 729-3009. TRD-9510972.

The Nolan County Central Appraisal District Board of Directors will meet at the Nolan County Courthouse, 100 East Third Street, Third Floor, Sweetwater, September 12, 1995, at 7:00 a.m. Information may be obtained from Patricia Davis, P.O. Box 1256, Sweetwater, Texas 79556, (915) 235-8421. TRD-9510964.

The Nolan County Central Appraisal District Board of Directors will meet at the Nolan County Courthouse, 100 East Third Street, Third Floor, Sweetwater, September 12, 1995, at 7:00 a.m. Information may be obtained from Patricia Davis, P.O. Box 1256, Sweetwater, Texas 79556, (915) 235-8421. TRD-9510965.



**Meetings Filed August 31,  
1995**

The Bell-Milam-Falls WSC Board will meet at the Office-FM 485 West, Cameron, September 7, 1995, at 8:30 a.m. Information may be obtained from Dwayne Jekel, P.O. Drawer 150, Cameron, Texas 76520, (817) 697-4016. TRD-9511026.

The Dawson County Central Appraisal District Board of Directors will meet at 1806 Lubbock Highway, Lamesa, September 6, 1995, at 7:00 a.m. Information may be obtained from Tom Anderson, P.O. Box 797, Lamesa, Texas 79331, (806) 872-7060. TRD-9511043.

The Harris County Appraisal District will meet at 2800 North Loop West, Eighth Floor, Houston, September 8, 1995, at 8:00 a.m. Information may be obtained from Susan Joidan, 2800 North Loop West, Houston, Texas 77092, (713) 957-5222. TRD-9511027.

The Kempner Water Supply Corporation Board of Directors will meet at Highway 190, Kempner, September 5, 1995, at 6:30 p.m. Information may be obtained from Donald W. Guthrie, P.O. Box 103, Kempner, Texas 76539, (512) 932-3701. TRD-9511028.

The Stephens County Rural WSC Board (Regular Monthly Board Meeting) will meet at 301 West Elm Street, Breckenridge, September 7, 1995, at 7:30 p.m. Information may be obtained from Mary Barton, P.O. Box 1621, Breckenridge, Texas 76424, (817) 559-6180. TRD-9511041.



# IN ADDITION

The **Texas Register** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

## Texas Commission on Alcohol and Drug Abuse

### Notice of Request for Proposals

Under the authority of the Texas Health and Safety Code, Title 6, Subtitle B, Chapter 461, the Texas Commission on Alcohol and Drug Abuse (the Commission) has established the Treatment Services Request for Proposals (TS96/97 RFP) through which it will purchase community-based treatment services for medically-indigent, chemically-dependent persons from licensed providers throughout the state of Texas.

To request a copy of the RFP, please call Susan Beaubien at (512) 867-8752, or write to: Texas Commission on Alcohol and Drug Abuse, Program Resources and Management Assistance Department, 710 Brazos, Suite 433, Austin, Texas 78701-2576. For convenience, the Program Narrative and application forms of the RFP are available on a 3 1/2" computer diskette. The Provider Compliance Guide is also available on the same diskette and should be referred to when responding to questions in the RFP. If a diskette is needed please request one when asking for a copy of the RFP at the number mentioned. When requesting a diskette, please designate the version (either PC or Macintosh).

The closing date for receipt of applications by TCADA is 5:00 p.m. on Wednesday, October 4, 1995.

The procedure by which the agency will award funds will be based on the objective of the commission to achieve a continuum of care in each of the state's Health and Human Services Commission (HHSC) Regions including, but not limited to, the provision of as wide a variety of treatment services as public funding allows. Additionally, the commission expects providers interested in seeking funding to fully utilize other health and human service systems available in their areas to serve the other needs of the individual or families seeking help. Only through effective agreements among service providers can programs funded through this RFP seek to improve the outcomes of the clients served. The commission also expects providers to seek other funding from local, corporate, or private sources to defray the cost of services.

Due to declining revenues and increasing demands for service, the commission has established funding priorities for Adult General Populations, Youth General Populations, Specialized Populations of Pregnant Females and Females with Dependent Children, and Civil Court Committed chemically dependent adults. Additional information regarding funding priorities can be found in the RFP.

Eligible applicants are public, incorporated private non-profit or for-profit organizations that have been licensed at the level and service they are proposing for 180 days prior to the date of the award, unless funds are being sought for developmental purposes.

In response to the legislative mandate (TCADA's Rider 23) of Article II, State Appropriations Act, an interagency contract will be developed between the commission and the University of Texas Health Science Center to fund the Houston Recovery Campus Project. No funds will be available for adult treatment services in Harris county except through the Campus Project.

Therefore, only applicants with service locations outside of Harris County who propose to serve clients who live outside of Harris County, but within the boundaries of HHSC Region 6, are eligible to apply for adult treatment services through this RFP. Note: There are funds allocated in HHSC Region 6, including Harris county, for youth, specialized female, methadone, and Civil Court Commitment services, for which providers may apply through this RFP.

Additional provider eligibility standards can be found in the RFP.

The award period for applications funded under this RFP will be on or about January 1, 1996 through August 31, 1997, subject to appropriations.

The commission pays funds through two payment mechanisms under these grants: (1) Object of Expense (Financial Assistance)-Note: This payment mechanism for treatment services will only be utilized for the development of new programs, subject to approval by the Commission; and (2) Unit Cost Competitive Procurement-Unit Cost payments under a grant are for services bid and are used when the end product can be described in detail.

Additional information regarding these grants can be found in the RFP.

The Commission currently administers two sources of public funds that can be used for treatment services: (1) Substance Abuse Prevention and Treatment Block Grant (SAPT), Part B, Public Health Services Act; Fiscal Year 1995/1996; and (2) Article II, State Appropriations Act; Fiscal Year 1995 (For-profit entities can only receive funding through this source, which is limited.) The RFP contains a chart which shows the annual estimated percentage of funds that will be allocated to each region.

Technical assistance will be provided in writing for questions related to Part 5, Program Narrative and the Bid Proposal sections of the RFP. Questions are due to the commission by Friday, September 15, 1995. The questions

will be addressed during a workshop to be held on Monday, September 25, 1995 from 9:00 a.m. to 4:00 p.m. at The University of Texas, Commons Building, 10100 Burnet Road, Austin, Texas. Technical assistance over the phone will be limited to forms completion and submission requirements. Only staff in the Program Resources and Management Assistance Department are to be contacted at the commission. Call 1-800-832-9623, extension 8265 or (512) 867-8265 for assistance.

Individuals needing auxiliary aids or services should notify Susan Beaubien at 1-(800)-832-9623, extension 8113 or (512) 867-8113 at least two working days prior to the workshop by mail or telephone.

Issued in Austin, Texas, on August 29, 1995.

TRD-9510915  
Thomas Mann, Jr.  
Legal Counsel  
Texas Commission on Alcohol and Drug  
Abuse

Filed. August 29, 1995

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**State Auditor's Office**  
**Consultant Proposal Request**

Notice of Invitation for Proposal. The State Auditor's Office, acting on behalf of the Legislative Audit Committee, invites offers of services from independent firms for the purposes of obtaining a comprehensive insurance program review of the Teacher Retirement System (System).

General Information. The System was established by amendment to the Texas Constitution in 1936 and enactment of statutes in 1937 to provide a retirement program for persons employed in public education in professional and business administration, supervision, and instruction. A general overview of the powers and duties of the System are set forth in the Texas Constitution, Article XVI, Section 67, and in Texas Government Code, Title 8, Subtitle C. The System also administers proportional retirement benefits under Texas Government Code, Chapter 803, Title 8. The System has approximately 395 employees and an annual budget of \$29.7 million. The System's responsibilities include the maintenance of an actuarially sound retirement system and the provision of health insurance services to retirees and active public school employees. To meet these responsibilities, the System must prudently manage its \$38.9 billion (market value) investment portfolio. The retiree insurance program, TRS-Care, administered by the System, is designed as a comprehensive major medical plan. It also provides benefits for covered expenses which are not paid by Medicare for those participants who have Medicare Part A. The plan assumes that all Medicare-eligible participants have Medicare Part B. There is a \$1.3 million lifetime maximum benefit. The maximum annual co-insurance limit is \$6,250. At August 31, 1994, TRS-Care had a total enrollment of 106,369, which includes retirees, surviving spouses, surviving dependent children, and dependents. The passage of the Texas Public School Employees Group Insurance Act in 1995 extended TRS-Care health insurance program benefits to active employees beginning with the 1996-1997 school year.

Description of Project. This review is intended to provide an independent and comprehensive evaluation of all aspects of the System's insurance functions. Specific areas to be evaluated include the following:

Program Issues--TRS Care 1, 2, and 3.

Retiree Insurance Programs.

Administration, cost, and coverage compared to similar programs.

Alternative approaches to current program design--Active Member.

Program, Funding, Plan design and cost, Risk selection, risk classification, or rating methodologies.

Program Management and Operational Issues--Board of Trustees/Committees.

Oversight Responsibilities--Policies and Procedures.

Organizational Structure--Insurance Department and Management Performance.

Reporting and Communication.

Delegation of Administrative Duties.

The Legislative Audit Committee may delegate duties associated with the solicitation, evaluation, and selection of proposals and with the management of a resulting contract to the State Auditor's Office and/or an advisory group selected by the Committee, subject to such ratification or approval as the Committee determines to be necessary.

Proposal Instructions. Detailed specifications concerning this project will be made available in proposal preparation instructions, which may be obtained on or after September 5, 1995, by submitting a written request to: Teacher Retirement System Insurance Program Review, Legislative Audit Committee, c/o the State Auditor's Office, P.O. Box 12067, Austin, Texas, 78711-2067, attn: Carol Smith. In order to ensure that all offerors have the same information and instructions concerning the preparation of proposals, all communications between offerors and the Legislative Audit Committee prior to the closing date for receipt of proposals shall be in writing.

Closing Date for Receipt of Proposals. Written proposals offering to provide the requested services may be hand delivered to the State Auditor's Office at 206 East 9th Street, 19th Floor, Austin, Texas, between the hours of 8 a.m. and 5:00 p.m., Monday-Friday, or sent by certified mail to the address specified above. Proposals must be received no later than 5:00 p.m. on September 28, 1995, except that proposals postmarked on or before September 28, 1995, and received subsequent to the closing date will also be considered.

Selection Process. An advisory group designated by the Legislative Audit Committee will evaluate proposals submitted by offerors. In evaluating proposals, the advisory group will consider: 1) the demonstrated competence, knowledge, and experience of the firm as a whole in analyzing group insurance programs and of the professional staff who will work on the review; 2) the firm's technical expertise in analyzing the insurance operations of public retirement systems; 3) the extent to which the firm's proposed services accomplish the purposes and specifications of this Consultant Proposal Request and the instructions; 4) the reasonableness of costs for the services proposed; 5) the extent of the firm's prior and current business relationships with the System; and 6) when other considerations are equal, a firm whose principal place of business is within the State of Texas, or who will manage the engagement wholly from one of its offices within the State of Texas, will be given preference. Historically

Underutilized Businesses are encouraged to submit or participate in the submission of proposals.

**Project Timing and Cost.** Contingent upon the negotiation of a contract with the offeror selected, the period of performance for the engagement is anticipated to be October 16, 1995-March 1, 1996. The firm selected to conduct the engagement will also be required to submit periodic progress reports as requested by the Legislative Audit Committee or its designee(s). The reasonableness of costs for the services proposed will be considered in the final decision.

**General Terms and Conditions.** The Legislative Audit Committee or its designee(s) reserve the right to accept or reject any (or all) proposals submitted. The information contained in this Consultant Proposal Request is intended to serve only as a general description of the services desired. Additional terms and conditions relating to this Consultant Proposal Request will be provided in the proposal preparation instructions. The responses hereto will be used as a basis for further negotiation of specific project details with offerors. Issuance of this Consultant Proposal Request creates no obligation to award a contract or to pay any costs incurred in the preparation of a proposal.

Issued in Austin, Texas, on September 5, 1995.

TRD-9510960      Lawrence F. Alwin, CPA  
State Auditor  
Office of the State Auditor

Filed: August 30, 1995

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**Office of Consumer Credit  
Commissioner**

**Notice of Rate Ceilings**

The Consumer Credit Commissioner of Texas has ascertained the market competitive rate ceiling by use of the formulas and methods described in Title 79, Texas Civil Statutes, Article 6.03 §6, as amended (Texas Civil Statutes, Article 5069-6.03 §6.). The market competitive rate ceiling for the period October 1, 1995, through September 30, 1996, is 21%.

Issued in Austin, Texas on August 29, 1995.

TRD-9510891      Leslie L. Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner

Filed: August 29, 1995

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**Texas Department of Health**

**Notice of Intent to Revoke Radioactive  
Material Licenses**

Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13 (25 Texas Administrative Code, §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following licensees: Polytex Fibers Corporation, Houston, G01608; Bloodcare, Dallas, L00630; Heights Hospital, Houston, L01782; B & W Equipment Sales and Manufacturing, Inc., Odessa, L04762.

The department intends to revoke the radioactive material

licenses; order the licensees to cease and desist use of such radioactive materials; order the licensees to divest themselves of the radioactive material; and order the licensees to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the licensees for a hearing to show cause why the radioactive material licenses should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the radioactive material licenses will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on August 28, 1995.

TRD-9510868      Susan K. Steeg  
General Counsel  
Texas Department of Health

Filed: August 28, 1995

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**Texas Department of Human Services  
Public Notice Open Solicitation of  
LaSalle County**

Pursuant to Title 2, Human Resources Code, Chapters 22 and 32 and 40 TAC §19.2324, in the March 31, 1995, issue of the *Texas Register* (20 TexReg 2443), the Texas Department of Human Services (TDHS) is announcing the reopening of the open solicitation period for LaSalle County, County Number 142, identified in the April 18, 1995, issue of the *Texas Register* (20 TexReg 2959). Potential contractors desiring to construct a 90-bed nursing facility in the above referenced county must submit a written reply (as described in 40 TAC §19.2324) to TDHS, Gary L. Allen, Certification, Provider Enrollment and Billing Services, Long Term Care-Regulatory, Mail Code (Y-976), P.O. Box 149030, Austin, Texas 78714-9030. Upon receipt of a reply from a potential contractor, TDHS will place a notice in the *Texas Register* to announce the closing date of the reopened solicitation period.

Issued in Austin, Texas, on August 3, 1995.

TRD-9510920      Nancy Murphy  
Section Manager, Media and Policy  
Services  
Texas Department of Human Services

Filed: August 29, 1995

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**Texas Department of Insurance  
Company License**

The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application for admission in Texas for Phoenix Indemnity Insurance Company, a foreign fire and casualty company. The home office is in Phoenix, Arizona.

Application for a name change in Texas for Texas Employers Indemnity Company, a foreign fire and casualty company. The proposed new name is Armor casualty Insurance Company. The home office is in Tampa, Florida.

Application for a name change in Texas for Keyport America Life Insurance Company, a foreign life, accident and health company. The proposed new name is Independence Life and Annuity Company. The home office is in Providence, Rhode Island.

Application for a name reservation in Texas for National Dental Maintenance Organization, Inc., a domestic health maintenance organization. The home office is in San Antonio, Texas.

Application for a name reservation in Texas for MetraHealth Care Plan, Inc., a domestic health maintenance organization. The home office is in Irving, Texas.

Application for a name reservation in Texas for Healthcare Partners HMO, a domestic health maintenance organization. The home office is in Tyler, Texas.

Application for a name reservation in Texas for FHP of New Mexico, Inc., a foreign health maintenance organization. The home office is in Albuquerque, New Mexico.

Application for a name reservation in Texas for FHP of El Paso doing business as for FHP of New Mexico, Inc., a foreign health maintenance organization. The home office is in Albuquerque, New Mexico. Any objections must be filed within 20 days after this notice was filed with the Texas Department of Insurance, addressed to the attention of Cindy Thurman, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

Issued in Austin, Texas, on August 30, 1995.

TRD-9510959 Alicia M. Fecthel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: August 30, 1995

## Notice of Public Hearing

The Commissioner of Insurance will hold a public hearing under Docket Number 2173 on September 27, 1995 at 9:00 a.m. in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, to consider the adoption of proposed amendments to 28 TAC §§3.3701, 3.3702, 3.3704, 3.3705 and 28 TAC §§11.1, 11.2, 11.204, 11.301, 11.1103, 11.1500-1502, 11.1600-11.1603, concerning health maintenance organizations (HMOs) and preferred provider plans (PPOs). The purpose of this hearing is to receive oral comments from interested persons.

The Texas Department of Insurance has proposed amendments to 28 TAC §§3.3701, 3.3702, 3.3704, 3.3705 and 28 TAC §§11.1, 11.2, 11.204, 11.301, 11.1103, 11.1500-1502, 11.1600-11.1603 to maintain quality of health care for all Texans at affordable prices and to establish procedures for fairness to health care providers. Protection of patients in the rapidly changing health care marketplace requires these updated regulations. These proposed amendments are necessary to assist consumers in

making informed choices among health care plans; to prohibit retaliation against enrollees and group contract holders (employers) for filing complaints or appealing decisions of a managed care plan; to provide for continuity of patient care; to provide for reimbursement of medically necessary emergency care services; to provide fairness to physicians and providers not designated as plan providers or terminated from the plan; and to assist the department in evaluating quality and costs of health care.

Individuals attending who wish to present comments will be asked to register immediately prior to the hearing. Individuals may present oral comments of up to five minutes in length when called upon in order of registration. Individuals who present oral comments are asked to specify at the beginning of their comments whether they wish to address the HMO rules, PPO rules or both, and the sections of the proposed rules to which their comments apply.

The proposed amendments and the statutory authority for the proposed amendments were published in the July 25, 1995, issue of the *Texas Register* (20 TexReg 5471).

Issued in Austin, Texas, on August 30, 1995.

TRD-9510957 Alicia M. Fecthel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: August 30, 1995

## Third Party Administrator Applications

Application for admission to Texas of CaliforniaCare Health Plans, a foreign third party administrator. The home office is Thousand Oaks, California.

Application for admission to Texas of Mid-America National Agency, Inc., a foreign third party administrator. The home office is Overland Park, Kansas.

Application for incorporation in Texas of Michael L. Lindsey, (doing business as Professional Administrative Services), a domestic third party administrator. The home office is Porter, Texas.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

Issued in Austin, Texas, on August 30, 1995.

TRD-9510958 Alicia M. Fecthel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: August 30, 1995

## Texas Department of Mental Health and Mental Retardation

### Notice of Cancellation of Public Hearing

The Texas Department of Mental Health and Mental Retardation (TDMHMR) has cancelled the public hearing scheduled for 2:00 p.m., Tuesday, September 5, 1995, to receive comments on the department's proposed reimbursements for the following Medicaid programs: home and community-based services; home and community-based services-OBRA; case management (MH and MR); rehabilitation services; and institutions for mental diseases.



The announcement of that public hearing appeared in the August 22, 1995, issue of the *Texas Register* (20 TexReg 6516). The hearing has been rescheduled for 8:30 a.m., Friday, September 8, 1995, in the TDMHMR Central Office auditorium (main building) at 909 West 45th Street in Austin, Texas. A complete announcement of the rescheduled hearing appears in this issue of the *Texas Register*. Questions should be directed to the Data Analysis Section, Medicaid Administration, Texas Department of Mental Health and Mental Retardation, at (512) 323-3870 or faxed to (512) 323-3250.

Issued in Austin, Texas, on August 29, 1995.

TRD-9510925

Ann K. Utley  
Chair, Texas MHMR Board  
Texas Department of Mental Health and  
Mental Retardation

Filed: August 29, 1995

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**Notice of Public Hearing on Medicaid Rates**

The Texas Department of Mental Health and Mental Retardation (TDMHMR) will conduct a public hearing to receive comments on the department's proposed reimbursements for the following Medicaid programs: home and community-based services; home and community-based services-OBRA; case management (MH and MR); rehabilitation services; and institutions for mental diseases. The public hearing is held in compliance with Title 25, Texas Administrative Code, Chapter 409, Subchapter A, §409.002(j), which requires a public hearing on proposed reimbursement rates for medical assistance programs. The hearing will be held at 8:30 a.m., Friday, September 8, 1995, in the TDMHMR Central Office auditorium (main building) at 909 West 45th Street in Austin, Texas. (Please note that this is a change from the previous notice of a hearing on Tuesday, September 5, 1995.) Persons who wish to offer testimony but who are unable to attend the hearing may submit written comments which must be received by noon the day of the hearing. The written comments should be sent to the Data Analysis Section, Medicaid Administration, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668 or faxed to (512) 323-3250. Interested parties may obtain a copy of the reimbursement briefing package by calling the Data Analysis Section at (512) 323-3870. If interpreters for the hearing impaired are required, please contact the Data Analysis Section at the number listed at least 72 hours in advance of the hearing.

Issued in Austin, Texas, on August 29, 1995.

TRD-9510924

Ann K. Utley  
Chair, Texas MHMR Board  
Texas Department of Mental Health and  
Mental Retardation

Filed: August 29, 1995

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**Texas Natural Resource Conservation Commission**

**Notice of Availability and Request for Comments**

The Texas Natural Resource Conservation Commission (TNRCC) announces Notice and availability of a regional solid waste management plan proposed by the Panhandle

Regional Planning Council (PRPC) and a 30 day period for public comment on the plan.

Notice is hereby given that the document entitled, *Panhandle Regional Solid Waste Management Plan*, is available for public review and comment. Regional solid waste management plans are required by the Texas Health and Safety Code, Chapter 363 (*Comprehensive Municipal Solid Waste Management, Recovery, and Conservation Act, 1990*) for each of the established regional planning agencies (COGs) in the state, which have been officially designated as solid waste management planning regions. The PRPC region includes the counties of Armstrong, Briscoe, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, and Wheeler. The plan describes current solid waste management efforts in the region, assesses problems and needs, and provides recommendations for future action. The plan was developed with the input of a solid waste advisory committee composed of various public and private interests; meetings of this advisory committee were open to the general public. In addition, numerous public meetings and formal public hearings concerning the plan were held in accordance with guidelines of TNRCC. Immediately upon adoption by TNRCC, the plan will have rule status. Subchapter O of *Municipal Solid Waste Regulations* (§330.568) will be amended at a later date to include, by reference, all adopted regional solid waste management plans in the state.

The interested public is invited to submit written comments on the proposed regional plan to the Texas Natural Resources Conservation Commission. Written comments must be received by no later than 30 days from the publication date of this notice. Please address comments to: Daniel J. Eden, Director, MC 132, Waste Planning and Assessment Division, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas, 78711-3087.

Copies of the regional plan document are available for public review at the following two locations: Panhandle Regional Planning Commission, 415 West Eighth Avenue, Amarillo, Texas 79105, (806) 372-3381 and Texas Natural Resource Conservation Commission, Library, 12100 Park 35 Circle, Building A, First Floor, Austin, Texas 78753, (512) 239-0020.

The Texas Natural Resource Conservation Commission will consider formal adoption of this regional plan at a regular agenda meeting, after the close of the comment period.

Issued in Austin, Texas, on August 30, 1995.

TRD-9510934

Lydia Gonzalez-Gromatzky  
Acting Director, Legal Division  
Texas Natural Resource Conservation  
Commission

Filed: August 30, 1995

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**Notice of Petition to EPA**

The Texas Natural Resource Conservation Commission (TNRCC) proposes to conduct a hearing and solicit comments prior to submitting a petition to the United States Environmental Protection Agency (EPA) requesting an extension of the temporary nitrogen oxides (NO<sub>x</sub>) exemption, pertaining to the Houston/Galveston (HGA) and

Beaumont/Port Arthur (BPA) ozone nonattainment areas, previously granted by EPA under the Federal Clean Air Act (FCAA), §182(f). The FCAA, §182(f) allows the following federally required measures pertaining to NO<sub>x</sub> to be waived if the state demonstrates that NO<sub>x</sub> reductions do not contribute to ozone attainment: reasonably available control technology (RACT), nonattainment new source review, vehicle inspection/maintenance, and conformity. The TNRCC's request for extension of the temporary NO<sub>x</sub> exemption for transportation conformity will be evaluated by EPA under §182(b)(1), the applicable section of the FCAA.

On August 17, 1994, the TNRCC submitted a petition to EPA requesting a temporary §182(f) exemption for NO<sub>x</sub> requirements in HGA and BPA to allow the results of further Urban Airshed Model (UAM) modeling, using data from the Coastal Oxidant Assessment for Southeast Texas (COAST), an intensive 1993 field study, to guide the NO<sub>x</sub> reduction strategy. These UAM results are critical in determining whether, and to what extent, NO<sub>x</sub> reductions will be needed to attain the ozone standard. On April 12, 1995, EPA approved a temporary §182(f) exemption for all federally required NO<sub>x</sub> measures in HGA and BPA. The approval stipulates that the temporary exemption expires on December 31, 1996, and that NO<sub>x</sub> RACT rules must be implemented no later than May 31, 1997. Upon expiration of the temporary exemption, the state must either implement all required NO<sub>x</sub> measures or, if UAM modeling shows no ozone benefit from NO<sub>x</sub> reductions, obtain a permanent §182(f) exemption.

The schedule submitted in the state's original §182(f) petition for HGA and BPA was based on completion of the UAM COAST modeling for attainment demonstration purposes by May 31, 1996. Now, an adjusted schedule has been developed to be consistent with submittal of the state's phased attainment demonstration State Implementation Plan (SIP) by May 31, 1997. This additional year allows the UAM modeling, using COAST data, to accommodate improvements in the modeling process. Submittal of the UAM modeling in mid-1997 using the more refined COAST data will allow the development of better substantiated control programs and minimize the possibility that earlier modeling could result in unnecessary or even counterproductive control programs, particularly if NO<sub>x</sub> controls are determined to not be needed. EPA's approval of the petition to extend the temporary §182(f) NO<sub>x</sub> exemption and grant the temporary §182(b)(1) transportation conformity exemption would provide additional time necessary to perform the UAM modeling.

Due to a court settlement in April, 1995, EPA will henceforth consider exemptions from interim NO<sub>x</sub> transportation conformity requirements under §182(b)(1), but will continue to consider NO<sub>x</sub> exemptions for other requirements under §182(f). EPA guidance for §182(b)(1) requires that revisions to transportation conformity rules go through a public participation process before submittal to EPA as a SIP revision. Although this requirement for public notice, hearing, and comment period affects only transportation conformity, all NO<sub>x</sub> requirements affected by the temporary §182(f) exemption are being included in the notice and comment process.

For more information regarding the public hearing please reference the notice of public hearing also printed in this issue of the *Texas Register*. For further information, contact Mike Magee, Office of Policy and Regulatory Development, Air Policy and Regulations Division, at (512) 239-1511.

Issued in Austin, Texas, on August 23, 1995.

TRD-9510764

Lydia Gonzalez-Gromatzky  
Director, Legal Services Division  
Texas Natural Resource Conservation  
Commission

Filed August 24, 1995

## Notices of Public Hearing

Notice is hereby given that pursuant to the requirements of the Texas Health and Safety Code, §382.017 (Vernon's 1992); Texas Government Code, Subchapter B, Chapter 2001 (Vernon's 1993); and 40 Code of Federal Regulations; §51.102 of the United States Environmental Protection Agency (EPA) regulations concerning State Implementation Plans (SIP), the Texas Natural Resource Conservation Commission (TNRCC) will conduct public hearings to receive testimony regarding revisions to the SIP regarding the Post-96 Rate-of-Progress for the Houston/Galveston and Beaumont/Port Arthur ozone nonattainment areas.

In a March 2, 1995 memorandum, Mary Nichols, U.S. EPA Assistant Administrator for Air and Radiation, provided guidance to give states more flexibility in meeting the attainment demonstration requirement. This guidance now requires that states wishing to follow a phased attainment demonstration approach submit a "Fix-up" SIP by December 31, 1995, which includes five requirements for the first phase.

In November 1994, Texas submitted the first two requirements, a 3.0% reduction in volatile organic compounds per year for the years 1997, 1998, and 1999, and urban airshed modeling out to the year 1999. The remaining three, a reasonably available control technology demonstration, a detailed schedule and plan for Phase II, and an enforceable commitment to participate in a consultative process, are proposed to be submitted by December 31, 1995. By providing the final three required SIP elements in the Fix-up SIP, the state will complete the requirements for Phase I of the attainment demonstration.

Public hearings on this proposal will be held in Houston on October 3, 1995, at 7:00 p.m. at the Houston-Galveston Area Council, Conference Room A, 3555 Timmons Lane, Houston; and in Beaumont on October 4, 1995 at 10:00 a.m. at the John Gray Institute, 855 Florida Avenue, Beaumont. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, a TNRCC staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments not presented at the hearing may be submitted to the TNRCC central office in Austin. The deadline for submission of written comments will be 30 days after the date of publication of this notice in the *Texas Register*. Material received by the TNRCC Office of Policy and Regulatory Development by 4:00 p.m. on that date will be considered by the Commission prior to any final action on the proposal. Please mail written comments to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 and reference Rule Log Number 95156-SIP-AI. Comments may also be faxed to (512) 239-5687. Copies of the proposals are available at the central office of the TNRCC located at 12118 North IH-35, Building E,

Austin and at all TNRCC regional offices. For further information please contact Liz Johnson at (512) 239-1967.

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.

Issued in Austin, Texas, on August 23, 1995.

TRD-9510762 Lydia Gonzalez-Gromatzky  
Director, Legal Services Division  
Texas Natural Resource Conservation  
Commission

Filed August 24, 1995



Notice is hereby given that pursuant to the requirements of the Texas Health and Safety Code, §382.017 (Vernon's 1992), Texas Government Code, Subchapter B, Chapter 2001 (Vernon's 1993); and 40 Code of Federal Regulations; §51.102 of the United States Environmental Protection Agency (EPA) regulations concerning State Implementation Plans (SIP), the Texas Natural Resource Conservation Commission (TNRCC) will conduct a public hearing to receive testimony regarding revisions to 30 TAC Chapters 116 and 117, to the SIP, and regarding a petition to the EPA requesting an extension of the temporary exemption under the Federal Clean Air Act (FCAA), §182(b)(1) and (f).

The proposed revisions to §116.150 would repeal requirements associated with nonattainment new source review of new or modified major stationary sources of nitrogen oxides (NO<sub>x</sub>) located in the Dallas/Fort Worth or El Paso ozone nonattainment areas, and temporarily suspend these requirements pertaining to offsets, lowest achievable emission rate, compliance certifications, and alternative site analysis in the Houston/Galveston and Beaumont/Port Arthur areas.

The proposed amendments to §§117.510, 117.520, and 117.530 would revise the compliance schedules to extend the final compliance dates from May 31, 1997 to May 31, 1999 for implementing NO<sub>x</sub> reasonably available control technology.

The petition to the EPA requests a one-year extension of the temporary NO<sub>x</sub> exemption, pertaining to the Houston/Galveston and Beaumont/Port Arthur ozone nonattainment areas, which was previously granted by the EPA under the FCAA, §182(f). The TNRCC is also requesting a one-year extension of the temporary NO<sub>x</sub> exemption for transportation conformity, to be evaluated by the EPA under the FCAA, §182(b)(1).

A public hearing on these proposals will be held on October 2, 1995 at 10:00 a.m. in Room 254S of TNRCC Building E, located at 12118 North IH-35, Park 35 Technology Center, Austin. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, a TNRCC staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments not presented at the hearing may be submitted to the TNRCC central office in Austin. The deadline for submission of written comments will be 30 days after the date of publication of the proposal in the *Texas Register*. Material received by the TNRCC Office of

Policy and Regulatory Development by 4:00 p.m. on that date will be considered by the Commission prior to any final action on the proposal. Please mail written comments to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 and reference Rule Log Number 95101-116-AI. Comments may also be faxed to (512) 239-5687. Copies of the proposals are available at the central office of the TNRCC located at 12118 North IH-35, Building E, Austin and at all TNRCC regional offices. For further information please contact Mike Magee at (512) 239-1511.

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.

Issued in Austin, Texas, on August 23, 1995.

TRD-9510763 Lydia Gonzalez-Gromatzky  
Director, Legal Services Division  
Texas Natural Resource Conservation  
Commission

Filed: August 24, 1995



Notice is hereby given that pursuant to the requirements of the Texas Health and Safety Code, §382.017 (Vernon's 1992); Texas Government Code, Subchapter B, Chapter 2001 (Vernon's 1993); and 40 Code of Federal Regulations; §51.102 of the United States Environmental Protection Agency regulations concerning State Implementation Plans (SIP), the Texas Natural Resource Conservation Commission (TNRCC) will conduct public hearings to receive testimony regarding revisions to 30 TAC Chapters 101 and 115, and to the SIP.

The proposed amendments to Chapter 101, concerning Definitions, and to Subchapters A, B, C, E, F, and J in Chapter 115, are simple rule revisions which either reduce requirements, clarify rule language, eliminate duplicative requirements or obsolete language, or update terminology or rule references. The proposed revision to Chapter 115, Subchapter G, would streamline the process for the introduction of innovative products in Texas.

Public hearings on these proposals will be held in Beaumont on September 26, 1995 at 7:00 p.m. at the John Gray Institute, 855 Florida Avenue, Beaumont; and in Houston on September 27, 1995 at 10:00 a.m. in Conference Room A at the Houston-Galveston Area Council, 3555 Timmons Lane, Houston. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, a TNRCC staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments not presented at the hearings may be submitted to the TNRCC central office in Austin. The deadline for submission of written comments will be 30 days after the date of publication of the proposal in the *Texas Register*. Material received by the TNRCC Office of Policy and Regulatory Development by 4:00 p.m. on that date will be considered by the Commission prior to any final action on the proposal. Please mail written comments to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 and reference Rule Log Number 95137-115-AI. Comments may also be faxed to (512) 239-5687.

Copies of the proposals are available at the central office of the TNRC located at 12118 North IH-35, Building E, Austin and at all TNRC regional offices. For further information please contact Eddie Mack at (512) 239-1488 or Randy Hamilton at (512) 239-1512.

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.

Issued in Austin, Texas, on August 23, 1995.

TRD-9510761 Lydia Gonzalez-Gromatzky  
Director, Legal Services Division  
Texas Natural Resource Conservation  
Commission

Filed: August 24, 1995

◆ ◆ ◆  
**Public Utility Commission of Texas**  
**Notice of Intent to File Pursuant to**  
**Public Utility Commission Substantive**  
**Rule 23.27**

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Town of South Padre Island in South Padre Island, Texas.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for Town of South Padre Island in South Padre Island, Texas pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Docket Number 14603

The Application. Southwestern Bell Telephone Company is requesting approval of a new PLEXAR-Custom service for Town of South Padre Island in South Padre Island, Texas. The designated exchange for this service is the Port Isabel exchange, and the geographic service market for this specific service is the Brownsville, Texas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Consumer Affairs Division at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on August 30, 1995.

TRD-9510928 Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: August 30, 1995

◆ ◆ ◆  
**The University of Texas System**  
**Consultant Proposal Requests**

The University of Texas Medical Branch at Galveston ("UTMB") requests, pursuant to the provisions of the Government Code, Chapter 2254 the submission of proposals leading to the award of a contract for a Cardiovascular Business Consulting Firm. UTMB's objective of this project is to optimize our collections, assess and improve payor mix, and improve overall operations in the Division

of Cardiology at UTMB by establishing program objectives which include a mission statement, practice history, specific practice objectives, financial analysis and financial plan, and an implementation time line.

The awarded Firm will be responsible for providing a preliminary assessment, operations analysis, market assessment, feasibility study, and complete strategic business plan for the Division of Cardiology at UTMB.

UTMB reserves the right to accept or reject any or all proposals submitted.

The firm awarded a contract, if any, will be the Firm whose proposal conforming to this request, is deemed to be the most advantageous by UTMB. In addition to the Firm's experience in a university hospital setting, they must possess the qualifications and references indicating a full understanding of the operations of a Cardiology Department in this environment. Other factors in awarding a contract will include, but not limited to, demonstrated competence, qualifications, experience, and reasonableness in the cost. proposals must remain valid for acceptance and may not be withdrawn for a period of 180 days after the proposal closing date.

An original and two copies of the full proposal must be submitted to UTMB prior to 3:00 p.m., Wednesday, September 20, 1995. Proposals received thereafter will not be considered and will be returned unopened. Proposals must be sent to the address indicated.

For further information or to obtain a complete proposal package (RFP Number 5-35), contact Steven C. Mueller, Senior Procurement Office, The University of Texas Medical Branch at Galveston, Administration Annex Building, Suite 3.202, Galveston, Texas 77555-0105, (409) 772-2262.

Issued in Austin, Texas on August 22, 1995.

TRD-9510684 Arthur H. Dilly  
Executive Secretary to the Board of  
Regents  
The University of Texas System

Filed: August 23, 1995

◆ ◆ ◆  
The University of Texas System, in accordance with provisions of the Texas Government Code, §§2254.021-2254.040, solicits to contract with a consultant to conduct a compensation study of The University of Texas System Administration and the University of Texas at Austin (hereinafter referred to together as UT).

**Project Description:** The UT Compensation Program Project, for which assistance is requested, will consist of determining all components of a total compensation program including, but not limited to, the following:

- \* Development of a UT compensation philosophy
- \* Methodology for job evaluation
- \* Guidelines for administration of programs
- \* Strategies both short-term and long-term to achieve competitive position in the applicable labor market
- \* Development of cost estimates to implement approved program
- \* Automation support to aid in cost effective administration of the program

\* Development of an implementation strategy for the program to include an effective communication plan for informing affected employees and managers regarding the program

Recommendation of appropriate staffing for maintenance, and

Establishment of criteria for Administrative and Professional positions

**Objectives:** UT must establish a new compensation plan that integrates UT's mission and values and includes creative approaches to all elements of the pay system. Consultant will define a strategic compensation philosophy and develop program to support that philosophy.

The primary focus of this project is the development and implementation of a salary administration program using automated system which will:

- (1) use a defensible evaluation methodology addressing internal equity
- (2) collect and maintain updated job documentation
- (3) identify and maintain appropriate market data for competitive pricing
- (4) establish compensation policy
- (5) develop procedures for independently maintaining the program

**Scope:** The scope of the project is as defined in the project description listed previously.

**Contract Period:** This agreement will begin within two weeks of contract execution date and will continue through the successful completion of all requirements as identified in project description stated previously.

**Contact:** For additional information on the work to be provided, to receive a complete Request for Proposals, and to submit proposal, contact: Trennis L. Jones, Director, Office of Human Resources, The University of Texas System Administration, 201 West Seventh Street, Third floor, Austin, Texas 78701-2981, (512) 499-4646.

**Procedure for Selection of Consultant:** The selected contractor will be the one whose proposal, as presented in the responses to this RFP, is the most advantageous to UT. UT is not bound to accept the lowest priced proposal if that proposal is contrary to the best interest of UT.

The proposal will be evaluated by a committee of UT personnel. The selection of the contractor for this service will be based upon the contractor's experience with compensation studies with institutions of higher education, overall cost of the project, and other criteria listed in the RFP.

**Qualifications:** The contractor chosen must be reputable, established, and financially stable. UT requires assurance that the contractor has a high probability of remaining in business during the life of the proposed contract. This required information is listed in the RFP.

**Conflict of Interest:** Consultant must state in writing as a part of their initial proposal that consultant and consultant's personnel agree that they have no employer-employee relationship with UT.

**Due Date:** Proposals will be due in the office of the Director of Human Resources, Office of Human Resources, The University of Texas System Administration, 201 West Seventh Street, Third floor, Austin, Texas 78701-2981 at the time and date specified in the Request for Proposals. It is the responsibility of the proposers to have proposals in the previously stated office at that time. Proposals received late for any reason will be returned unopened.

Issued in Austin, Texas, on August 22, 1995.

TRD-9510685      Arthur H Dilly  
Executive Secretary to the Board of  
Regents  
The University of Texas System

Filed: August 23, 1995



Name Geoffrey Garrison  
Grade 10  
School Klein Forest High School, Klein ISD



Name Robyn Culotta  
Grade 10  
School Klein Forest High School, Klein ISD

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