

TEXAS REGISTER

Volume 19, Number 6, January 25, 1994

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How to Use the Texas Register

Information Available: The 10 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Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.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.

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 19 (1994) is cited as follows: 19 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 "19 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 19 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, releases cumulative supplements to each printed volume of the TAC twice each year.

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 22, April 16, July 13, and October 12, 1993). 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
Part 1. Texas Department of Human Services
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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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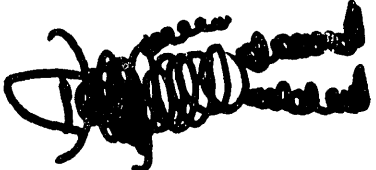
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Special Nutrition Programs

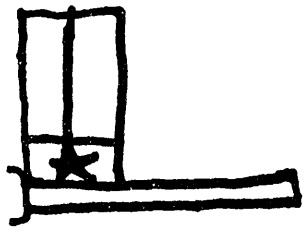
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Elementary

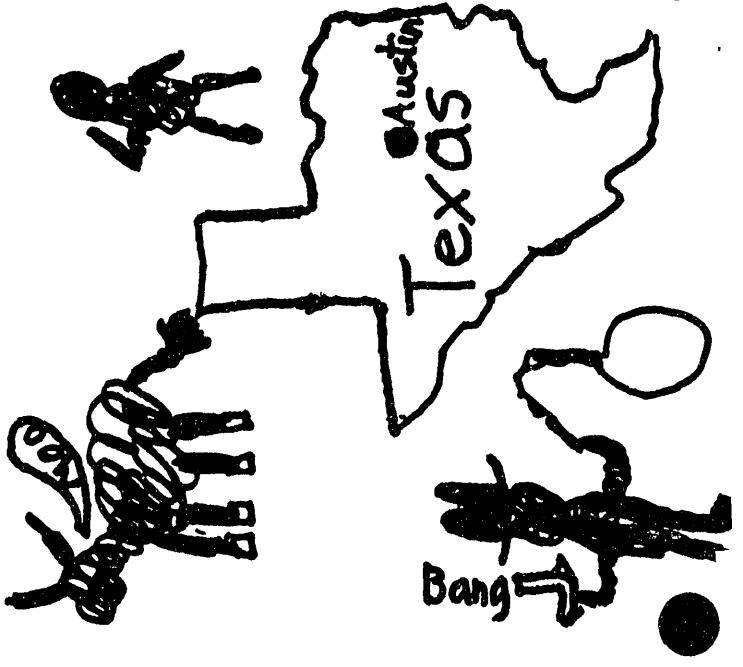
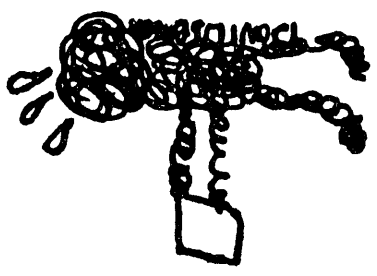
2001 Miller Elementary
Age 10
Colony Bend
Elementary



Natalie Magoulas
10
Colony Bend Elem.



Michael
Miller
Age - 10
Colony Bend

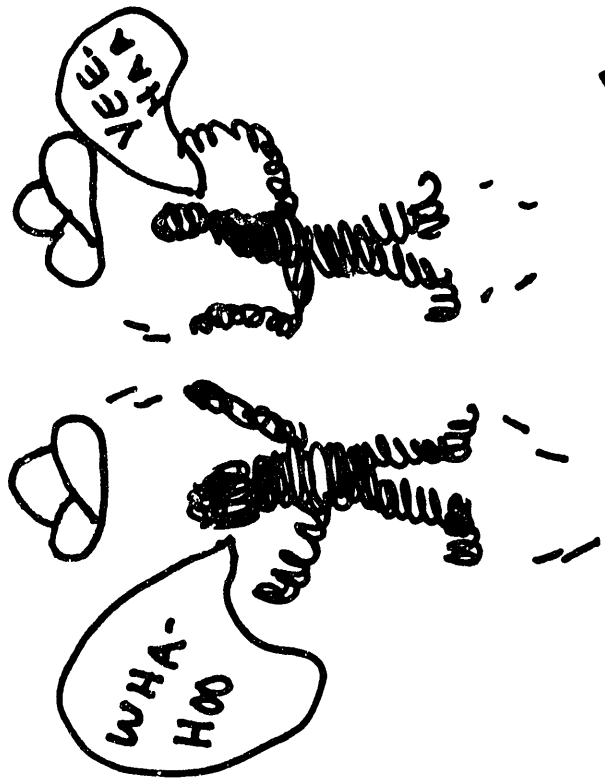




Josh Mayer
Age-10
Colony Bend
Elementary



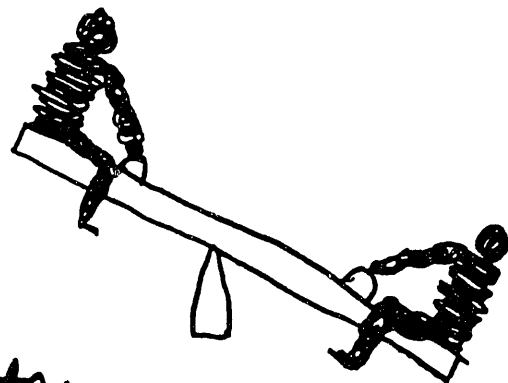
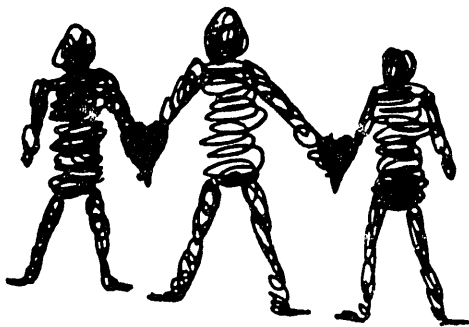
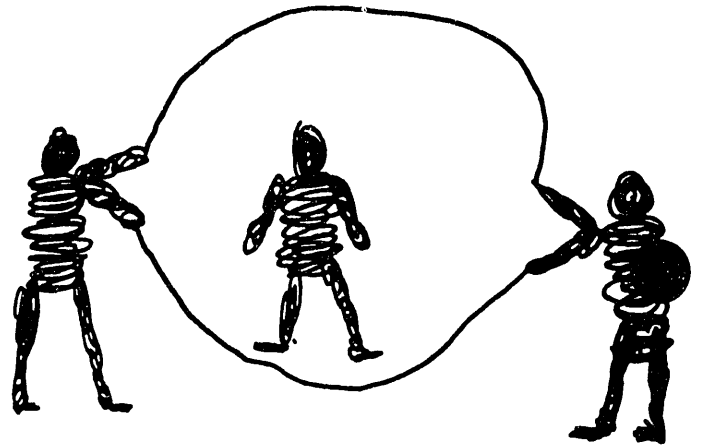
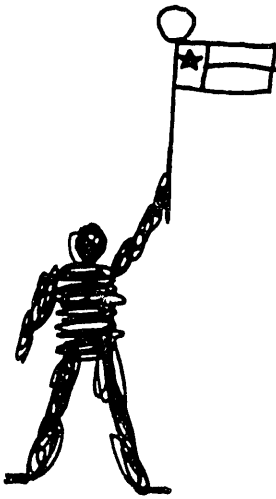
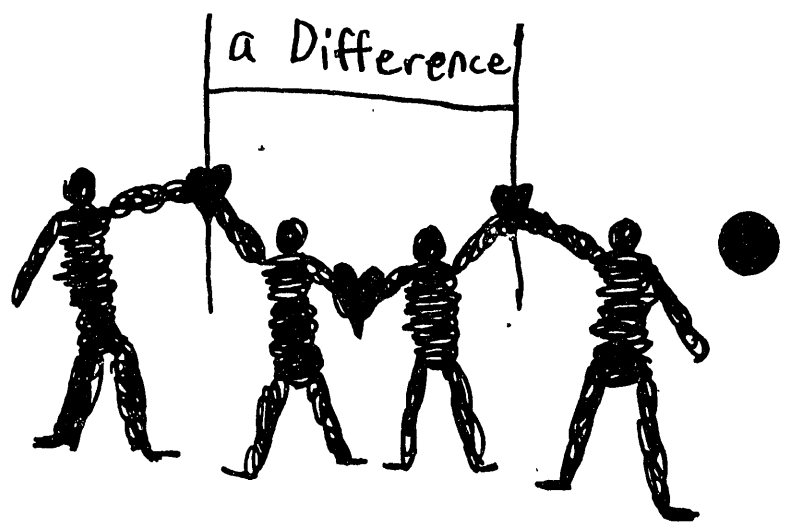
Daniel Wisard Age 10 Colony Bend Elementary



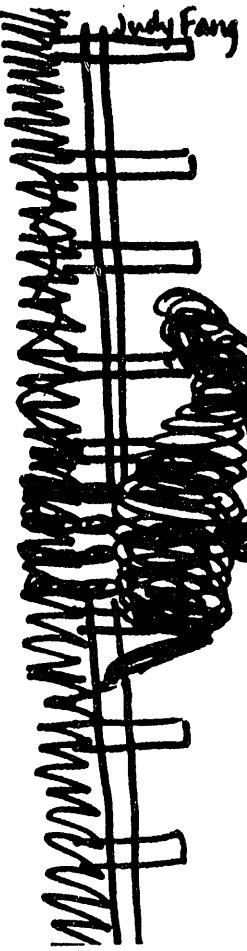
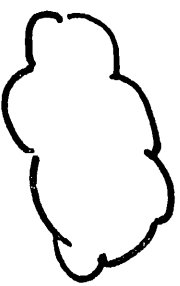
Age 6 thier 10 Colony Bend



Joseph Szeto
Age-10
Colony Bend
Elementary



aura Wedelich
Age-10
5th Grade, Colour Bend Elementary



Judy Fang
Age-10
Colony Bend



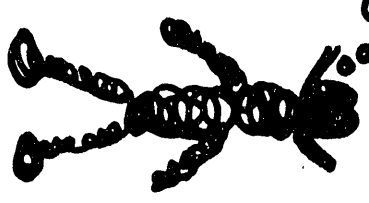
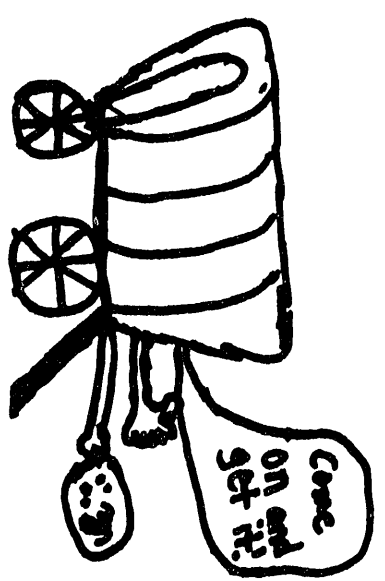
Stephanie Lin
Age-10
Colony Bend Elementary

We're all pioneers at
Colony
Bend



Spennie Morgan
Age-11

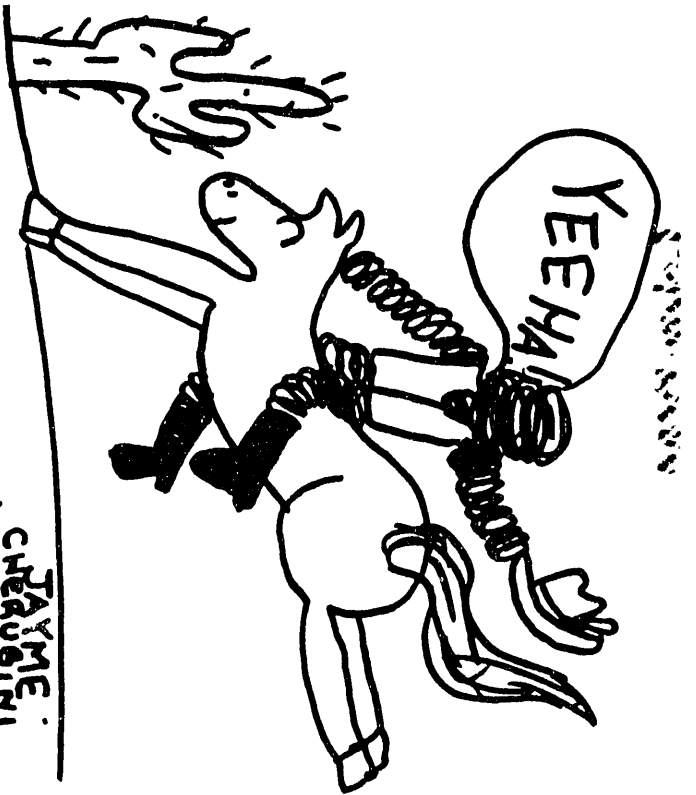
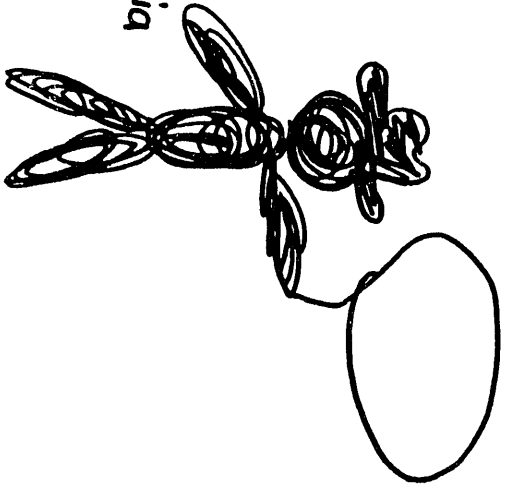
NO! anything
but.....
Lunch!



Sherwin Hsu
Age-11

Age-11

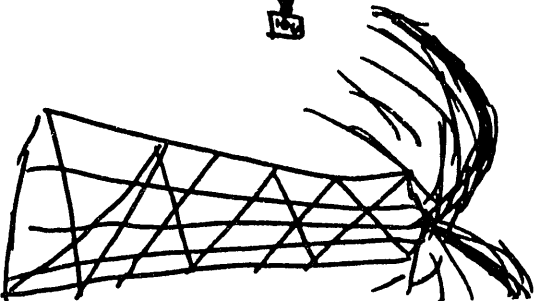
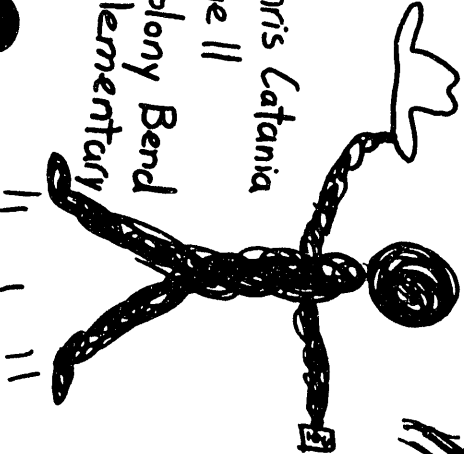
Chris Catania
age 10
Colony Bend
Elementary



JAYME
AGE: 10
COLONY BEND EA



Chris Catania
Age 11
Colony Bend
Elementary

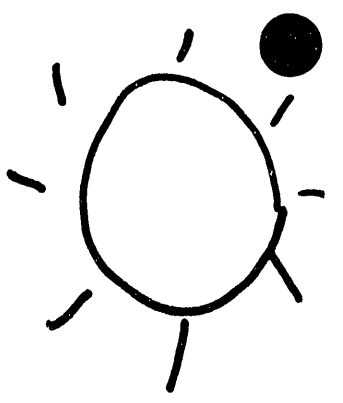


WORM

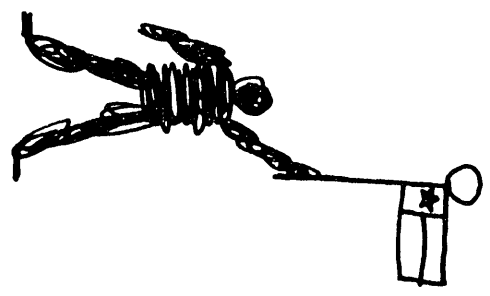
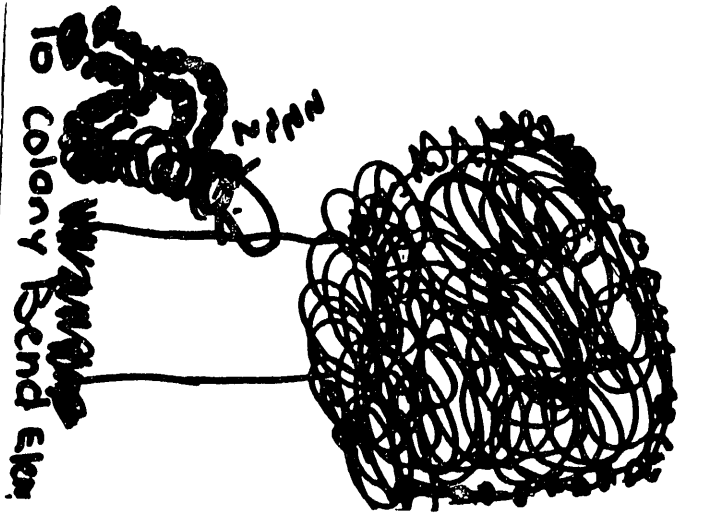


Lacey J.
Age 10
Colony Bend
Elm.

Natalie Magoulas
10
Colony Bend Elem.

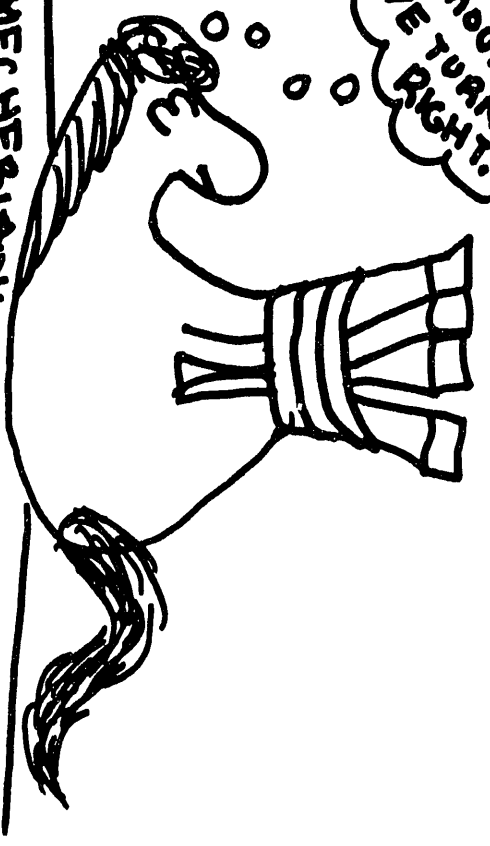


Natalie Magoulas
10
Colony Bend Elem.



Laura Wedelich
Age-10
Colony Bend

I KNEW
I SHOULD
HAVE TURNED
RIGHT!



JAYMECHERUVANI
AGE: 10
COLONY BEND ELM.

THE GOVERNOR

As required by Texas Civil Statutes, Article 6252-13a, §6, the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments Made January 10, 1994

To be Presiding Judge of the Fifth Administrative Judicial Region for a term to expire four years from date of qualification, effective January 24, 1994: Judge Darrell Hester, 3201 Clifford Drive, Harlingen, Texas 78550. Judge Hester is being reappointed.

To be a member of The University of Texas System Board of Regents for a term to expire February 1, 1999: Thomas O. Hicks, 3640 Beverly Drive, Dallas, Texas 75205. Mr. Hicks will be filling the unexpired term of Pete Coneway of Houston, who resigned.

Appointments Made January 12, 1994

To be members of the Texas Board of Nursing Facility Administrators pursuant to Senate Bill Number 674, 73rd Legislature. Terms expire February 1, 1995: Mary Lee Harris, 1708 Egger Avenue, Round Rock, Texas 78664; Johnnie Richardson, 6412 Peacock Hills #844, Houston, Texas 77035. Terms expire February 1, 1997: Johnnie Lou Avery, 4 Bennett Circle, Big Spring, Texas 79720; Cheryl L. Killian, 3801 Woodside Drive, Arlington, Texas 76016. Term expire February 1, 1999: Helen Anderson Beasley, 5210 72nd Street, Lubbock, Texas 79424; Thomas William Gard, 4455 Maddox, Beaumont, Texas 77705; Michael O. Sims, 9301 Pioneer Drive, Waco, Texas 76712.

To be a member of the Texas Alcoholic Beverage Commission for a term to expire November 15, 1999: Martha S. Dickie, 503 Brookhaven Trail, Austin, Texas 78746. Ms. Dickie will be replacing Neal Manne of Houston, who resigned.

To be Chairman of the Texas Alcoholic Beverage Commission for a term at the pleasure of the Governor: Roy Orr of DeSoto. Mr. Orr will be replacing Renee Higginbotham-Brooks of Fort Worth, who is no longer a member of the commission.

To be a member of the Texas Alcoholic Beverage Commission for a term to expire November 15, 1995: Steven R. Baker, 3505 Dallas West #495, Houston, Texas 77019. Mr. Baker will be filling the unexpired term

of Renee Higginbotham-Brooks of Fort Worth, who resigned.

To be a member of the Texas Council on Offenders with Mental Impairments for a term to expire February 1, 1999: Dollie Brathwaite, 9215 Claridge, Houston, Texas 77031. Ms. Brathwaite will be replacing Dr. William Schnapp of Houston, whose term expired.

To be a member of the Texas Council on Offenders with Mental Impairments for a term to expire February 1, 1999: Carol Oeller, 10807 MacKenzie, Houston, Texas 77086. Ms. Oeller is being reappointed.

To be Presiding Judge of the Third Administrative Judicial Region for a term to expire four years from date of qualification, effective February 1, 1994: Judge B. B. Schraub, 533 Crescent Drive, Seguin, Texas 78155. Judge Schraub is being reappointed.

To be a member of the Brazos Valley Regional Review Committee for a term to expire January 1, 1995: Mayor Byron Michael Ryder, P.O. Box 277, Buffalo, Texas 75831. Mayor Ryder will be replacing Robert Gresham of Centerville, whose term expired.

To be a member of the Texoma Regional Review Committee for a term to expire January 1, 1996: Mayor William J. Miller, P.O. Box 114, Muenster, Texas 76252. Mayor Miller will be replacing Charles Woolfolke of Gainesville, who is no longer eligible.

To be a member of the Texoma Regional Review Committee for a term to expire January 1, 1996: Mayor Jim J. Hatcher, 417 Willow Way, Gainesville, Texas 76240. Mayor Hatcher will be replacing Danny Knight of Gainesville, who is no longer eligible.

To be a member of the Texoma Regional Review Committee for a term to expire January 1, 1995: Mayor Alfred C. Miller, P.O. Box 340, Whitesboro, Texas 76273. Mayor Miller will be replacing O. M. Quattlebaum of Collinsville, who resigned

Issued in Austin, Texas, on January 12, 1994.

TRD-9434609

Ann W Richards
Governor of Texas



Appointments Made January 13, 1994

To be a member of the Texas Commission for the Blind for a term to expire February 1, 1999: Carolyn Marie Garrett, 4427 Knottynold, Houston, Texas 77053. Ms. Garrett will be replacing Leahray Smith Wroten of McKinney, whose term expired.

To be a member of the Texas Commission for the Blind for a term to expire February 1, 1999: Olivia Sandavol, 5934 Moon Dance, San Antonio, Texas 78238. Ms. Sandavol will be replacing Kyle Fulton of Lubbock, whose term expired.

To be a member of the Texas Commission for the Blind for a term to expire February 1, 1999: Olivia Chavez Schonberger, 424 Sharondale, El Paso, Texas 79912. Ms. Schonberger will be replacing Bob Keeney, Jr. of Houston, whose term expired.

To be a member of the Texas Department of Commerce Policy Board for a term to expire February 1, 1999: Renee Higginbotham-Brooks, 308 Canyon Creek, Fort Worth, Texas 76112. Ms. Higginbotham-Brooks will be filling the unexpired term of Vanessa Gilmore of Houston, who resigned.

To be a member of the Texas Water Development Board for a term to expire December 31, 1999: Elaine Mowinski Barron, M.D., 900 Cherry Hill Lane, El Paso, Texas 79912. Dr. Barron will be replacing Othon Medina, Jr. of El Paso, whose term expired.

To be a member of the Texas Commission on the Arts for a term to expire August 31, 1999: Gilberto Zepeda, Jr., 1221 South Doe, San Juan, Texas 78589. Mr. Zepeda will be replacing Alice Carrington of San Antonio, whose term expired

To be a member of the Texas State Board of Examiners of Marriage and Family Therapists for a term to expire February 1, 1999: Harriet H. Roberts, Ph.D., 5512 Ardmore, Houston, Texas 77021. Dr. Roberts is being reappointed.

To be a member of the Texas State Board of Examiners of Marriage and Family Therapists for a term to expire February 1, 1999: Noe Cavazos, 204 Audrey Drive, Weslaco, Texas 78596. Mr. Cavazos will be replacing June Hicks of Abilene, whose

term expired.

To be a member of the **Interagency Council on Autism and Pervasive Developmental Disorders** for a term to expire February 1, 1995: Anne Groves Russell, 3629 Norcross Lane, Dallas, Texas 75229. Ms. Russell is being reappointed.

To be Acting Chairman of the **Texas Department of Commerce Policy Board** for a term at the pleasure of the Governor: Kenneth Q. Carlile of Marshall, Texas. Mr. Carlile will replacing Vanessa Gilmore of Houston, who is no longer a member of the board.

Issued in Austin, Texas, on January 14, 1994.

TRD-9434803

Ann W. Richards
Governor of Texas



Executive Order

AWR94-14

Relating to Emergency Management

WHEREAS, the Legislature of the State of Texas has heretofore enacted the Texas Disaster Act of 1975, Chapter 418 et seq. of Vernon's Texas Codes Annotated to:

- (1) Reduce vulnerability of people and communities of this state to damage, injury, and loss of life and property resulting from natural or man-made catastrophes, riots, or hostile military or paramilitary actions;
- (2) Prepare for prompt and efficient rescue, care, and treatment of persons victimized or threatened by disaster;
- (3) Provide a setting conducive to the rapid and orderly restoration and rehabilitation of persons affected by disaster;
- (4) Clarify and strengthen the roles of the Governor, state agencies, and local governments in the prevention of, preparation for, response to, and recovery from disasters;
- (5) Authorize and provide for cooperation and coordination of activities relating to hazard mitigation, emergency preparedness, incident response, and disaster recovery by agencies and officers of this state, and similar state-local, interstate, federal-state, and foreign activities in which the state and its political subdivisions may participate;
- (6) Provide a comprehensive emergency management system for Texas that is a coordinated effort to make the best possible use of existing organizations and resources within government and industry, and which includes provisions for actions to be taken at all levels of government before, during, and after the onset of an emergency situation;
- (7) Assist in the prevention of disasters caused or aggravated by inadequate planning for and regulation of public and private facilities and land use, and
- (8) Provide the authority and mechanism to respond to an energy emergency, and.

WHEREAS, under Section 418.013, Texas Disaster Act of 1975, Vernon's Texas Codes Annotated, the Governor is expressly authorized to establish by executive order an EMERGENCY MANAGEMENT COUNCIL composed of the heads of state agencies, boards, and commissions and representatives of organized volunteer groups to advise and assist the Governor in all matters relating to disaster preparedness, emergency services, energy emergencies, and disaster recovery; and

WHEREAS, FURTHER UNDER Section 418.041, Texas Disaster Act of 1975, Vernon's Texas Codes Annotated, a DIVISION OF EMERGENCY MANAGEMENT is established in the Office of the Governor and the Director of the DIVISION OF EMERGENCY MANAGEMENT is to be appointed by and serve at the pleasure of the Governor; and

WHEREAS, with the aid and assistance of the EMERGENCY MANAGEMENT COUNCIL and DIVISION OF EMERGENCY MANAGEMENT, the Governor may recommend that cities, counties, and other political subdivisions of the state undertake appropriate emergency management programs and assist and cooperate with those developed at the state level;

NOW, THEREFORE, I, Ann W. Richards, Governor of Texas, under the authority vested in me, do hereby create and establish the EMERGENCY MANAGEMENT COUNCIL, to be composed of the Chief Executive Officers of the following state agencies, boards, commissions, and organized volunteer groups:

Adjutant General's Department
American Red Cross
Department of Information Resources
General Land Office
General Services Commission
Governor's Division of Emergency
Management
Public Utility Commission of Texas
Railroad Commission of Texas
State Aircraft Pooling Board
State Auditor's Office
State Comptroller of Public Accounts
Texas Attorney General's Office
Texas Commission on Fire Protection
Texas Department of Agriculture
Texas Department of Commerce
Texas Department of Health

Texas Department of Housing and
Community Affairs
Texas Department of Human Services
Texas Department of Insurance
Texas Department of Mental Health
and Mental Retardation
Texas Department of Public Safety
Texas Department of Transportation
Texas Education Agency
Texas Employment Commission
Texas Engineering Extension Service
Texas Forest Service
Texas Natural Resource Conservation
Commission
Texas Parks and Wildlife Department
Texas Rehabilitation Commission

The specific duties and responsibilities of each member of this group shall be as designated in the State Emergency Management Plan and Annexes thereto. Each member of the group may designate a staff member representative to the COUNCIL.

I further hereby designate the Director of the Texas Department of Public Safety to serve as Chairperson of the COUNCIL and as Director of the DIVISION OF EMERGENCY MANAGEMENT of the Governor's Office. The Director shall be my designated agent to exercise the powers granted to me under the Texas Disaster Act of 1975 in the administration and supervision of the Act, including, but not limited to, the power to accept from the federal government, or any public or private agency or individual, any offer of services, equipment, supplies, materials, or funds as gifts, grants, or loans for the purposes of emergency services or disaster recovery, and may dispense such gifts, grants, or loans for the purposes for which they are made without further authorization other than as contained herein. The Director shall establish emergency operations areas to be known as Disaster Districts which shall correspond to the boundaries of the Texas Highway Patrol Districts and Sub-Districts and shall establish in each a Disaster District Committee composed of representatives of the state agencies, boards, and commissions having membership on the COUNCIL. The Highway Patrol Commanding Officer of each Highway Patrol District or Sub-District shall serve as Chairperson of the Disaster District Committee and report to the Director on matters relating to disasters and emergencies. The Chairperson shall be assisted by the COUNCIL representatives assigned to that DISTRICT, who shall provide guidance, counsel, and administrative support as may be required.

The COUNCIL is hereby authorized to issue such directives as may be necessary to effectuate the purpose of the Texas Disaster Act of 1975, as amended, and is further authorized and empowered to exercise the specific powers enumerated in the Act.

Further, in accordance with Sections 418 102, 418 103, and 418 105 Texas Disaster Act of 1975, Vernon's Texas Codes Annotated, and published rules of the DIVISION OF EMERGENCY MANAGEMENT, I hereby designate the Mayor of each municipal corporation and the County Judge of each county in the state as the Emergency Management Director for each such political subdivision. The County Judge and Mayor shall serve as the Governor's designated agents in the administration and supervision of the Texas Disaster Act of 1975, and may exercise the powers, on an appropriate local scale, granted the Governor therein. The Mayor and County Judge may each designate an Emergency Management Coordinator who shall serve as assistant to the presiding officer of the political subdivision for emergency management purposes when so designated.

By the authority vested in me under Section 418 104, Texas Disaster Act of 1975, Vernon's Texas Codes Annotated, I further hereby authorize each political subdivision of the state to establish in the county in which they are sited, interjurisdictional agencies by intergovernmental agreement, supported as needed by local City Ordinance or Commissioner's Court Order, in cooperation and coordination with the DIVISION OF EMERGENCY MANAGEMENT of the Governor's Office. In compliance with Section 418 101, Vernon's Texas Codes Annotated, the presiding officer of each political subdivision shall promptly notify the DIVISION OF EMERGENCY MANAGEMENT of the manner in which it is providing or securing an emergency management program and the person designated to head that program.

This Executive Order supersedes Executive Order AWR 91-16 and shall remain in effect until modified, amended or rescinded by me.

Issued in Austin, Texas on January 14, 1994

TRD-9434805

Ann W Richards
Governor of Texas

EMERGENCY RULES

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

Symbology in amended emergency sections. New language added to an existing section is indicated by the use of **bold text**. [Brackets] indicate deletion of existing material within a section.

TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 409. Medicaid Programs

Subchapter E. Home and Community-Based Services-OBRA

- 25 TAC §§409.156, 409.166-409.173

The Texas Department of Mental Health and Mental Retardation is renewing the effectiveness of the emergency adoption of amended and new §§409.156, 409.166-409.173, for a 60-day period effective January 30, 1994. The text of amended and new §§409.156, 409.166-409.173 was originally published in the September 18, 1993, issue of the *Texas Register* (18 TexReg 6278).

Issued in Austin, Texas, on January 12, 1994.

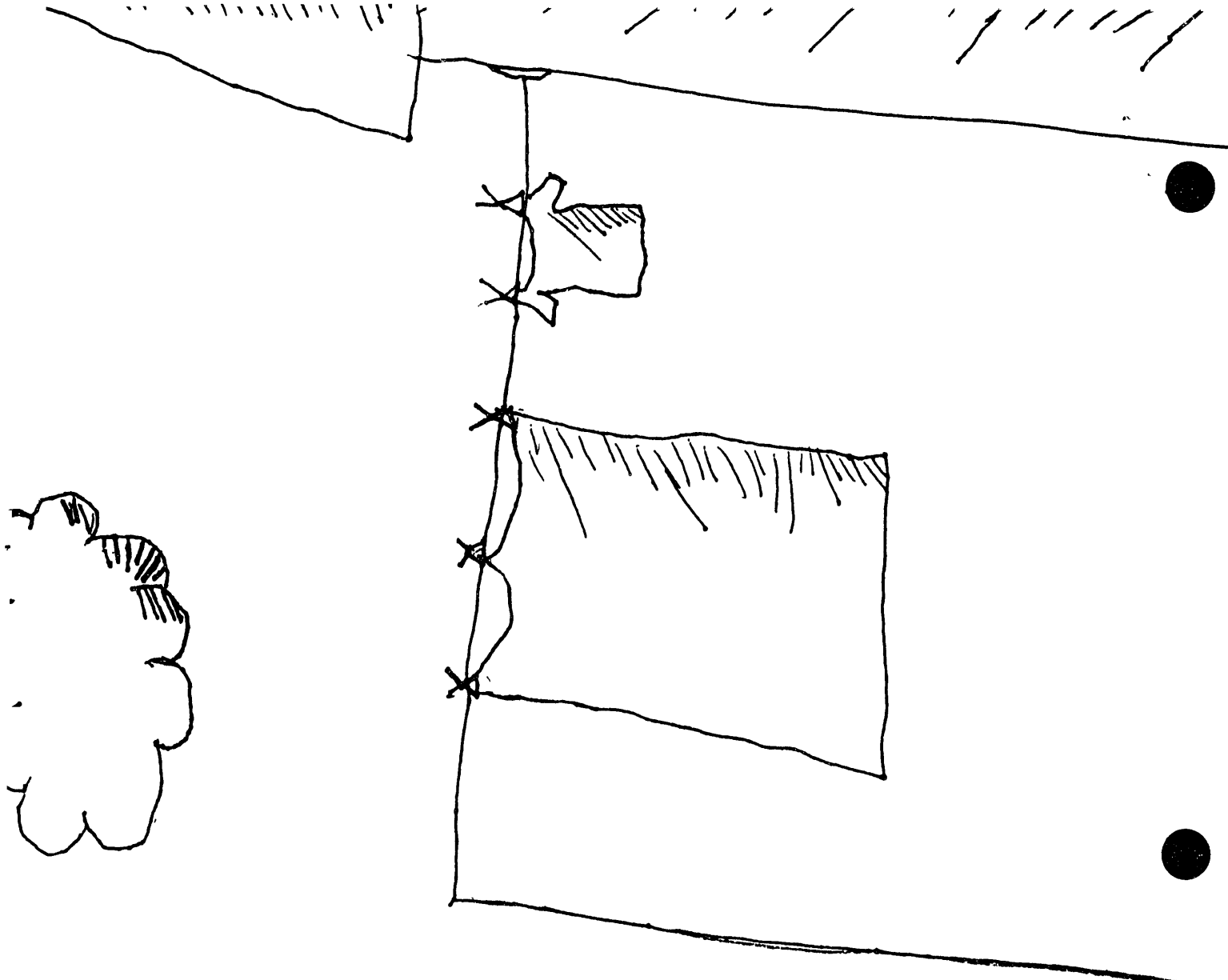
TRD-9434605 Ann K. Utley
 Chair
 Texas Department of
 Mental Health and
 Mental Retardation

Effective date January 30, 1994

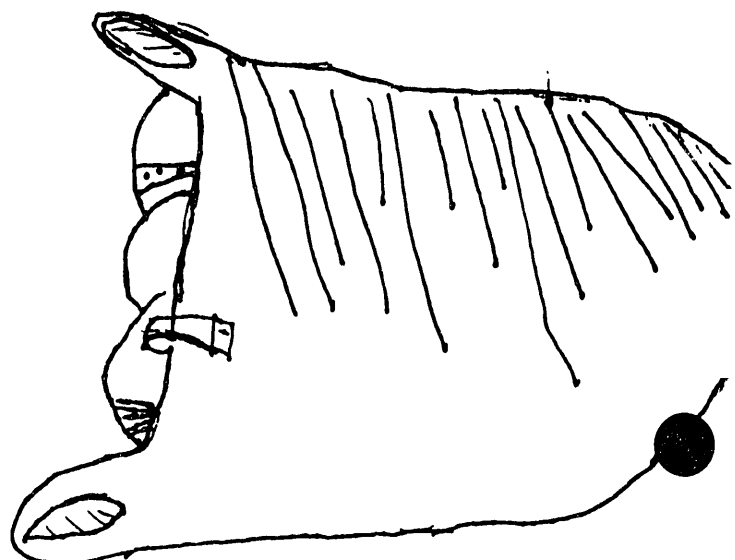
Expiration date April 1, 1994

For further information, please call. (512) 206-4516





Name: Kelly Vergon
Grade: 5
School: Ehrhardt Elementary, Klein ISD



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 29. Texas Agricultural Diversification Program: Matching Grants

• 4 TAC §29.3

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

The Texas Department of Agriculture (the department) proposes the repeal of §29.3, concerning the board of directors of the Agricultural Diversification Program. The repeal is proposed in order to reflect the abolishment of the board by the 73rd Legislature.

Robert Kennedy, deputy assistant commissioner for finance and agribusiness development, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Kennedy 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 greater consistency with Chapter 44 of the Texas Agriculture Code. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Robert Kennedy, Deputy Assistant Commissioner for Finance and Agribusiness Development, 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 proposed amendments in the *Texas Register*.

The repeal is proposed under the Texas Agriculture Code, §12.016, which provides the department with general rule-making authority, and §44.002, which provides that the commissioner shall create an agricultural diversification program. The repeals implement the Agriculture Code, Chapter 44

§29.3. Board of Directors.

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 January 14, 1994.

TRD-9434832 Dolores Alvarado Hibbs
Chief Administrative Law
Judge
Texas Department of
Agriculture

Earliest possible date of adoption: February 25, 1994

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

TITLE 7. BANKING AND SECURITIES

Part I. State Finance Commission

Chapter 10. Trust Companies

• 7 TAC §§10.1-10.3, 10.6

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

The Finance Commission of Texas (the Commission) proposes the repeal of §§10.1-10.3 and 10.6, concerning trust companies organized under Texas Civil Statutes, Article 1513a (repealed), and maintenance of paid-in capital of trust companies.

Everette D. Jobe, general counsel, Texas Department of Banking, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Jobe also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeal of §§10.1-10.3 will be the elimination of obsolete provisions of law. The repeal of §10.6 will eliminate a provision that duplicates statutory law. There will be no

effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposed repeal to be considered by the Commission must be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to Everette D. Jobe, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294.

Repeal of the sections is proposed under the general rulemaking authority of the Commission with regard to regulation of trust companies pursuant to Texas Civil Statutes, Article 342-1106(b), as well as Article 342-113(a), made applicable to trust companies by virtue of Article 342-1102.

No extant provisions of law are affected by the proposed repeal of §§10.1-10.3 and 10.6.

§10.1 Scope of Statute.

§10.2 Notice of Incorporation.

§10.3 Notice of Sale.

§10.6 Maintenance of Paid-In Capital

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 January 14, 1994.

TRD-9434827 Everette D. Jobe
General Counsel
Texas Department of
Banking

Earliest possible date of adoption: February 25, 1994

For further information, please call: (512) 475-1300

Part IV. Texas Savings and Loan Department

Chapter 63. Fees and Charges

• 7 TAC §63.5

The Texas Savings and Loan Department proposes an amendment to §63.5, concerning the fee charged to each association for an examination. The rule would be amended to clarify that examination fees will be charged only for special examinations and not for an association's annual regular examination. Special examinations would include only those which the Commissioner conducts or causes to have conducted after institution has completed one annual examination or such other additional examinations as the Commissioner deems to be necessary

James L. Pledger, commissioner, 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. Pledger 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 due to more efficient collection and administration of fees charged to the associations under the Department's jurisdiction. With respect to small businesses, the enforcement or administration of the rule as amended would reduce the fees charged to small institutions; however, such reduction will be offset by a general increase in annual assessment. Mr. Pledger has determined that the proposed rule will have no local employment.

Comments on the proposal may be submitted to James L. Pledger, Commissioner, Texas Savings and Loan Department, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705

The amendment is proposed under Texas Civil Statutes, Article 342-114, which provide the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same

Texas Civil Statutes, Article 852a is affected by this proposed amendment

§63.5 Fee for Special Examination or Audit Each association subject to a special examination [the Savings and Loan Act] shall pay to the [savings and loan] commissioner an examination fee based upon a per day rate of \$325 for each day during which each examiner is engaged in the examination of the affairs of such institution [association under the provisions of the Texas Savings and Loan Act, §8.02 and §8.03] For the purposes of this section, a special examination shall include only those examinations which the commissioner conducts or causes to have conducted after the institution has completed one annual examination or such other additional ex-

aminations as the commissioner deems to be necessary. This special examination fee shall not be charged for an institution's annual regular examination.

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 January 14, 1994.

TRD-9434796 James L. Pledger
Commissioner
Texas Savings and Loan
Department

Earliest possible date of adoption: February 25, 1994

For further information, please call: (512) 475-1350

Chapter 67. Savings and Deposit Accounts

• 7 TAC §67.5

(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 Savings and Loan Department or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Savings and Loan Department proposes the repeal of §67.5, concerning gifts or inducements to attract customers to open or add to deposit accounts with an institution. Because of a resurgence in the practice of paying premiums on savings deposits by federally chartered savings association and banks, the prohibition on such practice by state savings associations places these institutions at a competitive disadvantage. Several associations have requested that this prohibition be deleted for competitive parity, since the prohibition does not relate to safety and soundness concerns.

James L. Pledger, commissioner, has determined that for the first five-year period the repeals is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Pledger also has determined that for each year of the first five years the public may benefit from increased competition for savings accounts and the payment of such premiums by some institutions as a result of repealing the rule. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed

Mr. Pledger has determined that the proposed repeal of the rule will have no local employment impact.

Comments on the proposal may be submitted to James L. Pledger, Commissioner, Texas Savings and Loan Department, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705.

The repeal is proposed under Texas Civil Statutes, Article 342-114, which provide the

Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same.

Texas Civil Statutes, Article 852a is affected by this proposed repeal.

§67.5. Give-aways.

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 January 14, 1994.

TRD-9434793 James L. Pledger
Commissioner
Texas Savings and Loan
Department

Proposed date of adoption: March 26, 1994

For further information, please call: (512) 475-1360

Chapter 69. Reorganization, Merger, Consolidation, Acquisition, and Conversion

• 7 TAC §§69.1, 69.2, 69.7-69.9, 69.11

The Texas Savings and Loan Department proposes amendments to §§69.1, 69.2, 69.7-69.9, and 69.11, concerning reorganizations, mergers, consolidation and acquisitions involving state chartered savings and loan associations. The amendments are made to conform the language with legislative changes to the Texas Savings and Loan Act relating to cross industry mergers, consolidations, acquisitions, and conversions.

James L. Pledger, commissioner, 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. Pledger also has determined that for each year of the first five years there will be public benefits from the safe and sound operation of the resulting financial institution. 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.

Mr. Pledger has determined that the proposed sections have no local employment impact.

Comments on the proposal may be submitted to James L. Pledger, Commissioner, Texas Savings and Loan Department, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705

The amendments are proposed under Texas Civil Statutes, Article 342-114, which provide the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same.

Texas Civil Statutes, Article 852a is affected by this proposed amendments

§691 Filing of Plan Any association seeking to reorganize, merge, and/or consolidate with another association, a federal association, foreign association, a state or national bank, or a state or national savings bank must do so pursuant to a plan adopted by the board of directors and filed with the commissioner as a part of an application for approval, and subject to the provisions of the Texas Savings and Loan Act, Chapter 9, accompanied by the appropriate filing fee. Reference should be made to §639 of this title (relating to Fee for Reorganization, Merger, and Consolidation). No plan shall be filed more than one year after its adoption.

§692 Form and Content of Application The application for approval of the plan shall be titled "Application to Reorganize, Merge and/or Consolidate" and shall contain proof that the plan was adopted by the board of directors of each association, federal association, foreign association, state or national bank, or state or federal savings bank involved, documentation showing that the plan has been approved by each association by a majority of the total vote the members or shareholders of each are entitled to cast, a statement that the corporate continuity of the resulting institution [association] shall possess the same incidents as that of an entity [association] which has converted in accordance with the Texas Savings and Loan Act, and a statement that the home office of the largest applying association shall be the home office of the resulting entity [association] unless otherwise approved by the commissioner. A true copy of the plan, as adopted, shall be filed as part of the application. All documents and their contents shall be subscribed and sworn to be an officer of each entity [association] involved under the sanction of an oath, or such affirmation as is by law equivalent to an oath, made before an officer authorized to administer oaths.

§697 Denial and Appeal

(a) The Commissioner shall issue an order denying the proposed plan if the Commissioner finds that:

(1) the reorganization, merger, or consolidation would substantially lessen competition or be in restraint of trade and would result in a monopoly or be in furtherance of a combination or conspiracy to monopolize or attempt to monopolize the savings and loan industry in any part of the state, unless the anticompetitive effects of the proposed reorganization, consolidation, or merger,

are clearly outweighed in the public interest by the probable effect of the reorganization, merger, or consolidation in meeting the convenience and needs of the community to be served;

(2) in a merger or consolidation, the financial condition of either entity would jeopardize the financial stability of any association that is a party to the plan;

(3) the proposed plan is not in the best interest of any association that is a party to the plan;

(4) the experience, ability, standing competence, trustworthiness, or integrity of the management of the entities proposing the plan is such that the reorganization, merger or consolidation would not be in the best interest of the associations that are parties to the plan;

(5) after reorganization, merger, or consolidation the surviving entity would not be solvent, have adequate capital structure, or be in compliance with the laws of this state;

(6) the entities proposing the plan have not furnished all of the information pertinent to the application reasonable requested by the Commissioner; or

(7) the entities proposing the plan are not acting in good faith.

(b) Any appeal of an order or action of the commissioner shall be made pursuant to the Government Code, Chapters 2001 and 2002 [§16 of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.] and the Texas Savings and Loan Act, §1111 and §1112 Texas Civil Statutes, Article 852a

§698 Exemption for Supervisory Merger When the commissioner designates a merger to be a supervisory merger, the provisions of this chapter relating to reorganization, merger and/or consolidation, §§691-697 of this title (relating to Filing of Plan, Form and Content of Application, Use of Approved Forms, Notice and Hearing, Publication, Time of Decision, and Denial and Appeal), shall not be applicable, and the merger shall be effected pursuant to the Texas Savings and Loan Act, §213, Texas Civil Statutes, Article 852a

§699 Designation as Supervisory Merger

(a) The commissioner may designate a merger to be a supervisory merger when

(1) (No change)

(2) the commissioner has determined that one or more of the associations

subject to this Act or savings banks subject to the Texas Savings Bank Act is in an unsafe condition, or

(3) the Office of Thrift Supervision, or the Federal Deposit Insurance Corporation, or their successor [Federal Home Loan Bank Board] has determined, and certified to the commissioner, that the merger of a federal association or savings bank, or a state or national bank having its home office in the state and an association subject to this Act is necessary to prevent the failure or possible failure of the said institution [federal association]

(b) (No change)

§6911 Conversion Into Another Financial Institution [to Federal] Charter.

(a) The commissioner may authorize any association subject to this title to convert itself into another type of financial institution subject to applicable law and regulation relating to the type of institution into which the association seeks to convert [a federal association in accordance with the provision of the Home Owner's Loan Act of 1933, §5 as now or hereafter amended].

(b) In order to obtain such authorization, the converting association must adopt, by a majority vote of the members or shareholders of the association entitled to vote at any annual or special meeting called to consider such conversion, a resolution declaring that the association shall be so converted. The association shall then file with the commissioner, a written application accompanied by

(1) (No change)

(2) a copy of the proposed articles of incorporation and bylaws for the new entity [federal association],

(3)-(5) (No change)

(c) The commissioner may approve a conversion if he finds that

(1) the conversion will not substantially lessen competition or be in restraint of trade and will not result in a monopoly or be in furtherance of a combination or conspiracy to monopolize or attempt to monopolize the savings and loan or savings bank industry in any part of the state, unless the anti-competitive effects of the proposed conversion are clearly outweighed in the public interest by the probable effect of the conversion in meeting the convenience and needs of the community to be served,

(2)-(13) (No change)

(d) (No change)

(e) If the commissioner consents to such conversion, the association, within

three months after the date of the commissioner's consent, shall take such action in the manner prescribed and authorized by the laws of this state or the United States to consummate the conversion into another financial institution [a federal association], and shall file with the Commissioner a copy of the charter issued to the new financial institution by the appropriate banking agency [such federal association by the Federal Home Loan Bank Board] or a certificate showing the organization of the new financial institution certified by the secretary or assistant secretary of the appropriate banking agency, [such association as a federal association, certified by the secretary or assistant secretary of the Federal Home Loan Bank Board] provided that no failure to file such instrument [federal instruments] with the commissioner shall affect the validity of any such conversion

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 January 14, 1994

TRD-9434795
James L. Pledger
Commissioner
Texas Savings and Loan
Department

Earliest possible date of adoption: February 25, 1994

For further information, please call (512) 475-1360

Chapter 73. Subsidiary Corporations

• 7 TAC §73.6

The Texas Savings and Loan Department proposes a new §73.6, concerning the authority of state savings and loan associations to invest in operating subsidiaries whose activities are limited to those that could be conducted directly by the parent savings and loan association. Because operating subsidiaries can only invest in activities that could be conducted directly by the association, such investment would not be included in the calculation of the limit on investment in subsidiaries. Authority to invest in operating subsidiaries is identical to authority available to federally chartered savings associations and such investments by federal association are not counted as part of an institutions investment in subsidiaries.

Institutions generally use operating subsidiaries in order to limit liability of the association in situations involving foreclosed property or other instances where there may be a reason to clearly separate the association from the assets or activities of the operating subsidiary. Any investment of activity limitations that would be applicable to the association's activities or investments would be equally applicable to the operating subsidiary. Operating subsidiaries are fully subject to the regulatory supervision and examination of the Depart-

ment, the Office of Thrift Supervision, and the Federal Deposit Insurance Corporation

James L. Pledger, commissioner, 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. Pledger also has determined that for each year of the first five years there will be public benefit from savings and loan associations being allowed to perform selected activities that the parent association could conduct directly through and operating subsidiary, thus limiting the liability of the parent association and, therefore, increasing association and depositor protection. 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. Mr. Pledger has determined that the proposed rule will have no local employment impact.

Comments on the proposal may be submitted to James L. Pledger, Commissioner, Texas Savings and Loan Department, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705.

The new section is proposed under Texas Civil Statutes, Article 342-114, which provide the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same.

Texas Civil Statutes, Article 852a is affected by this proposed new rule.

§73.6 Operating Subsidiaries A savings and loan association is authorized to invest in operating subsidiaries, the activities of which are exclusively limited to activities which could be conducted directly by the parent savings and loan association. Because an operating subsidiary is limited to activities that could otherwise be conducted directly by the savings and loan association, operating subsidiary investment is not included as part of the percentage of assets or dollar amount restrictions applicable to subsidiary corporations as set forth in §73.5(a) of this title (relating to Investment in Debt Limitation).

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 January 14, 1994

TRD-9434798
James L. Pledger
Commissioner
Texas Savings and Loan
Department

Earliest possible date of adoption: February 25, 1994

For further information, please call (512) 475-1360

Chapter 77. Loans, Investments, Savings, and Deposits

• 7 TAC §77.105

(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 Savings and Loan Department or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Savings and Loan Department proposes the repeal of §77.105, concerning gifts or inducements to attract customers to open or add to deposit accounts with an institution. Because of a resurgence in the practice of paying premiums on savings deposits by federally chartered savings associations and banks, the prohibition on such practice by state savings associations places these institutions at a competitive disadvantage. Several associations have requested that this prohibition be deleted for competitive parity, since the prohibition does not relate to safety and soundness concerns.

James L. Pledger, commissioner, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Pledger also has determined that for each year of the first five years the public may benefit from increased competition for savings accounts and the payment of such premiums by some institutions as a result of repealing the rule. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the rule as repealed will be negligible. Although small savings institutions may incur additional costs related to offering such premiums, such activities are entirely voluntary and will enable such institutions to compete more effectively for deposits. Mr. Pledger has determined that the proposed repeal of the rule will have no local employment impact.

Comments on the proposal may be submitted to James L. Pledger, Commissioner, Texas Savings and Loan Department, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705.

The repeal is proposed under Texas Civil Statutes, Article 342-114, which provide the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same.

Texas Civil Statutes, Article 489e is affected by this proposed repeal.

§77.105 Give aways

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 January 14, 1994

Proposed date of adoption: March 26, 1994
For further information, please call (512)
475-1360

Chapter 79. Miscellaneous Books, Records, Accounting Practices, Financial State- ments, and Reserves

• 7 TAC §79.12

The Texas Savings and Loan Department proposes new §79.12, concerning the authority to adopt, amend, and repeal the bylaws of a state savings bank. Additionally, the proposal clarifies that a savings bank is specifically permitted to include in its bylaws, a provision regarding the limitation of liability for directors consistent with the Texas Miscellaneous Corporations Act, Article 1302-7.06. Such directors liability limitations are available to state or national banks in Texas and state or federal savings associations.

James L. Pledger, commissioner, 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. Pledger also has determined that for each year of the first five years there will be public benefit from state savings banks being subject to corporate bylaw and director liability provisions that are competitive with state banks and state savings and loan associations. 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. Mr. Pledger has determined that the proposed rule will have no local employment impact.

Comments on the proposal may be submitted to James L. Pledger, Commissioner, Texas Savings and Loan Department, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705.

The new section is proposed under Texas Civil Statutes, Article 342-114, which provide the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same.

Texas Civil Statutes, Article 489e is affected by this proposed new rule.

§79.12 Bylaws

(a) The bylaws of a state savings bank shall contain sufficient provisions to govern the institution in accordance with the Texas Savings Bank Act, the Texas Business Corporation Act, the Texas Miscellaneous Corporation Laws Act, and other applicable laws, rules and regulations, or

the Association's articles of incorporation. Bylaws may contain a provision which permits such bylaws to be adopted, amended or repealed by either a majority of the shareholders or a majority of the board of directors of the savings bank. Bylaw amendments may not take effect before being filed with and approved by the commissioner.

(b) A state savings bank is specifically authorized to adopt in its bylaws a provision which limits the liability of directors as contained in the Texas Miscellaneous Corporation Laws Act, Article 1302-7.06 to the same extent permitted under state law for banks and savings and loan associations. Such bylaw provision is optional and within the discretion of the state savings bank.

(c) Other optional bylaws may be adopted by a state savings bank with the approval of the Commissioner.

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 January 14, 1994.

TRD-9434799

James L. Pledger
Commissioner
Texas Savings and Loan
Department

Earliest possible date of adoption. February 25, 1994

For further information, please call (512)
475-1360

Fees and Charges

• 7 TAC §79.95

The Texas Savings and Loan Department proposes an amendment to §79.95, concerning the fee charged to each savings bank for an examination. The rule would be amended to clarify that examination fees will be charged only for special examinations and not for a savings bank's annual regular examination. Special examinations would include only those which the Commissioner conducts or causes to have conducted after the institution has completed one annual examination or such other additional examinations as the Commissioner deems to be necessary.

James L. Pledger, commissioner, 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. Pledger also has determined that for each year of the first five years there will be public benefit from the adoption of this amendment due to more efficient collection and administration of fees charged to the savings banks under the Department's jurisdiction. With respect to small businesses, the enforcement or administration of the rule as amended would reduce the fees charged to small insti-

tutions; however, such reduction will be offset by a general increase in annual assessments. There is no anticipated economic cost to persons who are required to comply with the section as proposed. Mr. Pledger has determined that the proposed rules will have no local employment impact.

Comments on the proposal may be submitted to James L. Pledger, Commissioner, Texas Savings and Loan Department, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705.

The amendment is proposed under Texas Civil Statutes, Article 342-114, which provide the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same.

Texas Civil Statutes, Article 489e is affected by this proposed amendment.

§79.95 Fee for Special Examination or Audit. Each association subject to a special examination [the Savings Bank Act] shall pay to the commissioner an examination fee based upon a per day rate of \$325 for each day during which each examiner is engaged in the examination of the affairs of such institution [savings bank under the provisions of the Texas Savings Bank Act, §4.06]. For the purposes of this section, a special examination shall include only those examinations which the Commissioner conducts or causes to have conducted after the institution has completed one annual examination or such other additional examinations as the commissioner deems to be necessary. This special examination fee shall not be charged for an institution's annual regular examination.

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 January 14, 1994

TRD-9434797

James L. Pledger
Commissioner
Texas Savings and Loan
Department

Earliest possible date of adoption. February 25, 1994

For further information, please call (512)
475-1360

• 7 TAC §79.105

The Texas Savings and Loan Department proposes an amendment to §79.105, concerning the filing fee for existing depository institutions to convert to a state savings bank charter. The fees for institutions with assets of less than \$75 million would be reduced to ensure that the cost of conversion for such institutions is not prohibitive.

James L. Pledger, commissioner, 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. Pledger also has determined that for each year of the first five years there will be public benefit as a result of more institutions being able to convert to state savings banks, thus strengthening the state thrift system. The fees for small business will be reduced as a result of this rule. There is no anticipated economic cost to persons who are required to comply with the section as proposed. Mr. Pledger has

determined that the proposed rule will have no local employment impact.

Comments on the proposal may be submitted to James L. Pledger, Commissioner, Texas Savings and Loan Department, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705.

The amendment is proposed under Texas Civil Statutes, Article 342-114, which provide the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution

and statutes of the state and, from time to time, to amend same.

Texas Civil Statutes, Article 489e is affected by this proposed amendment.

§79.105. Fee for Conversion into a Savings Bank. The commissioner shall collect a filing fee for each application filed pursuant to §75.90 of this title (relating to Conversion into a Savings Bank) for conversion into a savings bank pursuant to the following schedule:

\$ 0 - <u>30</u> [35] million	\$ <u>3,000</u> [5,000]
<u>30</u> [35] - <u>40</u> [60] million	<u>5,000</u> [10,000]
<u>40</u> [60] - <u>75</u> [100] million	<u>10,000</u> [15,000]
<u>75</u> - <u>100</u> million	<u>15,000</u>
100 - 250 million	20,000
250 million - 1 billion	25,000
1 billion - 2 billion	27,000
2 billion - 3 billion	30,000
3 billion - 4 billion	33,000
Over 4 billion	35,000

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 January 14, 1994

TRD-9434794 James L. Pledger
Commissioner
Texas Savings and Loan
Department

Earliest possible date of adoption: February 25, 1994

For further information, please call: (512) 475-1360

◆ ◆ ◆
TITLE 10. COMMUNITY DEVELOPMENT

Part I. Texas Department of Housing and Community Affairs

Chapter 7. Low Income Home Energy Assistance Program

• **10 TAC §§7.1-7.8**

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

The Texas Department of Housing and Community Affairs (TDHCA) proposes the repeal of §§7.1-7.8, concerning the Low Income

Home Energy Assistance Program. The rules proposed for repeal formerly governed the Texas Department of Human Service's administration of the Home Energy Assistance Program. The rules were administratively transferred to TDHCA with the legislative transfer of the program on September 1, 1992. The program has substantially changed and the rules are now obsolete

Larry Crumpton, division director, Community Affairs, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Crumpton also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be the repeal of obsolete rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Anne O. Paddock, Deputy General Counsel, P.O. Box 13941, Austin, Texas 78711-3941 within 30 days after the date of this publication.

The repeals are proposed under Texas Government Code, Chapter 2208, §2308.091(12), and Texas Civil Statutes, Article 4413(503), §2.05, which provide the Texas Department of Housing and Community Affairs with the authority to administer the Low Income Energy Assistance Program and to adopt rules.

§7.1. Timeframes for Home Energy Assistance Program (HEAP) Qualifications.

§7.2. Home Energy Assistance Program (HEAP) Eligibility Criteria.

§7.3. Vulnerability.

§7.4. Rights and Responsibilities of Households.

§7.5. Responsibilities of Energy Suppliers and Housing Authorities.

§7.6. Benefit Amount.

§7.7. Outreach.

§7.8. Appeals.

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 January 14, 1994.

TRD-9434896 Henry Flores
Executive Director
Texas Department of
Housing and
Community Affairs

Earliest possible date of adoption: February 25, 1994

For further information, please call: (512) 475-3948

TITLE 22. EXAMINING BOARDS

Part XI. Board of Nurse Examiners

Chapter 211. Bylaws

• 22 TAC §§211.1-211.10

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

The Board of Nurse Examiners proposes the repeal of §§211.1-211.10, concerning Bylaws. The repeal of the sections is being proposed to allow for the adoption of new sections.

Dr. Louise Waddill, Ph.D., R.N., executive director, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Dr. Waddill also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeal will be clarification by omission. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Louise Waddill, Ph.D., R.N., Executive Director, Board of Nurse Examiners, P.O. Box 140466, Austin, Texas 78714.

The repeals are proposed under Texas Civil Statutes, Article 4514, §1, which provide the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it.

§211.1 Introduction

§211.2 Purpose and Functions.

§211.3 Organization and Structure

§211.4 Officers.

§211.5 Meetings

§211.6 Committees

§211.7 Advisory Committees

§211.8 Conflict of Interest

§211.9 General Considerations.

§211.10 Amendments to the Sections.

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 January 13, 1994.

TRD-9434734

Louise Waddill, Ph.D., R.N.
Executive Director
Board of Nurse Examiners

Proposed date of adoption: March 9, 1994

For further information, please call: (512) 835-8650

• 22 TAC §§211.1-211.12

The Board of Nurse Examiners proposes new §§211.1-211.12, concerning Bylaws. The new rules are being proposed to update the board's bylaws, due, in part, to recent changes in the Nursing Practice Act and newly adopted practice and procedure rules. Texas Civil Statutes, Article 4513, §7 requires the development and implementation of policies that clearly define responsibilities of the board and board's staff. These proposed new rules will bring the bylaws into compliance with current rules and practices.

Dr. Louise Waddill, Ph.D., R.N., executive director, 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.

Dr. Waddill 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 as proposed will not be applicable as the public is relatively unaffected by this section. 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.

Comments on the proposal may be submitted to Louise Waddill, Ph.D., R.N., Executive Director, Board of Nurse Examiners, P.O. Box 140466, Austin, Texas 78714.

The new sections are proposed under Texas Civil Statutes, Article 4514, §1, which provide the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it.

§211.1. Introduction.

(a) Name. The entity is the Board of Nurse Examiners for the State of Texas, hereafter referred to as the board. It is a decision-making board appointed by the Governor of the State of Texas in compliance with Texas Civil Statutes.

(b) Location. The administrative offices shall be located in Austin, Texas. The mailing address for the board is Box 140466, Austin, Texas, 78714.

(c) Legal authority. The board is established pursuant to Texas Civil Statutes, Article 4513, and derives its grant of authority from Articles 4513-4528.

(d) Composition. The board shall be composed of those persons appointed by the Governor with the advice and consent of the Senate.

(e) Fiscal year. For all fiscal and administrative purposes, the reporting year of the board shall be identical to that of the State of Texas.

§211.2. Purpose and Functions.

(a) Purpose. The purpose of the board is to protect and promote the welfare of the people of Texas. This purpose supercedes the interest of any individual, the nursing profession, or any special interest group. The board fulfills its mission through two principle areas of responsibility.

(1) regulation of the practice of professional nursing; and

(2) establishment of standards for nursing education.

(b) Functions. The board shall perform the following functions as outlined in Texas Civil Statutes, Articles 4513-4528.

(1) Establish standards of nursing practice and regulate the practice of professional nursing.

(2) Interpret the Nursing Practice Act and the Rules and Regulations Relating to Professional Nurse Education, Licensure and Practice to nurses, employers, and the public to ensure informed professionals, allied health professionals, and consumers.

(3) Receive complaints and investigate possible violations of the Nursing Practice Act and rules and regulations

(4) Discipline violators through appropriate legal action to enforce the Nursing Practice Act and rules and regulations.

(5) Provide a mechanism for public comment with regard to the rules and regulations and the Nursing Practice Act and review and modify the rules and regulations when necessary and appropriate.

(6) Examine and license qualified applicants to practice professional nursing in the state of Texas in a manner that ensures that applicable standards are maintained and that practitioners are minimally competent.

(7) Grant licensure by endorsement to registered nurses from other states to ensure standards are maintained and applicable practices are consistent.

(8) Recommend to legislature appropriate changes in the Nursing Practice Act to ensure that the Act is current and applicable to changing needs and practices.

(9) Establish standards for nursing education and accredit or deny accredit

tation to schools of nursing and educational programs which fail to meet or maintain the prescribed course of study or other applicable standards to ensure that high levels of education are achieved

(10) Monitor the examination results of licensure applicants to determine variances in the level of educational effectiveness

(11) Provide consultation and guidance to nurse education institutions to facilitate self-study, evaluation, and the development of effective nurse education programs

(12) Provide advice and counsel to the faculty of educational programs, to staff of health agencies utilizing nursing services, and to practitioners of nursing to continually improve professional service delivery

§211.3 Organization and Structure

(a) General The board shall consist of members appointed by the Governor with the advice and consent of the Senate

(b) Terms of office In accordance with Texas Civil Statutes, Article 4513, the terms of board members shall be six years in length and shall be staggered so that the terms of not more than one-third of the members shall expire in a single calendar year. Upon completion of a term, a member may continue to serve until a successor has been appointed. A member may be reappointed to successive terms at the discretion of the Governor

(c) Eligibility Refer to Texas Civil Statutes, Article 4513

(d) Compensation Each member of the board shall receive per diem as provided by law for each day that the member engages in the business of the board and will be reimbursed for travel expenses incurred in accordance with the state of Texas and Board of Nurse Examiners' travel policies

§211.4 Officers

(a) Selections and appointments The board shall nominate and elect from among its members at the last meeting of the fiscal year a president unless designated by the Governor, as provided for in Texas Civil Statutes, Article 4514, §1, a vice-president and a treasurer by majority vote of members present and voting

(b) Duties of the officers

(1) The president shall

(A) preside at all meetings of the board and the executive committee,

(B) represent the board in legislative matters and in meetings with related groups,

(C) appoint standing, ad hoc, and advisory committees, and

(D) perform such other duties as pertain to the office of the president

(2) The vice-president shall function in the absence of the president and shall perform such other duties that are from time to time assigned by the board. If the office of president becomes vacant, the vice-president will serve as president until another member is elected by the board or named by the Governor

(3) The treasurer shall assure that funds appropriated to the board by the legislature are disbursed and accounted for in accordance with the board's financial plan, assure that revenues generated by the agency are remitted and accounted for in accordance with the board's financial plan; shall work closely with the executive director in the preparation of the legislative appropriations request and the board's annual operating budget to be adopted by the board, and shall perform the functions of the president in the absence of both the president and the vice-president

§211.5 Meetings. Regular meetings of the board shall be held at regular intervals throughout the year for the transaction of such business as may come before the board. Special meetings may be called as provided for in Texas Civil Statutes, Article 4514, §1. The regular meetings shall be held in Austin or a location designated by the board. At least one meeting each year will be held outside of Austin, if funds are available

(1) Agenda An agenda shall be posted in accordance with the Open Meetings law and copies shall be sent to the board members at least two weeks prior to the meeting

(2) Open meetings, open records, and administrative procedures The board shall comply with the requirements of the Texas Open Meetings Act, Government Code, Chapter 551, the Texas Open Records Act, Government Code, Chapter 552, and the Administrative Procedures Act, Government Code, Chapter 2001

(3) Quorum A majority of the members of the board, at least three of whom shall be registered nurses, shall constitute a quorum for the transaction of all business at any regular or special meeting

(4) Voting The board may act only by majority vote of its members present and voting, with each member entitled

to one vote, unless a conflict of interest exists as described in §211.10 of this title (relating to Conflict of Interest). No proxy vote shall be allowed.

(5) Presiding officer In the absence of the president, the vice-president and the treasurer, a presiding officer shall be chosen by a majority of the board members present

§211.6 Executive Committee.

(a) The executive committee shall consist of the President, the Vice-President and the Treasurer

(b) The executive committee shall have the authority to act on behalf of the board on matters that require a board decision between regular meetings of the board

(c) The executive committee shall meet at the call of the president

(d) The president shall designate a member of the executive committee to coordinate the annual performance reviews of the executive director and valuation of the board

§211.7 Committees of the Board

(a) Eligibility and Disciplinary Committee.

(1) Members of the committee shall be appointed by the president and shall consist of one consumer member and two nurse members

(2) The chair shall be named by the president

(3) Duties and powers The disciplinary committee shall have the authority to determine matters of eligibility for licensure and discipline of licenses, including temporary suspension of a license, and administrative and civil penalties

(b) Education Liaison The three board members representing nursing educational programs shall serve as advisory to the staff on matters pertaining to faculty waivers, proposed curriculum revisions and other issues that may arise between regular board meetings. The recommendations of the liaison members are presented to the board at the next regular meeting for ratification

(c) Advanced Practice Liaison Three members shall be designated by the president to serve as advisory to the staff on matters pertaining to advanced practitioner waivers and other issues that may arise between regular board meetings. The recommendation of the liaison members are presented to the board at the next regular meeting for ratification.

(d) Other standing or ad hoc committees. The board may designate other

standing or ad hoc committees as deemed necessary. Such committees shall have and exercise such authority as may be granted by the board.

§211.8 Executive Director

(a) The board shall determine qualifications for and retain an executive director who shall be the chief executive officer of the agency

(b) The executive director shall have the authority and responsibility for the operations and administration of the agency and such additional powers and duties as prescribed by the board. As chief executive of the board the executive director shall manage all aspects of the agency, including personnel, financial and other resources, in support of the NPA, rules and policies, the board's mission and strategic plan. The executive director shall attend all meetings of the board and may offer recommendations to the board, but shall not vote on matters brought before the board

§211.9 *Advisory Committees* The president may appoint, with the authorization of the board, advisory committees for the performance of such activities as may be appropriate

§211.10 *Conflict of Interest* When matters to be discussed by or before the board concern a school and/or agency with which the board member is affiliated, the board member shall not enter into the discussion unless questioned by a member of the board and shall not vote on the matter.

§211.11 General Considerations

(a) Parliamentary procedure Parliamentary procedures for all board, committee and advisory group meetings will be conducted in accordance with the latest edition of Robert's Rules of Order

(b) Minutes Minutes of all board meetings will be prepared and transmitted to board members for their review prior to subsequent board meetings and shall be filed with the Legislative Reference Library. Proceedings of standing and ad hoc committee meetings and advisory committee meetings shall be recorded, distributed and filed in accordance with parliamentary procedure

(c) Video Tape All or any part of the proceedings of a public board meeting may be recorded by any person in attendance by means of a tape recorder, video camera, or any other means of sonic or visual reproduction

(1) The executive director shall direct any individual wishing to record or videotape as to equipment location, place-

ment, and the manner in which the recording is conducted.

(2) The decision will be made so as not to disrupt the normal order and business of the board.

(d) Executive Session.

(1) The Board of Nurse Examiners may meet in executive session to consider only the following items as provided by law:

(A) involving the appointment, employment evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee, unless such officer or employee requests a public hearing,

(B) with respect to the purchase, exchange, lease, value of real property and negotiated contracts for prospective gift or donations to the state or the governmental body, when such discussion would have a detrimental effect on the negotiating position of the board as between the board and a third person, firm, or corporation,

(C) regarding the deployment, or specific occasions for implementation of security personnel or devices, or

(D) in private consultation between a governmental body and its attorney, in instances in which the board seeks the attorney's advice with respect to pending or contemplated litigation, settlement offer, and matters where the duty of board's counsel to his client, pursuant to the Code of Professional Responsibility of the State Bar of Texas, clearly conflicts with applicable statutory provisions

(2) An executive session of the board shall not be held unless a quorum of the board has first been convened in open meeting. If during such open meeting, a motion is passed by the board to hold an executive session, the presiding officer shall publicly announce that an executive session will be held by stating "Under the authority of Government Code, §551.101, et seq. this meeting is in executive session"

(3) The presiding officer of the board shall announce the date and time at the beginning and end of the executive session

(4) The presiding officer of the board shall make a tape recording of the executive session which shall include the announcement made by the presiding officer at the beginning and end of the executive session

(5) In lieu of a tape recording, the presiding officer shall prepare an agenda of the executive session which shall be cer-

tified by the presiding officer as being a true and correct record of the proceedings. The certified agenda shall:

(A) include an announcement of the date and time by the presiding officer at the beginning and end of the executive session; and

(B) state the subject matter of each deliberation and include a record of any further action taken.

(6) At the conclusion of the executive session, the presiding officer shall place the certified agenda or tape in an envelope, seal and date the envelope and deliver the envelope to the executive director.

(7) The executive director will place the envelope containing the tape or agenda in the agency's safe

(8) The certified agenda or tape shall be maintained at the board office for at least two years from the date of the executive session. If an action involving the executive session commences during such two-year period, the certified agenda shall be maintained until the final disposition of such action

(9) The certified agenda or tape shall be available for inspection by the judge of a district court as specified in Government Code, §555.104, if litigation has been initiated involving a violation of this section

§211.12 *Amendments to the Sections* These bylaws may be amended as provided in Government Code, §2001.023

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 January 13, 1994

TRD-9434735

Louise Waddill, Ph.D., R.N.
Executive Director
Board of Nurse Examiners

Proposed date of adoption March 9, 1994

For further information, please call (512) 835-8650

◆ ◆ ◆ Part XVIII. Texas State Board of Podiatry Examiners

Chapter 371. Examinations

• 22 TAC §371.1, §371.2

The Texas State Board of Podiatry Examiners proposes amendments to §371.1 and §371.2, concerning Examinations. The amendments define what a person must do to

become a podiatrist. The amendments are needed to list additional requirements set forth by Senate Bill 1080.

Robert A. Lansford, executive director, 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. Lansford 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 the protection of the public health through the setting of examination requirements for persons applying for a podiatrist's license. 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.

Comments on the proposal may be submitted to Janie Alonzo, 3420 Executive Center Drive, Suite 305, Austin, Texas 78731, (512) 794-0145.

The amendments are proposed under Texas Civil Statutes, Articles 4568(j) and 4590(e), which provide the Texas State Board of Podiatry Examiners with the authority to adopt all reasonable or necessary rules, regulations, and by-laws not consistent with the law regulating the practice of podiatry, the laws of this state, or of the United States, to govern its proceedings and activities, the regulation of the practice of podiatry, and the enforcement of the law regulating the practice of podiatry.

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

Act—the Podiatry Practice Act. Texas Civil Statutes, Article 4567, et seq.

Applicant. A person who applies to the Texas State Board of Podiatry Examiners for a license to practice podiatric medicine in the State of Texas. A person who applies for relicensing, or applies for renewal of his or her license, or applies for reinstatement of his or her license after suspension or revocation is not an applicant for purpose of this chapter, and subsequent chapters.

Board. The Texas State Board of Podiatry Examiners as established and authorized by the Podiatry Practice Act of Texas, Texas Civil Statutes, Article 4567, et seq.

Board Member. A person [One] lawfully appointed by the governor to serve a term as set by law on the board.

Examinee. A person who has been admitted to take the examination given by or at the direction of the Texas State Board of Podiatry Examiners as a requirement for licensing to practice podiatry in the State of Texas.

Executive Director. An employee of the board who manages the day-to-day operations of the board.

§371.2 Application for License

(a)-(f) (No change)

(g) **Temporary License.**

(1) A temporary license may be granted by the Board to a certified graduate of an approved school of podiatry under §371.3(b) of this title (relating to Qualifications of Applicants) who is enrolled in an approved internship or residency program under §371.3(d) for a term not to exceed the time the graduate is enrolled in said internship or residency program, unless the graduate is not practicing in the State of Texas during the term of said internship or residency program. In no case is said temporary license to be issued for a term to exceed three years, or renewed in successive years for a time that cumulatively exceeds three years.

(2)[(h)] A temporary license may be granted by the Board to a certified graduate of an approved school of podiatry under §371.3(b) of this title (relating to Qualifications of Applicants) who is enrolled in an internship or residency program that is pending approval, as defined under §371.3(d), for a term not to exceed the time the graduate is enrolled in said internship or residency program. In no case is said temporary license to be issued for a term to exceed three years, or renewed in successive years for a time that cumulatively exceeds four years. It shall be the sole responsibility of the applicant to ascertain the approval status, as defined in §371.3(d), of the applicant's residency program [he chooses to attend].

(3)[(i)] A temporary licensee granted a temporary license for the purpose of pursuing an internship residency program in the State of Texas shall not engage in the practice of podiatry, whether for compensation or free of charge, outside the scope and limits of the residency program in which he or she is enrolled.

(4)[(j)] A temporary license granted by the Board for the purpose of pursuing a residency program in the State of Texas shall terminate by operation of law and under these rules at the time and on the day that said temporary licensee leaves or is terminated from said residency program. Any successive entry into a second or further residency program shall be subject to all laws and rules and application requirements set forth herein.

(5)[(k)] All temporary licensees shall be subject to the same fees and penalties as all other licensees as set forth in the Podiatry Practice Act of Texas, Texas Civil Statutes, Article 4567 et seq., and subsequent amendments, including Article 4574 of said Act, and Chapter 376 of this title (relating to Violations and Penalties), except that temporary licensees are not subject

to any board rules concerning continuing education.

(h) **Provisional License.**

(1) **Requirements for Provisional License.** On application for examination, a candidate may apply for a provisional license under the following circumstances.

(A) The applicant must be licensed in good standing as a podiatrist in another state, the District of Columbia, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of the Podiatry Practice Act, subsequent amendments, and rules and must furnish proof of such licensure on board forms provided.

(B) The applicant must have passed a national or other examination recognized by the Board relating to the practice of podiatry and must submit a true and correct copy of the applicant's score report.

(C) The applicant must not have failed an examination for a license conducted by the Board.

(D) The applicant's license to practice podiatry must not have been revoked or suspended in any jurisdiction.

(2) **Sponsorship.** A candidate for provisional licensure must be sponsored by a person currently licensed by the board and in good standing under the Podiatry Practice Act with the following conditions applicable.

(A) Prior to practice in Texas, on forms provided by the Board, the sponsor licensee will certify to the Board the following:

(i) that the applicant for provisional licensure will be working within the same office as the licensee, under the direct supervision of the sponsor licensee; and

(ii) that such sponsor licensee is aware of the Act and rules governing provisional licensure and that the sponsorship will cease upon the invalidity of the provisional license.

(B) Sponsor licensee will be held responsible for the unauthorized practice of podiatry should such provisional license expire.

(3) **Hardship.** An applicant for a provisional license may be excused from the requirement of sponsorship of

this rule if the Board determines that compliance with that subsection constitutes a hardship to the applicant.

(4) Application and Fee. The Board shall issue a license pursuant to this rule to the holder of a provisional license if:

(A) The candidate for provisional licensure will be subject to all application requirements required by Chapter 371 of this title (relating to Examinations) and subject to the applicable examination fees established under §371.2 of this title (relating to Examination Fee). In addition, the candidate will be subject to a fee for issuance of a provisional license.

(B) No provisional license can be issued until all application forms and fees are received in the Board office and the application is approved.

(C) A provisional license expires upon the earlier to occur of the passage of 180 days or notice by the Board of the candidate's successful passage or failure of all examinations required by Chapter 371. It shall be the responsibility of the candidate and sponsor to return the provisional license to the Board office on expiration.

(D) The candidate's failure to sit for the first scheduled Board examination following application for examination invalidates the provisional license, unless in the discretion of the Board, sufficient and reasonable evidence regarding nonappearance exists.

(E) Each candidate for provisional license shall receive only one nonrenewable license prior to the issuance of a podiatrist license.

(F) If at any time during the provisional licensure period it is determined that the holder of such provisional license had violated the Podiatry Practice Act or Board rules, such provisional license will be subject to termination.

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 January 14, 1994

TRD-9434842

Janie Alonzo
Certifying Official, Staff
Services Officer I
Texas State Board of
Podiatry Examiners

Earliest possible date of adoption. February 25, 1994

For further information, please call. (512) 794-0145

◆ ◆ ◆
• 22 TAC §371.15

The Texas State Board of Podiatry Examiners proposes new §371.15, concerning Examinations. The new section defines licensing requirements. Amendment are need to list requirement for licensure for individuals who are in default of their Guaranteed Student Loan.

Robert A. Lansford, 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

Mr Lansford 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 better clarity in the rules. 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

Comments on the proposal may be submitted to Janie Alonzo, 3420 Executive Center Drive, Suite 305, Austin, Texas 78731, (512) 794-0145

The amendment is proposed under Texas Civil Statutes, Articles 4568(j) and 4590(e), which provide the Texas State Board of Podiatry Examiners with the authority to adopt all reasonable or necessary rules, regulations, and by-laws not consistent with the law regulating the practice of podiatry, the laws of this state, or of the United States; to govern its proceedings and activities, the regulations of the practice of podiatry, and the enforcement of the law regulating the practice of podiatry

§371.15 *Licensing of Guaranteed Student Loan Defaulters*

(a) The Board shall refuse to renew the license of a licensee whose name is on the list of those who have defaulted on student loans published by the Texas Guaranteed Students Loan Corporation (hereinafter TGSLC) unless

(1) the renewal is the first renewal following the board's receipt of a TGSLC list including the licensee's name among those in default; or

(2) the licensee presents to the board a certificate issued by the TGSLC certifying that

(A) the licensee has entered into a repayment agreement on the defaulted loan, or

(B) the licensee is not in default on a loan guaranteed by the corporation.

(b) The board may issue an initial license to a person on TGSLC's list of defaulters who meets all other qualification for licensure but shall not renew the license unless the licensee presents to the board a certificate issued by the TGSLC certifying that

(1) the licensee has entered into a repayment agreement on the defaulted loan, or

(2) the licensee is not in default on a loan guaranteed by the TGSLC.

(c) The board shall not renew the license of a licensee who defaults on a repayment agreement unless the person presents to the board a certificate issued by the TGSLC certifying that:

(1) the licensee has entered into another repayment agreement on the defaulted loan, or

(2) the licensee is not in default on a loan guaranteed by the TGSLC or on a repayment agreement

(d) The board will provide the licensee identified by the TGSLC as being in default with written notice of his or her default status at least 30 days before the expiration day of the license to the last known address according to the board's record.

(e) A person informed by the board of his or her default status according to the TGSLC shall be given a hearing in accordance with rules 377 et seq

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 January 14, 1994

TRD-9434843

Janie Alonzo
Certifying Official, Staff
Services Officer I
Texas State Board of
Podiatry Examiners

Earliest possible date of adoption February 25, 1994

For further information, please call (512) 794-0145

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Chapter 373. Identification of Practice

• 22 TAC §373.4

The Texas State Board of Podiatry Examiners proposes an amendment to §373.4, concerning Trade Names and Assumed Names. This section defines the terms commonly used in the profession, to use of trade names and assumed names. The amendments delete the section regarding clinic because there is no longer a need for limitations on the use of the term

Robert A Lansford, 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

Mr. Lansford also has determined that for each year of the first five years the section as proposed is in effect there will be no public benefits anticipated as a result of enforcing the section

Comments on the proposal may be submitted to Janie Alonzo, 3420 Executive Center Drive, Suite 305, Austin, Texas 78731, (512) 794-0145.

The amendment is proposed under Texas Civil Statutes, Articles 4568(j) and 4590(e), which provide the Texas State Board of Podiatry Examiners with the authority to adopt all reasonable or necessary rules, regulations, and by-laws not consistent with the law regulating the practice of podiatry, the laws of this state, or of the United States, to govern its proceedings and activities, the regulations of the practice of podiatry, and the enforcement of the law regulating the practice of podiatry

§373.4. Trade Names and Assumed Names

(a) A podiatrist desiring a ruling on the use of a trade name or assumed name to identify a group of podiatrists with which he is practicing, shall submit the names to the board for review and approval

(b) The board shall approve a trade name or assumed name that

(1) includes a word or words indicating the practice specialty is podiatry;

(2) fairly and objectively identified the practice, and

(3) complies with §373.3, of this title (relating to Advertising)

(c) If a name is disapproved, the board shall notify in writing the party requesting the ruling on the name and set forth the reasons for disapproval

[(d) The term "clinic" may be used in the name identifying a podiatry practice only if the practice is conducted in connection with a medical or podiatry school or hospital, or if the podiatrist is practicing in a group composed of practitioners from different branches of the hearing are, or if the group is composed of three or more podiatrists specializing in different fields or branches of podiatric medicine. Examples of names acceptable under this subsection are "Stephenville Community Hospital Podiatry Clinic" and "State Medical School Foot Clinic".]

(d)[(e)] Within any advertisement or like publication that includes the name of a group, each podiatrist in the group shall also publish his own name and professional identify himself in the manner provided in §373.2(a) or (b) of this title (relating to Practitioner Identification), as applicable

(e)[(f)] Any person who violates any provisions of this section, or a determination of the board hereunder, is subject to penalty pursuant to Chapter 376 of this title (relating to Violations and Penalties) of up to \$500 for each day of violation, as provided in Texas Civil Statutes, Article 4568a, not to exceed the maximum penalty amount set forth in Chapter 376 herein.

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

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For further information, please call: (512) 794-0145

Chapter 375. Rules Governing Conduct

• 22 TAC §375.4, §375.6

The Texas State Board of Podiatry Examiners proposes new §375.4, and 375.6, concerning Rules Governing Conduct. The new sections define what requirements the board has to provide consumer information and public participating in meetings. The new sections are needed to conform with requirements set forth by Senate Bill 1080

Robert A Lansford, executive director, 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 Lansford 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 the protection of the public health through the setting of examination requirements to keep the public informed regarding how to file complaints against a podiatrist and regarding what is discussed at board meeting. 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

Comments on the proposal may be submitted to Janie Alonzo, 3420 Executive Center Drive, Suite 305, Austin, Texas 78731, (512) 794-0145.

The amendments are proposed under Texas Civil Statutes, Article 4568(j) and 4590(e), which provide the Texas State Board of Podiatry Examiners with the authority to adopt all reasonable or necessary rules, regulations, and by-laws not consistent with the law regulating the practice of podiatry, the laws of this state, or of the United States, to govern its

proceedings and activities, the regulations of the practice of podiatry, and the enforcement of the law regulating the practice of podiatry.

§375.4. Consumer Information

(a) In order for the public to be informed regarding the functions of the Board and the Board's procedures by which complaints are filed with and resolved by the Board, each licensee is required to display in each podiatric office information regarding the Board's name, address, and telephone number.

(b) The licensee must display a sign furnished by the Board or provide to all patients and consumers a brochure that notifies consumers or recipients of services of the name, mailing address, and telephone number of the Board and a statement informing consumers or recipients of services that complaints against a licensee can be directed to the Board.

(c) The sign shall be conspicuously and prominently displayed in a location where it may be seen by all patients. The consumer brochure, if chosen, must be prominently displayed and available to patients and consumers at all times.

§375.6. Public Participating in Meetings.

A schedule time shall be established on each posted agenda to allow the opportunity for public comment on any issue under the jurisdiction of the Board. The time allowed an individual spokesperson may be limited at the discretion of the chair.

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

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Janie Alonzo
Certifying Official, Staff
Services Officer I
Texas State Board of
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For further information, please call: (512) 794-0145

• 22 TAC §375.11

The Texas State Board of Podiatry Examiners proposes an amendment to §375.11, concerning Records. This amendment defines the timeframe for keeping patient records. Changes were needed to explain what is included in records and the procedure to follow when a patient requests copies of their records.

Robert A. Lansford, 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.

Mr. Lansford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the public will be more aware of what they can obtain in the way of records. 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.

Comments on the proposal may be submitted to Janie Alonzo, 3420 Executive Center Drive, Suite 305, Austin, Texas 78731, (512) 794-0145.

The amendment is proposed under Texas Civil Statutes Articles 4568(j) and 4590(e), which provide the Texas State Board of Podiatry Examiners with the authority to adopt all reasonable or necessary rules, regulations, and by-laws not consistent with the law regulating the practice of podiatry, the laws of this state, or of the United States, to govern its proceedings and activities, the regulations of the practice of podiatry, and the enforcement of the law regulating the practice of podiatry.

§375.11. Records

(a) All podiatrists shall make, maintain, and keep accurate records of the diagnosis made and the treatment performed for and upon each of his or her patients for reference and for protection of the patient for at least five [two] years following the completion of treatment.

(b) The records of the identity, diagnosis, evaluation, or treatment of a patient by a podiatrist that are created or maintained by a podiatrist are the property of the podiatrist.

(c) A podiatrist shall furnish copies of records requested pursuant to a written request by the patient or by a parent or legal guardian if the patient is a minor, or a legal guardian if the patient has been adjudicated incompetent to manage his or her personal affairs, or an attorney ad item appointed for the patient or personal representative if the patient is deceased. The information shall be furnished by the podiatrist within a reasonable period of time and reasonable and customary fees for furnishing the information shall be paid by the patient or someone on the patient's behalf.

(d) "Records" included any records, reports, notes, charts, x-rays or statements pertaining to the history, diagnosis, evaluation, treatment, or prognosis of the patient.

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 January 14, 1994.

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Janie Alonzo
Certifying Official, Staff
Services Officer I
Texas State Board of
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For further information, please call: (512) 794-0145

Chapter 377. Procedure Governing Grievances, Hearings and Appeals

• 22 TAC §377.43

The Texas State Board of Podiatry Examiners proposes an amendment to §377.43, concerning Procedures Governing Grievances, Hearings and Appeals. The amendment is needed to change the location of the district court having jurisdiction to Travis County.

Robert A. Lansford, 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.

Mr. Lansford also has determined that for each year of the first five years the section is in effect there will be no public benefit anticipated as a result of enforcing the section. 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.

Comments on the proposal may be submitted to Janie Alonzo, 3420 Executive Center Drive, Suite 305, Austin, Texas 78731, (512) 794-0145.

The amendment is proposed under Texas Civil Statutes, Articles 4568(j) and 4590(e), which provide the Texas State Board of Podiatry Examiners with the authority to adopt all reasonable or necessary rules, regulations, and by-laws not consistent with the law regulating the practice of podiatry, the laws of this state, or of the United States; to govern its proceedings and activities, the regulations of the practice of podiatry, and the enforcement of the law regulating the practice of podiatry.

§377.43. Appeals. Any person whose license to practice podiatry has been denied, canceled, revoked, reprimanded, or suspended by order of the board may appeal to a district court of Travis County but the decision of the board shall not be enjoined or stayed except on application to the district court after notice to the board. The proceeding on appeal shall be under the substantial evidence rule. [any district court having jurisdiction and venue in the county of his residence]

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

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For further information, please call: (512) 794-0145

Chapter 378. Continuing Education

• 22 TAC §378.1

The Texas State Board of Podiatry Examiners proposes an amendment to §378.1, concerning Continuing Education. This amendment describes the requirements for continuing education, and is needed to comply with Senate Bill 1080.

Robert A. Lansford, 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.

Mr. Lansford also has determined that for each year of the first five years the section is in effect there will be no public benefit anticipated as a result of enforcing the section. 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.

Comments on the proposal may be submitted to Janie Alonzo, 3420 Executive Center Drive, Suite 305, Austin, Texas 78731, (512) 794-0145

The amendment is proposed under Texas Civil Statutes, Articles 4568(j) and 4590(e), which provide the Texas State Board of Podiatry Examiners with the authority to adopt all reasonable or necessary rules, regulations, and by-laws not consistent with the law regulating the practice of podiatry, the laws of this state, or of the United States; to govern its proceedings and activities, the regulations of the practice of podiatry, and the enforcement of the law regulating the practice of podiatry.

§378.1. Continuing Education Required.

(a) Each person licensed to practice podiatry in the State of Texas is required to have 15 hours of continuing education annually for the renewal of their license to practice podiatry. One hour of the required 15 hours of annual continuing education may be a course, class, seminar, or workshop in Ethics.

(b) These hours of continuing education must be obtained in the 12-month period immediately preceding the year for which the license is issued. A licensee who completes more than the required 15 hours during the preceding licensing period may carry forward a maximum of

five hours for the next license period. Each licensee shall maintain records for three years evidencing completion of the continuing education programs completed by the licensee.

(1) The year will begin annually on September 1 and will extend until August 31 of the following year.

(2) Notice is hereby given that receipt for proof of completion of the required 15 hours must be received by the State Board of Podiatry Examiners no later than August 31, of the relevant year. Receipt of completion of such requirement after August 31, date subjects the practitioners of the penalty fees for late license renewal as provided in §379.2 of this title relating to Fees and License Renewal. [\$50 penalty for late license renewal]

(c) The Board may assess the continuing education needs of a licensee and require the licensee to attend continuing education courses specified by the board.

(d) Continuing education obtained as part of a disciplinary action is not acceptable credit towards the total of 15 hours required annually.

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 January 14, 1994

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Janie Alonzo
Certifying Official, Staff
Services Officer I
Texas State Board of
Podiatry Examiners

Earliest possible date of adoption February 25, 1994

For further information, please call (512) 794-0145

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• 22 TAC §378.8

The Texas State Board of Podiatry Examiners proposes new §378.8, concerning Inactive License Status. The new section was needed to set rules for putting a license on inactive status as required by Senate Bill 1080.

Robert A. Lansford, 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.

Mr. Lansford also has determined that for each year of the first five years the section is in effect there will be no public benefit anticipated as a result of enforcing the section. 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.

Comments on the proposal may be submitted to Janie Alonzo, 3420 Executive Center Drive, Suite 305, Austin, Texas 78731, (512) 794-0145.

The new section is proposed under Texas Civil Statutes, Articles 4568(j) and 4590(e), which provide the Texas State Board of Podiatry Examiners with the authority to adopt all reasonable or necessary rules, regulations, and by-laws not consistent with the law regulating the practice of podiatry, the laws of this state, or of the United States; to govern its proceedings and activities, the regulation of the practice of podiatry, and the enforcement of the law regulating the practice of podiatry.

§378.8. *Inactive License Status.*

(a) A licensee may place a license on inactive status by applying for inactive status on a form prescribed by the Board before the date of the expiration of the license and by complying with all license renewal requirements other than the continuing education requirements.

(b) A holder of a license that is on inactive status may not practice podiatry in this state. The practice of podiatry by a holder of a license that is on inactive status constitutes the practice of podiatry without a license.

(c) A licensee may remain on inactive status for three years. In order for a licensee to return to active status, the licensee must complete 15 hours of continuing education per year of inactive status not to exceed three years in addition to any outstanding hours of continuing education and pay the required renewal license fees prior to the expiration of the three years. If licensee does not return to active status prior to the expiration of three years, the license is delinquent and the licensee must pay a late renewal penalty in addition to the requirements for returning to active status.

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

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Janie Alonzo
Certifying Official, Staff
Services Officer I
Texas State Board of
Podiatry Examiners

Earliest possible date of adoption. February 25, 1994

For further information, please call (512) 794-0145

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Chapter 379. Fees and License
Renewal

• 22 TAC §379.1, §379.2

The Texas State Board of Podiatry Examiners proposes new §379.1, and §379.2 con-

cerning Fees and License Renewal. These new sections are needed to put fees and license renewal requirements in the rules in compliance with Senate Bill 1080.

Robert A. Lansford, executive director, has determined that there will be fiscal implications as a result of enforcing or administering the sections. The effect on state government for the first five-year period the sections are in effect will be an estimated increase \$37,750 for each of the fiscal years 1994-1998. The only businesses who will be effected are podiatrists. Examination fees will increase by \$25, renewal fees will increase by \$50.

Mr. Lansford also has determined that for each year of the first five years the sections are in effect there will be no public benefit anticipated as a result of enforcing the sections. The anticipated economic cost to persons who are required to comply with the sections as proposed will be an Examination Fee of \$25 and a Renewal Fee of \$50 for each of the fiscal years 1994-1998.

Comments on the proposal may be submitted to Janie Alonzo, 3420 Executive Center Drive, Suite 305, Austin, Texas 78731, (512) 794-0145.

The new sections are proposed under Texas Civil Statutes, Articles 4568(j) and 4590(e), which provide the Texas State Board of Podiatry Examiners with the authority to adopt all reasonable or necessary rules, regulations, and by-laws not consistent with the law regulating the practice of podiatry, the laws of this state, or of the United States; to govern its proceedings and activities, the regulations of the practice of podiatry, and the enforcement of the law regulating the practice of podiatry.

§379.1. *Fees.*

(a) The fees set by the Board and collected by the Board must be sufficient to meet the expenses of administering the Podiatry Practice Act, subsequent amendments, and the applicable rules and regulations.

(b) Fees are as follows.

- (1) Examination-\$125;
- (2) Re-Examination-\$125;
- (3) Renewal-\$250;
- (4) Renewal Penalty-as specified in statute,
- (5) Duplicate License-\$50;
- (6) Copies of Public Records-provided at cost to the agency;
- (7) Copies of Mailing Lists-\$100; and
- (8) Statute and Rule Notebook-provided at cost to the agency.

§379.2 *License Renewal*

(a) A person may renew his unexpired license by paying the Board before the expiration date of the license the required

renewal fee. A license to practice podiatry expires on August 31 of each year. To be eligible to renew the license, a licensee must comply with the continuing education requirements prescribed by the Board.

(b) If a person's license has been expired for 90 days or less, the person may renew the license by paying to the Board the required renewal fee and an additional fee that is one-half of the examination fee for the license.

(c) If a person's license has been expired for more than 90 days but less than one year, the person may renew the license by paying to the Board all unpaid renewal fees and a fee that is equal to the examination fee for the license.

(d) If a person's license has been expired for one year or longer, the person may not renew the license. The license is considered to have been canceled. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license. The Board may renew without reexamination an expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding application. The person must complete an application prescribed by the Board and pay to the Board a fee that is equal to the examination fee for the license.

(e) The annual renewal application will be deemed to be written notice of the impending license expiration forwarded to the person at the person's last known address according to the records of the Board.

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

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Janie Alonzo
Certifying Official, Staff
Services Officer I
Texas State Board of
Podiatry Examiners

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For further information, please call (512) 794-0145

Chapter 381. Anesthesia

• 22 TAC §§381.1

(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 State Board of Podiatry Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas State Board of Podiatry Examiners proposes the repeal of §381.1, concerning Anesthesia. This rule is very vague and no longer used or enforced by the Board.

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

Mr. Lansford 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 better clarity in the rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Janie Alonzo, 3420 Executive Center Drive, Suite 305, Austin, Texas 78731, (512) 794-0145.

The repeal is proposed under Texas Civil Statutes, Articles 4568(j) and 4590(e), which provide the Texas State Board of Podiatry Examiners with the authority to adopt all reasonable or necessary rules, regulations, and by-laws not consistent with the law regulating the practice of podiatry, the laws of this state, or of the United States, to govern its proceedings and activities, the regulation of the practice of podiatry, and the enforcement of the law regulating the practice of podiatry.

No other article of the Statute is affected by this proposed repeal.

§381.1 Relative Analgesia

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

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Janie Alonzo
Certifying Official, Staff
Services Officer I
Texas State Board of
Podiatry Examiners

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For further information, please call (512) 794-0145

• 22 TAC §§381.1-381.8

The Texas State Board of Podiatry Examiners proposes new §§381.1-381.8 concerning Anesthesia. These rules were needed to define requirements for a podiatrist to utilize Nitrous Oxide Conscious Sedation.

Robert A. Lansford, executive director, 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. Lansford 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 clarity in the rules. 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.

Comments on the proposal may be submitted to Janie Alonzo, 3420 Executive Center Drive, Suite 305, Austin, Texas 78731, (512) 794-0145.

The new sections are proposed under Texas Civil Statutes, Articles 4568(j) and 4590(e), which provide the Texas State Board of Podiatry Examiners with the authority to adopt all reasonable or necessary rules, regulations, and by-laws not consistent with the law regulating the practice of podiatry, the laws of this state, or of the United States, to govern its proceedings and activities, the regulation of the practice of podiatry, and the enforcement of the law regulating the practice of podiatry.

No other article of the Statute is affected by this proposed new sections.

§381.1 Nitrous Oxide/Oxygen Inhalation Conscious Sedation. Conscious sedation is the production, by pharmacological or non-pharmacological methods, or a combination thereof, of an altered level of consciousness in a patient. Conscious sedation of a patient by nitrous oxide is the administration by inhalation of a combination of nitrous oxide and oxygen producing a minimally depressed level of consciousness while retaining the patient's ability to maintain a patent airway independently and continuously, and to respond appropriately to physical stimulation and verbal command.

§381.2 Direct Supervision. Conscious sedation of a patient by nitrous oxide shall be induced, maintained, and continuously supervised only by the podiatric physician or by the assistant under continuous direct supervision of the podiatric physician. The nitrous oxide shall not be flowing if the podiatric physician is not present in the room continuously throughout the procedure.

§381.3 Equipment Safety Criteria. Equipment used must meet the following safety criteria. The gas machine should have:

- (1) 30% minimum flow of oxygen,
- (2) glass flow tubes,
- (3) nitrous oxide fail-safe (will not flow without oxygen),
- (4) automatic room air intake in the event the bag is empty,
- (5) non-rebreathing check valve,
- (6) oxygen flush, and
- (7) auxiliary oxygen outlet with one demand valve resuscitation assembly per office.

§381.4 Office Safety Equipment and Medical Supplies. The office should be equipped with a manifold to provide for

protection against overpressure. The manifold must be equipped with an audible alarm system. The machine must have a service check on a three-year basis, and a copy of the service check is to be filed with the office of the Texas State Board of Podiatry Examiners. There must be a method of locking the nitrous oxide tanks at night. The podiatric physician must have appropriate emergency drugs and equipment for resuscitation.

§381.5 Nitrous Oxide-Oxygen Inhalation Conscious Sedation Permit

(a) To employ nitrous oxide/oxygen inhalation conscious sedation for any medical purpose, the podiatric physician must obtain a permit from the Texas State Board of Podiatry Examiners.

(b) Any podiatrist who is employing nitrous oxide/oxygen inhalation conscious sedation on the effective date of this regulation must apply for the permit in order to continue using nitrous oxide/oxygen inhalation conscious sedation.

(c) The Texas State Board of Podiatry Examiners may at any time at its own discretion require an on-site office evaluation to determine that all standards regarding nitrous oxide/oxygen inhalation conscious sedation are being met.

(d) Once a permit for nitrous oxide/oxygen inhalation conscious sedation is issued, the Texas State Board of Podiatry Examiners shall automatically renew the permit annually, unless the Board determines that for good cause an evaluation of the permit is appropriate, and of which the permit holder shall be promptly and fully informed so as to prevent inadvertent use of the technique when the permit status is in question.

(e) When statutory authority exists, the Texas State Board of Podiatry Examiners shall collect annually, along with the annual license renewal fee from each permit holder, a renewal fee of \$5.00, beginning with the license renewal fees due for the fiscal year 1995. New permits shall be issued at a fee of \$25, beginning with the license fees due for the fiscal year 1994.

(f) When a permit is issued, it must be clearly displayed in the office alongside the original license.

§381.6 Nitrous Oxide/Oxygen Inhalation Conscious Sedation Permit Requirements

(a) To induce and maintain nitrous oxide/oxygen inhalation conscious sedation of patients having podiatric surgical procedures in the State of Texas, the following requirements must be met. To use nitrous oxide/oxygen inhalation conscious sedation on a patient for podiatric medical purpose in

the State of Texas, the podiatric physician must first provide to the Texas State Board of Podiatry Examiners documentary proof that:

(1) the podiatric physician has completed a didactic and clinical course in nitrous oxide/oxygen inhalation conscious sedation approved by the Texas State Board of Podiatry Examiners, or incorporated into a Texas State Board of Podiatry Examiners approved post-graduate residency training program. The didactic and clinical course shall:

(A) be directed by qualified instructors with advanced education in comprehensive pain control and with broad clinical experience in the technique of nitrous oxide/oxygen inhalation conscious sedation,

(B) include a minimum of four didactic work in pharmacodynamics of nitrous oxide/oxygen inhalation conscious sedation,

(C) include a minimum of six hours of clinical experience under personal supervision,

(2) the podiatric physician has completed a continuing medical education course in nitrous oxide/oxygen inhalation conscious sedation that includes training in the prevention and management of emergencies in the podiatric medical practice,

(3) the podiatric physician has completed Advanced Life Support Program, and has provided the Texas State Board of Podiatry Examiners documentary proof that his certification is current.

§381.7 Auxiliary Personnel. All auxiliary personnel employed in Texas in an office of a podiatric physician and who shall assist in the nitrous oxide/oxygen inhalation conscious sedation procedure shall be trained in basic life support and shall have annual reviews of emergency protocols, contents and use of emergency equipment, and basic cardiopulmonary resuscitation. Documentation verifying these annual reviews shall be maintained in the office of the podiatric physician who employs the auxiliary personnel and shall be submitted upon demand to the Texas State Board of Podiatry Examiners.

§381.8 Pre-operative Evaluation. The podiatric physician shall evaluate and document in the patient's medical record, prior to the nitrous oxide/oxygen inhalation conscious sedation procedure, the patient's health and medical status to insure that nitrous oxide/oxygen inhalation conscious sedation is medically appropriate.

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 January 14, 1994.

TRD-9434854

Janie Alonzo
Certifying Official, Staff
Services Officer I
Texas State Board of
Podiatry Examiners

Earliest possible date of adoption: February 25, 1994

For further information, please call. (512) 794-0145

TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resources Conservation Commission

Chapter 285. On-Site Wastewater Treatment

General Procedures and Information

• 30 TAC §§285.11-285.17

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

These repeals are proposed under the authority of Texas Water Code, §5.103 and §5.105, which provides the Texas Natural Resources Conservation Commission with the authority to adopt rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve all general policies of the commission. These sections are also proposed under the Texas Health and Safety Code, §366.012 which provides the TNRC with the authority to adopt rules concerning on-site sewage disposal systems.

§285.11. General Procedures and Information

§285.12. Design Standards for Sewerage Systems

§285.13. Design Standards for Effluent Disposal Systems

§285.14. Disposal Alternatives/Special Applications

§285.15. On-Site Sewerage System Maintenance and Water Conservation

§285.16. Unsatisfactory On-Site Disposal Systems

§285.17. Tables and Figures.

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 January 12, 1994.

TRD-9434643

Mary Ruth Holder
Director, Legal Division
Texas Natural Resources
Conservation
Commission

Earliest possible date of adoption February 25, 1994

For further information, please call (512) 463-8069

§285.108. Emergency Repairs.

§285.109. Penalties.

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 January 12, 1994

TRD-9434642

Mary Ruth Holder
Director, Legal Division
Texas Natural Resource
Conservation
Commission

Earliest possible date of adoption February 25, 1994

For further information, please call (512) 463-8069

New §285.102 lists definitions of words and phrases used in the text of the rules.

New §285.103 describes general requirements for OSSF's including requirements for professionally designed systems, situations which require professional designs, review of professional designs, review of subdivision plans and variances.

New §285.104 states the required procedure for issuing OSSF permits in governmental areas without local regulation of OSSF

New §285.105 describes the required procedures for a local governmental entity to become an authorized agent of the TNRCC

New §285.106 states the program review requirements for local governmental entities and the review authority of TNRCC

New §285.107 describes the registration and certification of OSSF installers, designated representatives and site evaluators. Specifically, program administration, applications, examinations, qualifications, certificates, sanctions, fees, and training are discussed

New §285.109 describes penalties resulting from violation of these sections including criminal, injunctive, civil and administrative.

New §285.110 states the TNRCC requirements for facility planning including land planning, site evaluation and approval of small lots or tracts

New §285.111 describes the criteria necessary to design an OSSF. Three types of systems are detailed including standard systems, proprietary systems and non-standard systems. Requirements for system setback and separation are also discussed

New §285.112 describes analytical methods for evaluation soil and how this evaluation is used to determine the suitability of an OSSF. Evaluation procedures include texture analysis, structure analysis, restrictive horizons, drainage, and loading rates

New §285.113 states the design criteria for OSSF's using surface disposal methods including spray irrigation, greywater irrigation and disposal of wastes from composting toilets

New §285.115 consists of tables and figures necessary for the design of an OSSF facility and which will aid the designers of these systems

Stephen Minick, division of budget and planning, has determined that for the first five years these sections are in effect there will be fiscal implications as a result of enforcement and administration of the sections. The effect on state government will be an increase in revenue of approximately \$162,500 in fiscal year 1994 and \$325,000 in each of the fiscal years 1995-1998. Costs to state government will increase by approximately \$155,000 in fiscal year 1994 and by \$305,000 in each of the fiscal years 1995-1998. The changes to procedural and technical requirements in these sections are not anticipated to have significant fiscal implications for affected persons. These rules will increase certain fee assessments associated with permitting on-site sewage facilities and registration of authorized facility installers. New fees are pro-

Administrative Requirements for On-Site Sewerage

• 30 TAC §§285.101-285.109

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

The repeals are proposed under the authority of Texas Water Code, §5.103 and §5.105, which provides the Texas Natural Resource Conservation Commission with the authority to adopt rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve all general policies of the commission. The repeals are also proposed under the Texas Health and Safety Code, §366.012, which provides the TNRCC with the authority to adopt rules concerning on-site sewage disposal systems

§285.101 Purpose

§285.102. Definitions

§285.103 General Requirements for On-Site Sewerage Facilities (OSSF)

§285.104. Texas Department of Health (TDH) Regulation in Areas without Local Regulation

§285.105. Delegation, Procedures/Sections for Local Entities

§285.106. Review of Locally Administered Programs.

§285.107. Registration of On-Site Sewerage Facility Installers.

The Texas Natural Resource Conservation Commission (TNRCC) proposes new §§285.101-285.107, 285.109-285.113, and 285.115 and the repeal of §§285.11-285.17 and 285.101-285.109, concerning on-site sewage facility program administration and design criteria

Senate Bill 2, First Called Session, 72nd Legislature, transferred all the powers, duties, rights, and obligations of the Texas Department of Health (TDH) pertaining to the program administration, technical design, treatment, and disposal of on-site sewage facilities (OSSF) to the TNRCC effective March 1, 1992. All rules pertaining to OSSF, except procedural rules, were administratively transferred from Title 25, Part 1, Texas Department of Health, to Title 31, Part IX, Texas Water Commission, in the March 3, 1992, issue of the *Texas Register* (17 TexReg 1649)

The new sections concerning the general program administration are proposed by TNRCC in order to clarify program operating procedures, better define TNRCC's relationship with authorized agents, establish two classes of installer, establish continuing education requirements for installers, establish a certification procedure for designated representatives of authorized agents and add civil and administrative penalties for violation of these sections. The last two revisions were mandated by the 73rd Legislature, Senate Bill 1042, revisions to Chapter 366, Texas Health and Safety Code

The new sections concerning design criteria for OSSF are proposed to identify and describe minimum acceptable design criteria for all types of OSSF currently in use and proposed for use

The TNRCC has assessed the rules adopted by TDH concerning OSSF program administration and design criteria and has determined that new rules are necessary in order to effectively administer, manage and implement the program regulating design, installation and operation of OSSF's in the State of Texas

New §285.101 states the purpose and objectives of these rules which is to establish a procedure for permitting and regulating OSSF's

posed for registration of authorized local inspectors of facilities. Permit fees will increase from \$100 to \$200 for standard permits and from \$250 to \$400 for large engineered systems. Initial registration fees for installers will increase from \$50 to \$75 and renewals from \$25 to \$50. Fees for registration of inspectors are proposed at \$75 for initial registration and \$50 for a renewal. Direct effects on local governments are limited to the costs of registration of local inspectors. There are no direct effects on small businesses, except those which may employ certified installers subject to the increases in registration fees. These effects are directly related to the number of affected employees.

Mr. Minick also has determined that for the first five years these sections as proposed are in effect the public benefit anticipated as a result of enforcement of and compliance with the sections will be improvements in the regulation of on-site sewage facilities, the administration of the on-site sewage facility program and the protection of the quality of the water resources of the state. There are costs anticipated for persons required to comply with these sections including the costs of additional permit fees for approval of private facilities and the registration costs for installers and inspectors if these costs are borne individually.

Written comments on the proposal may be submitted to Sherman Hart, Flood Management and Groundwater Program Section, Agriculture Division, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087. In order to be considered, written comments must be received by the Agriculture Section no later than 5:00 p.m., 30 days after the date of publication of this proposal. In addition, a public hearing will be held on February 28, 1994, at 9:00 a.m. in Room 201S, of the TNRCC, Building E, 12100 Park 35 Circle, Austin, Texas.

On-Site Sewage Facility (OSSF) Program Administration

- 30 TAC §§285.101-285.107,
285.109-285.113, 285.115

The new sections are proposed under the authority of the Texas Water Code, §5.103 and §5.105, which provides the Texas Natural Resource Conservation Commission with the authority to adopt rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve all general policies of the commission. These sections are also proposed under the Texas Health and Safety Code, §366.012, which provides the TNRCC with the authority to adopt rules concerning on-site sewage disposal systems.

§285.101. Purpose. It is the policy of the Texas Natural Resource Conservation Commission (TNRCC) to assist the state's citizens in obtaining safe and adequate on-site sewage facilities (OSSF), to minimize the exposure of Texas citizens to the disease

transmission potential of human and domestic waste; to minimize the potential for contamination of drinking water supplies and hazards to the state's recreational areas; and to reduce the potential for surface and groundwater pollution. It is further the public policy of this state to eliminate and prevent health hazards through the regulation and the proper planning of the location, design, construction, installation, alteration, extension, repair, operation, and maintenance of on-site sewage facilities. It is under these policies and the authority given to the Texas Natural Resource Conservation Commission, in Texas Health and Safety Code, Chapter 366, that these sections are promulgated and adopted.

§285.102. Definitions. The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise:

Aerobic digestion—The bacterial decomposition and stabilization of sewage in the presence of free oxygen.

Anaerobic digestion—The bacterial decomposition and stabilization of sewage in the absence of free oxygen.

Authorized agent—The local governmental entity authorized by the commission to implement and enforce Chapter 366, Texas Health and Safety Code, and this chapter for the regulation of on-site sewage facilities.

Bedrock—A continuous horizontal layer of hardened mineral; deposits that do not support growth of common plant life.

Blackwater—All sewage other than greywater that contains sufficient human or animal wastes to require the water to be treated prior to disposal to the earth's subsurface.

Borehole—A drilled hole four feet or greater in depth and one to three feet in diameter.

Cesspool—A non-watertight, covered receptacle intended for the receipt and partial treatment of domestic sewage. This device is constructed such that its sidewalls and/or bottom are open jointed to allow the gradual discharge of liquids while retaining the solids for anaerobic decomposition.

Chemical—A substance that in sufficient quantity could have a biotoxic effect on on-site sewage facilities.

Chemical toilet—A portable toilet using chemicals to mask odors, discourage insect breeding and provide partial disinfection.

Collection system—An on-site sewage collection, treatment and disposal system designed to serve two or more sewage-generating units where the total combined flow from all units does not exceed 5,000 gallons per day.

Commission—The Texas Natural Resource Conservation Commission.

Composting toilet—A self-contained disposal facility designed to decompose non-waterborne human wastes through bacterial action facilitated by aeration.

Designated representative—A person or group that is designated by the commission or an authorized agent to operate an on-site sewage facility program by handling the permitting, and making inspections of on-site sewage facilities, and is duly certified under the provisions of this chapter. The appointed person cannot work as an installer during his/her term.

Director—The executive director of the Texas Natural Resource Conservation Commission.

Emergency Repair—An immediate correction to an on-site sewage system to abate a serious and dangerous nuisance condition without altering the system.

Evapotranspiration (ET) system—A subsurface sewage facility which relies on soil capillarity and plant uptake to dispose of treated effluent through surface evaporation and plant transpiration.

Facility—Any on-site sewage system.

Floodplain (100-year)—That area along a stream during the time the stream is subject to the statistical 100-year flood.

Floodway (100-year)—The channel of a stream and adjacent land areas (center portion of the 100-year floodplain) that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface more than one foot above the 100-year flood elevation prior to encroachment into the 100-year floodplain.

Floodway fringe (100-year)—That area (outer edges) of the 100-year floodplain outside the floodway.

Geotextile filter fabric—A non-woven fabric suitable for wastewater applications.

Gravelless drainfield pipe—A generically labeled large diameter (usually eight or ten inches) geotextile fabric-wrapped piping product which is intended for use without gravel in a subsurface sewage facility.

Greywater—Wastewater from clothes washing machines, showers, bathtubs, handwashing lavatories, and sinks not used for the disposal of hazardous or toxic ingredients.

Holding tank—A watertight container equipped with a high-level alarm used to receive and store sewage in an anaerobic environment pending its delivery to, and treatment at, an approved treatment facility. This type of facility is generally intended for interim use, if and when approved by the local permitting authority.

Individual—A person, group of persons, corporation, or entity.

Installer—A person that is compensated by another for the installation, construction, alteration, extension, or repair of an on-site sewage facility and is duly registered under the provisions of this chapter.

Injection well—A hole drilled into permeable soil which is intended to receive either raw sewage or the effluent from some form of sewage treatment process.

Local governmental entity—A municipality, county, river authority or special district including an underground water district or soil and water conservation district.

Maintenance—The normal or routine upkeep, cleaning or mechanical adjustments to an existing on-site sewage facility.

Maintenance company—A company or individual in the business of maintaining on-site sewage systems. At least one individual in the company must hold an Installer II certificate and be certified by the appropriate manufacturer's maintenance program for the proprietary unit being maintained.

Maintenance findings—The results of a required performance check or component inspection on a specific on-site sewage facility by a valid maintenance company as outlined in the maintenance contract.

Mobile home park—Any facility or area developed for lease or rental of space for the placement of two or more mobile homes.

Mound system—A soil absorption system which is installed in or below an artificially created mound of earth.

National Sanitation Foundation (NSF) International—National Sanitation Foundation International testing laboratories, Ann Arbor, Michigan.

Natural soil—Earthen materials deposited into place by natural processes and not disturbed by artificial processes. Nuisance:

(A) sewage, human excreta, or other organic waste discharged or exposed in a manner that makes it a potential instrument or medium in the transmission of disease to or between a person or persons; or

(B) an overflowing septic tank or similar device, including surface discharge from or groundwater contamination by a component of an on-site sewage facility, or a blatant discharge from an on-site sewage facility.

On-site sewage facility system—A single system or systems of treatment devices and disposal facilities that does not produce more than 5,000 gallons of wastewater per day and is used only for the on-site disposal of that wastewater.

On-site waste disposal order—An order adopted by local governmental entities and approved by the commission. This order grants authorized agent status to the local governmental entity.

Owner—Holder of the warranty deed and/or the legally responsible occupant of the property served by an on-site sewage facility.

Permit—An authorization, issued by the commission or an authorized agent, to install, construct, alter, extend, repair, or operate an on-site sewage facility.

Person—An individual, corporation, organization, government, or governmental subdivision or agency, business, trust, partnership, association, or any other legal entity.

Pit privy—A watertight vented vault intended to store human waste and allow its decomposition through natural processes. In this type of treatment, no external water source is provided and there is no direct discharge to the surface.

Platted—Subdivided property recorded with the county/city in an official plat record.

Portable toilet—A portable enclosure with a built-in toilet seat and a raw sewage holding tank. It is primarily intended for use at construction sites and other areas where temporary restroom facilities are required. Domestic sewage collected in these facilities is generally retained in an anaerobic state pending delivery to, and treatment at, an approved treatment facility.

Probation—A formal procedure in which a person is subjected to an evaluation for a trial period not to exceed two years to ascertain the fitness in retaining possession of a registration or certification issued by the commission.

Professional designs—A design for an on-site sewage facility made by a registered professional engineer or registered sanitarian.

Regional offices—A regional office of the Texas Natural Resource Conservation Commission.

Restrictive horizon—A layer of earth which impedes the vertical movement of water.

Revocation—A formal procedure initiated by the commission in which a registration or certification is rescinded.

Sanitary control easement—A document securing all land, within a specified distance of a public potable water well location, from pollution hazards that include, but are not limited to, solid and liquid waste disposal sites, animal pens, improperly sealed or abandoned wells, major sewage pumping and treatment plants, and drainage ditches which contain agricultural and industrial waste discharges.

Scum—A mass of organic and/or inorganic matter which floats on the surface of sewage.

Seepage pit—An unlined covered excavation in the ground which is designed to operate in essentially the same manner as a cesspool.

Septic tank—A watertight covered receptacle designed to receive, store and provide treatment to domestic sewage. Its function is to separate solids from the liquid, digest organic matter under anaerobic conditions, store the digested solids through

a period of detention, and allow the clarified liquid to be disposed of in an approved subsurface sewage facility.

Sewage—Water which contains, or which has been in contact with, organic and inorganic contaminants such as human or animal wastes, vegetable matter, cooking fats and greases, laundry and dishwashing detergents, and other chemical compounds and waste products.

Sewage disposal plan—A technical report prepared by either a registered professional engineer or registered sanitarian, having demonstrated expertise in on-site sewage disposal planning. The plan shall describe the circumstances involved with sewage disposal on a land tract that has been, or is proposed to be, subdivided into lots of less than ten acres.

Single-family dwelling—A habitable structure constructed on, or brought to its site, and occupied by members of one family.

Site evaluator—A person that conducts a pre-construction site evaluation which includes performing soil analysis, a site survey and other criteria necessary to determine the suitability of a site for a specific on-site sewage facility and is duly certified under the provisions of this chapter.

Sludge—A semi-liquid mass of partially decomposed organic and inorganic matter which settles at or near the bottom of a receptacle containing sewage.

Soil—The unconsolidated mineral material on the surface of the earth that serves as a natural medium for the growth of plants.

Soil absorption system—A subsurface method for the disposal of partially treated sewage which relies on the soil's ability to absorb moisture and allow its dispersal by lateral and vertical movement through and between individual soil particles.

Subsurface sewage facility—A system designed to treat sewage and distribute the pretreated sewage effluent into a below ground level disposal area.

System—An on-site sewage facility.

Ultra low-flow toilets—Toilets that use 1.6 gallons or less per flush.

Uniform gravel size—Gravel to be used in conventional absorption trench or bed installations that has been processed through shaker screens to produce a size passing one size screen and retained on another. The upper and lower screens define the limits of the size and uniformity of the gravel.

§285.103 *General Requirements for On-site Sewage Facilities.*

(a) Basic requirements for permitting. All aspects of the design, installation, construction, alteration, extension, repair, operation and maintenance of on-site sewage facilities must be in accordance with

§§285.110-285.113 and 285.115 of this title (relating to Facility Planning; Design Criteria for Subsurface Sewage Systems; Soil Technology and Disposal Method Selection and Sizing; Design Criteria for On-Site Wastewater Systems Utilizing Surface Disposal Methods; and Tables and Figures) or other published criteria by authorized agents which has received the commission's written approval. In the case of facilities proposed for installation, construction, alteration, extension or repair in areas void of an authorized agent the commission will be the permitting authority and this chapter shall be the construction criteria for permit compliance. Procedures for obtaining a permit include:

- (1) completion and submittal of an application provided by the commission or an authorized agent;
- (2) submittal of the appropriate fees;
- (3) receipt of application approval; and
- (4) satisfactory completion of on-site inspections by the commission or its authorized agent.

(b) Requirements for professionally designed systems. Certain geological, topographical, and other circumstances discussed in this chapter require the submission of planning materials by a registered professional engineer or registered sanitarian authorized to practice in the State of Texas. In areas where local regulation is in effect, the authorized agent is responsible for the design approval; however, the commission will provide technical review assistance upon the authorized agent's request.

(c) Situations requiring professionally designed systems. The following situations shall require a professionally designed facility:

- (1) proposals for treatment and/or disposal by any method other than standard as described in §285.111 of this title (relating to Design Criteria for Subsurface Sewage Systems) except for gravelless systems and leaching chambers;
- (2) proposals for treatment and/or disposal by any method if the facility has an average daily wastewater flow greater than 1,500 gallons per day;
- (3) any on-site sewage facility proposed to serve mobile home developments, recreational vehicle parks, multi-unit residential developments such as apartments or condominiums, clustered single-family developments, commercial developments, or institutional establishments; or
- (4) any situation where a request for a variance to any part or parts of this chapter has been made.

(d) Review of professional non-standard designs. The commission shall review plans for all non-standard designs, as defined in §285.111(c) and (f) of this title (relating to Design Criteria for Subsurface Sewage Systems). The commission, at its option, may grant review authority for these designs to authorized agents if such authority is requested by the agent

(e) Review of subdivision plans. Persons proposing the subdivision of land for use as residential subdivisions, mobile home parks, multi-unit residential developments, business parks or other similar uses and utilizing on-site sewage facilities for sewage disposal must submit planning material for these subdivisions to the commission. The planning material must include an overall site plan, topographic map, 100-year floodplain map, soil survey, and complete engineering report detailing the types of on-site sewage facilities to be considered and their compatibility with area wide drainage and groundwater. A comprehensive drainage and 100-year floodplain impact plan must also be included in this planning material. Local governmental agencies having authorized agent status and having their own technical subdivision review may be exempted from submitting this material provided they have received written authorization from the commission. Required planning material must be submitted at least 60 days prior to the proposed subdivision construction. The authorized agent shall not grant final approval of a subdivision until the commission has given its written approval or authorization. The mentioned time periods do not imply that commission approval will be granted during or within those periods.

(f) Qualifications for designers of On-site Sewage Facilities. A professionally designed system, as defined in §285.103(c) of this title (relating to General Requirements for On-Site Sewage Facilities), shall be designed by a person holding one of the following qualifications with experience in the design of on-site sewage facilities:

- (1) a registered professional engineer licensed to practice in Texas, or
- (2) a registered sanitarian licensed to practice in Texas; and
- (3) all non-standard surface application systems, as defined in this chapter, shall be designed by a registered professional engineer having experience in the design of these systems.

(g) Variances Requests for variances from this chapter may be considered by the commission on an individual basis. The designer must demonstrate to the satisfaction of the commission that the variance has been requested because conditions are such that the equivalent protection of the public health and the environment can be

provided by alternate means. The commission may also grant variances to authorized agents in the form of a letter from any part or parts of this chapter.

§285.104. Commission Regulation in Areas Without an Authorized Agent.

(a) Permits, inspections, fees.

(1) The application fee for a commission permit is \$200 for a standard facility and \$400 for each facility which requires the submission of planning material by a registered professional engineer or registered sanitarian as stated in §285.103(c) of this title (relating to General Requirements for On-Site Sewage Facilities). The fee is payable upon application from the owner/agent to the commission for an on-site sewage facility permit. This fee shall be submitted to the appropriate commission regional office. Money orders or personal checks only, payable to the commission, shall be accepted. All applications shall expire one year from the date of the original application. No refunds of any amount shall be granted.

(2) An authorization to construct, if granted, will be valid for one calendar year from the date of application. Should a construction inspection not be requested during this period, the application for authorization shall be rendered invalid. Fees for reapplication shall be the same as the current fee on the date of reapplication.

(3) Application for permits shall be made to the appropriate commission regional office. Upon approval of each application and fee the regional office shall issue an authorization to construct the facility.

(4) Upon approval of the on-site sewage facility design and construction inspection, the regional office shall issue a permit to operate the facility with a unique identification number.

(5) The permit is to be issued in the name of the person who owns the system, and the permit enables such person to install, construct, alter, extend, repair, or operate the on-site sewage facility. Permits shall be transferred automatically to the new owner upon legal sale of the property.

(6) A reinspection fee shall be required if the on-site sewage facility failed to pass the initial inspection. The reinspection fee shall be equal to one-half of the permit fee and shall be assessed to the installer of record each time a reinspection is required.

(7) If the commission or its authorized agent determines that an on-site sewage facility is creating a nuisance as described in §285.102 of this title (relating to Definitions), the on-site sewage facility

must be brought into compliance with the permitting and construction requirements described in these sections to abate the nuisance.

(b) Administration of nuisance complaints. To assure consistent administrative procedures in the resolution of such complaints, the following procedures will be followed:

(1) All complaints regarding a facility shall be investigated within 21 days after receipt.

(2) To facilitate complaint processing, a commission-approved complaint form shall be used to record pertinent facts involved in an investigation. Each complaint received shall necessitate the completion of the form regardless of other communication which may be required in the complaint's resolution.

§285.105 Delegation Procedures.

(a) General policy. It is commission policy to promote regulation of on-site sewage facilities by local governmental entities.

(b) Proposed on-site waste disposal orders.

(1) Local governmental entities which desire to become authorized agents of the commission shall indicate such in writing to the commission.

(2) The prescribed measures for obtaining authorized agent status will be included in a separate commission document which shall include a model order or ordinance for local entities. Any changes to the model requested for local conditions must be consistent with established commission policies and with the current rules under this chapter. The commission shall be the sole and final authority in determining the acceptability of proposed variances from the model order/ordinance. A brief overview of the delegation procedure is as follows.

(A) Upon request, the commission shall provide model orders or ordinances to local entities which do not have an on-site waste disposal order.

(B) The commission consults with local authorities as to specific procedures and requirements to obtain authorized agent status.

(C) The local entity drafts the proposed order/ordinance, posts required notices, and holds public hearings as required. The submittal must be based upon the model order/ordinance and must address all the issues that are addressed in the model order/ordinance.

(D) The entity submits the proposed order/ordinance for the commission's review along with publisher's affidavit and copy of the public notice.

(E) If the submittal is found acceptable by the commission, the local entity adopts their order/ordinance through formal procedures and sends certified copies of the adopted order/ordinance and the adopting minutes to the commission for final review. After an acceptable final review, the executive director officially designates the local entity as an authorized agent. The local entity is notified by certified mail. The local entity turned authorized agent shall administer its own on-site waste disposal order.

(F) If the submittal is not found acceptable, the commission shall provide a clear explanation of the unacceptable factors of the proposed order/ordinance. Any proposed change to specific requirements of the model order/ordinance must be at least as stringent as the corresponding requirement contained in the model order/ordinance.

(3) Other areas of consideration in the evaluation of a local entity's proposal are the public comments of the entity's citizens, the adequacy of funding/program commitment, the program enforcement plan, and adequate enforcement procedures for resolving nuisances created by on-site sewage facilities. Funding should be available at a level consistent with anticipated growth and activity levels within the proposed jurisdiction.

(c) Amendments to existing local regulations. Procedures for amending local regulations shall be provided in the model on-site waste disposal order/ordinance available from the commission. The amendment procedure may be initiated by the authorized agent, or upon the commission's recommendation. The commission may require periodic revisions or renewals of on-site waste disposal orders for compliance with new rules or regulations.

(d) Regulation in areas without authorized agents. The commission shall be the regulatory authority of permitting and inspections in the local governmental entity's area of jurisdiction if that local governmental entity does not adopt an approved on-site sewage facility order/ordinance. Commission's personnel shall perform all the duties associated with permitting and inspections.

§285.106. Review of Locally Administered Programs.

(a) General. The commission is required to review locally administered programs for adequate performance and

compliance with requirements established by Texas Health and Safety Code, Chapter 366, this chapter and the order/ordinance adopted by the authorized agent.

(b) Processing of on-site sewage facility applications. The authorized agent shall complete the processing of applications for new facilities and improvements to existing facilities within timeframes established by Texas Health and Safety Code, Chapter 366. The initial inspection shall be made not later than the fifth working day, not including holidays, after the date on which notification has been received that a particular installation is complete and ready for inspection. To assure continuous compliance with these schedules, each local authorized agent shall maintain a monthly roster available for commission review indicating the total number of applications received monthly. This roster shall include information regarding the date of application, date of final processing and the disposition of each application.

(c) Resolution of nuisance complaints. A major activity of any authorized agent is the satisfactory resolution of nuisance complaints involving on-site sewage facilities. In order to assure consistent administration of enforcement procedures by authorized agents, the commission establishes the following criteria

(1) All complaints regarding on-site sewage facilities shall be investigated within 21 calendar days of receipt.

(2) Enforcement procedures must be written into the local on-site waste disposal order.

(3) Each authorized agent shall provide to the commission a detailed monthly report of on-site sewage facility activities as prescribed by the commission. Categories in this report shall include, but not be limited to the following:

(A) permitting activities including subdivision reviews,

(B) complaint and enforcement activities;

(C) information on the types of on-site sewage facilities permitted; and

(D) administrative activities performed by the authorized agent.

(4) The commission may review an authorized agent's locally administered program. If the commission's review determines that an authorized agent does not enforce the commission's minimum requirements for on-site sewage facilities, the commission shall hold a hearing in accordance with the Administrative Procedures Act

(Texas Government Code, Article 2001) and the commission's formal hearing procedures to determine whether the entity shall lose its designation as an authorized agent of the commission. If designation is revoked, the commission shall perform the permit/inspection operations in the disposed agent's jurisdiction. In such instances, all fees, etc as described in §285.105(d) of this title (relating to Delegation Procedures) shall be payable to the commission

§285.107. Registration of On-site Sewage Facility Installers and Certification of Designated Representatives and Site Evaluators

(a) General Requirements for Registration and Certification.

(1) The purpose of this section is to set forth a statewide uniform procedure for the training and registration of installers of on-site sewage facilities and the certification of site evaluators and designated representatives of authorized agents

(2) The intent of this section is to assist individuals employed or seeking employment in the on-site sewage facility industry in meeting the educational and testing requirements for obtaining registration or certification

(3) No person may install, construct, alter, extend, or repair an on-site sewage facility unless he/she is registered by the commission or is expressly exempted from the installer's registration requirements

(4) In addition to the requirements of this section, a registered installer shall comply with all state regulatory requirements relevant to the installation, construction, alteration, extension, repair, operation or maintenance of on-site sewage facilities and be responsible for the proper installation of all on-site sewage facilities installed under his or her registration

(5) No individual may work under a registered installer's registration unless said individual is an employee of that installer. The installer must show proof of employment for said individual to the designated representative or the commission at the time of obtaining a permit and/or when requested to do so.

(6) The registered installer must be present on the job-site at all phases of installation, construction, alteration, extension, or repair of the on-site sewage facility and must directly supervise all individuals working under the registration.

(7) Beginning 360 days after the effective date of this chapter, no person shall be employed or compensated by an authorized agent as a designated representative having on-site sewage facility reg-

ulatory responsibilities without being certified by the commission.

(8) Beginning 360 days after the effective date of this chapter, no person shall be appointed, employed or compensated as a site evaluator conducting pre-construction site evaluation or soil analysis without being certified by the commission.

(9) In addition to the requirements of this section, a designated representative shall comply with all state regulatory requirements relevant to the permitting and inspection of on-site sewage facilities and be responsible for the proper operation of an on-site sewage facility program.

(10) Individuals who are certified as a site evaluator shall not be allowed to conduct the site evaluation and/or soil analysis and be the installer of the on-site sewage facility.

(b) Administration The commission shall be responsible for administering the registration of installers and the certification of designated representatives and site evaluators This administration includes:

(1) accepting and reviewing applications to determine if qualifications are met and notifying applicant as to action taken;

(2) preparing and administering examinations,

(3) scoring examinations and promptly notifying applicants as to the results;

(4) issuing and renewing registrations and certifications;

(5) publishing of a roster with monthly updates of installers and site evaluators holding valid registration or certification with copies available to any person upon request;

(6) maintaining training records of installers, designated representatives, and site evaluators,

(7) approving training schools and courses for registration and certification purposes; and

(8) collecting fees.

(c) Applications.

(1) Application for registration or certification shall be made on a standard form provided by the commission.

(2) Each application shall be accompanied by a fee of \$75.

(3) The applicant shall furnish evidence of any training credit or any other information as requested by the commission.

(4) Applicants shall meet the qualifications, the training requirements and submit the appropriate fee before taking the examination

(5) An application is valid for 12 months from the initial date of the training school attendance.

(d) Examinations.

(1) An applicant shall take an examination for an Installer I, Installer II, or Site Evaluator certificate after presenting qualifications acceptable to the commission.

(2) The passing score for the examination shall be 70%. The examinee shall be informed, in writing only, as to the results of the examination.

(3) Any applicant who fails an examination may repeat the examination 90 days after the date of the previous examination after providing a \$75 reexamination fee. The examination may be repeated up to three times in a given 12-month period.

(4) Following the failure of the examination, the application shall be held by the commission for a maximum of 12 months from the initial date of the training school. After the 12-month period and the applicant has not passed the examination, the application will be voided and he/she must submit a new application with the appropriate fee and repeat the appropriate training school before taking the examination again.

(5) Examinations shall be administered and supervised by the commission or by any person designated by the commission. Examinations shall be given at places and times established by the commission.

(6) Examinations shall be graded by the commission and the results shall be forwarded to the applicant no later than 45 days after the examination date.

(e) Qualifications.

(1) All applicants shall be required to successfully complete the educational training program provided by or for the commission.

(2) Only training that has been approved by the commission is acceptable for registration or certification.

(3) All applicants for installer registration shall be required to pass an examination covering the field of on-site sewage facilities.

(4) Installer I qualifications:

(A) no experience necessary in on-site sewage facility installation, construction, repair or operation;

(B) the successful completion of the Installer I training school; and

(C) passing the Installer I examination.

(5) An installer I is qualified to install, construct, alter, extend, or repair standard on-site sewage facilities as defined in §285.115(9) of this title (relating to Tables and Figures). These systems consist of conventional trench drainfields, unlined E.T. beds, as well as the proprietary systems utilizing gravelless pipe drainfields, and leaching chambers.

(6) Installer II qualifications:

(A) must possess an Installer I certificate;

(B) have at least two years of experience in on-site sewage facility installation, construction, extension, repair and/or operation under said registration;

(C) the successful completion of the Installer II training school, and

(D) passing the Installer II examination.

(7) An Installer II is qualified to install, construct, alter, extend, or repair all types of on-site systems, including standard as well as proprietary and non-standard systems as defined in §285.115(9) of this title (relating to Tables and Figures). These are lined E.T. beds, drip emitter systems, pressure dosing, surface irrigation systems, professionally designed systems and all other types of on-site systems. Only an Installer II is qualified to maintain proprietary and non-standard systems.

(8) Beginning 360 days after the effective date of this chapter, a registered installer shall no longer operate as an Installer II without meeting all the requirements set forth in this section.

(9) All applicants for designated representative or site evaluator certification shall be required to pass an examination covering the field of on-site sewage facility installation, construction, repair, operation, disposal, design, maintenance, soil analysis, site evaluation and program administration.

(10) Designated Representatives qualifications:

(A) must be appointed, employed or compensated by an authorized agent having duties and responsibilities in the regulation of on-site sewage facilities;

(B) the successful completion of the Site Evaluator training school; and

(C) passing the Site Evaluator examination.

(11) A designated representative is qualified to assume the duties and responsibilities of running an on-site sewage facility program for an authorized agent.

(12) Site evaluator qualifications:

(A) the successful completion of the Site Evaluator training school; and

(B) passing the Site Evaluator examination.

(13) A site evaluator is qualified to conduct pre-construction site evaluation which includes performing soil analysis, a site survey and other criteria necessary to determine the suitability of a site for a specific on-site sewage facility.

(f) Certificates.

(1) Issuance of certificates

(A) Upon satisfactory fulfillment of the requirements provided in this section, an Installer I, Installer II, or Site Evaluator certificate shall be issued by the commission.

(B) The installer, designated representative, or site evaluator shall inform the commission of any change in address during the validity period of the certificate. All certificates expire on August 31 of each year.

(C) An installer registration, or site evaluator certification certificate will be issued to individuals only and will not be transferable.

(D) The issuance of a certificate shall not be construed by any individual that the commission is responsible for the performance of the certificate holder.

(E) When an Installer I passes the Installer II examination, the lower level certificate becomes invalid and the installer is issued an Installer II certificate.

(2) Renewal of certificates.

(A) Renewal fees of \$50 are due annually on August 1.

(B) Renewal fees must be received prior to the expiration date of the certificate.

(3) Renewal application procedure.

(A) At least 45 days prior to the expiration date of the certificate, the commission shall mail to the registered installer, certified designated representative or certified site evaluator a renewal application showing the expiration date, the fee to be paid, and what continuing educational courses will be acceptable for the renewal requirements.

(B) The commission shall mail the renewal application to the installer, designated representative, or site evaluator at the most recent address provided to the commission.

(C) It is the responsibility of the installer, designated representative, or site evaluator to make sure the renewal application and the appropriate fee along with proof of the continuing educational course requirements are returned to the commission by the August 31 deadline.

(D) Upon the applicant's satisfactory fulfillment of the requirements for renewal provided in this section, an appropriate renewal certificate will be issued by the commission.

(E) If an installer, designated representative, or site evaluator misplaces his/her renewal certificate, the commission shall issue another certificate to the individual for an additional fee of \$20

(F) Certificates that have not been renewed by the expiration date of August 31 with the appropriate fee and/or the acceptable eight-hour continuing educational course requirement will be considered invalid. A new certificate shall be obtained by submitting a new application with the appropriate fee and receive a passing score on the examination. The applicant is not required to retake the appropriate training school provided that he/she is submitting a new application and successfully passes the examination within one year of the expired certificate.

(g) Sanctions.

(1) Probation of an Installer's Registration.

(A) If an installer violates any requirements of Texas Health and Safety Code, Chapter 366, or this chapter, the installer may be placed on probation for a period of not more than two years. Notification and rebuttal procedures shall be the same as for revocation, but the commission shall not be required to hold a formal hearing.

(B) Probationary status shall serve as a warning that any further violations or offenses may warrant revocation proceedings.

(C) If an installer violates any requirements of Texas Health and Safety Code, Chapter 366, or this chapter, the commission may seek criminal, civil, and/or administrative penalties as provided by Texas Health and Safety Code, Chapter 366, in addition to the probationary status.

(2) Probation of an Designated Representative or Site Evaluator Certification.

(A) If a designated representative or site evaluator violates any requirements of Texas Health and Safety Code, Chapter 366, or this chapter, the designated representative or site evaluator may be placed on probation for a period of not more than two years. Notification and rebuttal procedures shall be the same as for revocation, but the commission shall not be required to hold a formal hearing.

(B) Probationary status shall serve as a warning that any further violations or offenses may warrant revocation proceedings.

(C) If a designated representative or site evaluator violates any requirement of Texas Health and Safety Code, Chapter 366, or this chapter, the commission may seek criminal, civil and/or administrative penalties as provided by Texas Health and Safety Code, Chapter 366, in addition to the probationary status.

(3) Revocation of an Installer's Registration. An installer's registration may be revoked if

(A) the applicant obtained the registration through fraud, deceit or through submission of incorrect data on his/her qualifications,

(B) the installer violates any requirement of Texas Health and Safety Code, Chapter 366, or this chapter. Under this subsection, the commission may also seek criminal, civil and/or administrative penalties as provided by Texas Health and Safety Code, Chapter 366, in addition to revoking the registration.

(4) Revocation of the Designated Representative or Site Evaluator Certification. A designated representative's or site evaluator's certification may be revoked if:

(A) the applicant obtained the certification through fraud, deceit or through submission of incorrect data on his/her qualifications;

(B) the designated representative or site evaluator commits a violation or an offense under Texas Health and Safety Code, Chapter 366, or this chapter. Under this subsection, the commission may also seek criminal, civil and/or administrative penalties as provided by Texas Health and Safety Code, Chapter 366, in addition to revoking the certification.

(5) When the executive director of the commission has reason to believe that the allegations against an installer, designated representative or site evaluator may be valid, the executive director of the commission shall notify the individual by personal service or certified mail at his/her last known address:

(A) of the allegations made against him/her,

(B) that the executive director of the commission intends to conduct an investigation of the allegations; and

(C) that the person has an opportunity to meet with the executive director's staff to refute and disprove the allegations.

(6) After the executive director's investigation of the allegations, if the executive director still has reason to believe there is a cause for revocation, the executive director may initiate revocation proceedings in accordance with the Administrative Procedures Act, Texas Government Code, Article 2001 and the commission's formal hearing procedures.

(7) A registration or certification may be voluntarily relinquished by the submission of the original certificate and a notarized statement of relinquishment to the commission.

(8) After revocation of a registration or certification has been effective for a period of not less than 360 days, the person may apply in writing for reinstatement to the executive director of the commission, including in his/her petition any relevant facts concerning changes to conditions under which revocation occurred. Such facts should show clearly that the applicant will comply with the laws and regulations.

(9) The reinstated installer, designated representative, or site evaluator will be on probation for a period of not more than one year.

(10) If a registration or certification is revoked a second time, the revocation will be permanent.

(h) Training.

(1) Training credit shall be based upon attendance recorded by the commission. The applicant is expected to attend at least 95% of the class hours. If the applicant attends less than the minimum 95% of the class hours, then he/she will not receive credit for having completed the class.

(2) The basic school required for the Installer I certificate shall cover specific knowledge regarding the basic treatment and disposal of wastewater. The school will instruct applicants on rules, regulations, permitting, an introduction to using soils as a wastewater treatment, operation, installation and construction of basic or conventional on-site sewage facilities utilizing standard subsurface treatment and disposal methods. The applicant shall also be familiar with distribution mechanisms and shall have the ability to make calculations, determine slope and be familiar with the use of a transit.

(3) The advanced school required for the Installer II certificate shall cover specific knowledge regarding the subsurface treatment and disposal of wastewater. The school will instruct applicants on wastewater characteristics and the operation, installation, construction and maintenance of alternative and innovated on-site systems using non-standard treatment and disposal methods, groundwater, basic soil analysis and site evaluation. The applicant shall also be familiar with distribution mechanisms and shall have the ability to make calculations and measure water flow rates.

(4) The school required for the designated representatives or site evaluators for a site evaluator certificate shall cover specific knowledge regarding the subsurface treatment and disposal of wastewater, concepts and theory of system design, operations, installation, construction and maintenance of all types of on-site sewage facilities, soil analysis and site evaluation, groundwater, regulatory operations, health laws, and the judicial system. The applicant shall also be familiar with wastewater characteristics, distribution mechanisms, shall have the ability to make calculations, measure water flow rates, be able to operate different surveying equipment and be acquainted with the proper inspection procedures, as well as having the ability to keep records and successfully operate an on-site sewage facility program.

(5) A person holding an Installer I, Installer II or Site Evaluator certificate must successfully complete a minimum of eight hours of training in wastewater treatment or soil analysis at an approved training facility prior to August 31 of each year for certificate renewal.

(i) Exception to installer registration requirements. A single-family residential property owner shall not be subject to the training and registration requirements when installing, constructing, altering, extending or repairing his/her own standard on-site sewage facility on his/her property. However, the authorized agent or the commission (if there is not an authorized agent) must be contacted prior to construction of the facility regarding any permitting requirements to insure compliance with the commission's design criteria or such construction criteria duly established by the authorized agent. The homeowner shall not subcontract work to a person who is not a registered installer.

(j) Fees applicable to the registration and certification program administered by the commission

(1) The fees shall be as follows

(A) the application fee-\$75.

(B) the renewal fee-\$50,

(C) the re-examination fee-\$75,

(D) the reissuance of a current certificate-\$20

(2) All fees shall be paid by personal check, cashier's check, or by money order. Cash cannot be accepted for payment of fees.

(3) An applicant shall pay all required fees before taking the examination or receiving a certificate.

(4) All registration, renewal, and reexamination fees for Installer I or Installer II shall be made payable to the Texas Natural Resource Conservation Commission-Installer Registration Program (TNRCC-IRP) and are not refundable.

(5) All certification, renewal, and reexamination fees for designated representative, or site evaluator shall be made payable to the Texas Natural Resource Conservation Commission-Site Evaluator Program (TNRCC-SEP) and are not refundable.

(6) If the applicant does not submit the appropriate payment with the new or renewal application, the certificate shall not be issued.

(7) The application fee for registration or certification shall not be prorated.

§285.109 Penalties

(a) Criminal Penalties

(1) A person who installs, constructs, alters, extends or repairs an on-site sewage facility, owned by another person,

commits an offense if the person fails to register as an installer with the commission.

(2) A person commits an offense if the person begins to install, construct, alter, extend, or repair an on-site sewage facility owned by another person, before the owner of the system obtains a permit to install, construct, alter, extend, or repair, the on-site sewage facility in violation of Texas Health and Safety Code, Chapter 366, Subchapter D.

(3) An offense under this section is a misdemeanor punishable by a fine of not less than \$50 or more than \$100 unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this chapter, in which case he/she shall be punished by a fine of not less than \$125 nor more than \$500, by confinement in jail for not more than one month, or by both.

(4) Each day of a continuing violation is a separate offense.

(b) Civil Suit or Injunction

(1) If it appears that a person has violated, is violating, or is threatening to violate any provision of Texas Health and Safety Code, Chapter 366, or any rule, permit or other order of the commission issued pursuant to Texas Health and Safety Code, Chapter 366, the commission may request the attorney general to bring a civil suit for

(A) mandatory or prohibitory injunctive relief, as warranted by the facts,

(B) a civil penalty as provided by Texas Health and Safety Code, Chapter 366, or

(C) both injunctive relief and a civil penalty.

(2) Venue for an action under Texas Health and Safety Code, Chapter 366, is in Travis County District Court, the county in which the defendant resides, or in the county in which the violation or threat of violation occurs.

(c) Civil Penalty

(1) An owner who violates any provision of Texas Health and Safety Code, Chapter 366, or any rule, permit, or order issued pursuant to Texas Health and Safety Code, Chapter 366, is subject to a civil penalty of not less than \$100 nor more than \$500 for each act of violation. Each day of a continuing violation is a separate offense.

(2) Any other person who violates any provision of Texas Health and Safety Code, Chapter 366, or any rule, permit, or order issued pursuant to Texas

Health and Safety Code, Chapter 366, is subject to a civil penalty of not less than \$500 nor more than \$5,000 for each act of violation. Each day of a continuing violation is a separate offense.

(3) The commission shall be the sole authority designated to initiate an enforcement action under subsections (b), (c), and (d) of this section. However, a local government may request that the commission initiate an enforcement action pursuant to these sections through a petition filed with the commission. If the commission chooses to initiate an enforcement action on behalf of a local government, civil penalties recovered shall be divided between the local government and the state based on the proportion of resources expended by each entity in the course of enforcement action.

(4) If the state prevails in a suit under Texas Health and Safety Code, Chapter 366, it may recover reasonable attorney's fees, court costs, and reasonable investigative costs incurred in relation to the proceeding.

(d) Administrative Penalty.

(1) If a person violates Texas Health and Safety Code, Chapter 366, or a rule or order adopted or a permit issued under Texas Health and Safety Code, Chapter 366, the commission may assess an administrative penalty against that person as provided by this section.

(2) A person who violates Texas Health and Safety Code, Chapter 366, or a rule, order, or permit issued pursuant to Texas Health and Safety Code, Chapter 366, is subject to an administrative penalty as follows:

(A) an owner shall be subject to an administrative penalty in an amount not to exceed \$500 per day. Each day a violation continues may be considered a separate offense for purposes of assessing a penalty; and

(B) any other person shall be subject to an administrative penalty in an amount not to exceed \$5,000 per day or act of violation. Each day a violation continues may be considered a separate offense for purposes of assessing a penalty.

(3) In determining the amount of the penalty, the commission shall consider

(A) the circumstances surrounding the prohibited act, with special consideration of the threat to public health and the environment,

(B) the history of previous violations,

(C) the amount necessary to deter future violations;

(D) efforts to correct the violation; and

(E) any other matters that justice may require.

(4) If the executive director of the commission concludes that a violation has occurred, the executive director may issue a preliminary report;

(A) stating the facts that support the conclusion; and

(B) recommending that a civil penalty be assessed as described in this section

(5) The executive director shall send a copy of the report to the person charged no later than the tenth day after the report was issued. That notice shall include a statement that the person has the right to a hearing before the agency

(6) The person charged may, no later than 20 days after the date on which the notice was received, give written consent to the executive director's report or request a hearing

(7) If the person charged with the violation consents to the penalty recommended by the executive director or does not timely respond to the notice, the commission shall assess the penalty by order or shall order a hearing to be held on the findings and recommendations in the executive director's report. If the commission assesses the penalty, the commission shall give written notice to the person charged of its decision

(8) The person assessed an administrative penalty shall pay the penalty not later than the 30th day after the date on which the commission order is final or file a petition for judicial review.

(9) The commission may request enforcement by the attorney general if any person fails to comply with an agency order.

(10) Judicial review of any agency administrative order issued under this section shall be under Administrative Procedures Act (Texas Government Code, Article 2001, §19)

(11) An administrative penalty collected under this section shall be deposited in the state treasury to the credit of the general revenue fund.

§285.110. Facility Planning.

(a) Land planning and site evaluation. Land developments and land subdivided for building construction which will utilize on-site systems for sewage disposal shall be evaluated for overall site suitability and this evaluation shall be included in the official subdivision plat or deed submitted to the county/city clerk in the county which the property is located. This submittal shall be reviewed and approved by the commission or its authorized agent prior to approval being granted for subdivision of the property. The following items shall be evaluated.

(1) Minimum Lot Size. The minimum lot size for developments served by a public water system shall not be less than 1/2-acre and shall contain only one on-site sewage facility. The minimum lot size for developments served by individual private wells shall not be less than one acre. Each subdivided area shall contain a on-site sewage facility to be installed in compliance with separation requirements in §285.111(g) of this title (relating to Design Criteria for Subsurface Sewage Systems) Exceptions to this rule may be granted by the commission based upon the development plan review as submitted by a registered professional engineer.

(2) Site evaluation. The subdivided property must be evaluated for soil suitability in accordance with §285.112 of this title (relating to Soil Technology and Disposal Method Selection and Sizing). The result of this evaluation and recommended treatment and disposal methods shall be included on the official subdivision plat.

(b) Approval of existing small lots or tracts. Existing small lots or tracts, subdivided prior to January 1, 1988, and not conforming to the minimum lot size requirements may be approved for an on-site sewage facility provided the following conditions are met:

(1) Minimum separation distances in §285.111(g) of this title (relating to Design Criteria for Subsurface Sewage Systems) are maintained.

(2) The soil has been found to be suitable or provisionally suitable in accordance with §285.112 of this title (relating to Soil Technology and Disposal Method Selection and Sizing).

(3) If one or more of the items in subsection (b) of this section cannot be met on an existing site, a permit to construct a standard on-site sewage facility will not be issued. Non-standard systems, designed by a qualified designer as established in §285.103(b), (c), and (d) of this title (relating to General Requirements for On-Site Sewage Facilities), will be considered for approval.

§285.111. Design Criteria for Subsurface Sewage Systems.

(a) Treatment processes—standard.

(1) Septic tanks (gravity flow). A septic tank is a watertight container which receives raw sewage and serves the purpose of settling and digesting sludge from the sewage and retaining floating scum by the use of retention baffles. The septic tank is attached to wastewater fixtures through a watertight pipe identified as a building "stub out" or "house sewer". The septic tank is connected to the house sewer by an inlet device. Effluent from the septic tank, having undergone primary treatment, flows out of the tank through an outlet device into additional treatment processes or a disposal field. A septic tank, designed and constructed in accordance with this chapter, shall meet the following material, component, construction and approval requirements:

(A) House sewer. The sewer from the building plumbing to the septic tank shall be constructed of cast iron, ductile iron, polyvinyl chloride (PVC) Schedule 40 or other material approved by the commission. The slope of the sewer shall be no less than 1/4-inch fall per foot of pipe. A cleanout plug must be provided between the building plumbing and the septic tank. An additional cleanout plug shall be provided at changes in alignment, both horizontal and vertical and every 50 feet on long runs of pipe. This sewer shall have a minimum inside diameter of three inches.

(B) Tank volumetric capacity. The liquid volume of a septic tank shall not be less than established in §285.115(2) of this title (relating to Tables and Figures). The liquid depth of the tank shall not be less than 30 inches.

(C) Inlet and outlet devices. The flowline of the inlet device shall be at least three inches higher than the flowline of the outlet device. The discharge point of both the inlet and outlet device shall be below the liquid level of the tank at a depth between 35% to 45% of the overall liquid depth of the tank. The inlet and outlet devices shall be tee branch fittings, vented elbow fittings, constructed baffles or other structures or fittings approved by the commission. All inlet and outlet devices shall be installed watertight to the septic tank walls.

(D) Baffles and series tanks. All septic tanks shall be divided into two or more compartments by the use of baffles or by connecting two or more tanks in series. In a baffled tank, the baffle shall be located so that one-half to two-thirds of the total

tank volume is located in the first (inlet) compartment. Two or more tanks may be arranged in series to achieve the required liquid capacity. Interconnecting inlet and outlet devices may be installed at the same elevation for multiple tank installations. Baffles shall be constructed the full width and height of the tank with a one-inch (approximate) gap between the top of the baffle and the tank top. The baffle shall have an opening located below the liquid level of the tank at a depth between 35% and 45% of the liquid level. The opening may be a slot or hole and a tee or elbow may be fitted. If a tee or elbow is fitted, the inlet to the fitting shall be at the stated depth in this subparagraph. Any metal structures, fittings, or fastenings shall be stainless steel.

(E) Inspection and cleanout ports. All septic tanks shall have an inspection and/or cleanout port located on the tank top over the inlet and outlet device. These ports may be any configuration with the smallest dimension of the opening not less than ten inches. Septic tanks buried more than 12 inches below the ground surface shall have risers over the port openings. These risers shall extend up to the ground surface and be sealed to the tank and capped.

(F) Septic tank construction materials. The septic tank shall be of sturdy, watertight construction. Materials used shall be steel-reinforced poured-in-place concrete, steel-reinforced pre-cast concrete, fiberglass, reinforced plastic polyethylene or other materials approved by the Commission. Metal septic tanks are prohibited. The septic tank shall be structurally designed to resist buckling from internal hydraulic loading and exterior loading caused by earth fill and additional surface loads. At the discretion of the permitting authority, a dye test or any other test for watertightness that is acceptable to the commission may be required to determine the structural integrity of the septic tank. Tanks exhibiting obvious deflections, leaks, or structural defects shall not be used. Where concrete tanks are installed, sweating or condensation at construction joints is acceptable.

(G) Special requirements for poured-in-place concrete tanks. For poured-in-place concrete tanks, the bottoms shall be at least six inches thick with 6x6x6 gauge welded steel or number 3 reinforcing bars on 12-inch centers (each way). The floor and walls must be constructed monolithically and the walls shall be reinforced the same as the bottom. Walls are to be a minimum of four inches thick. Tank tops shall be reinforced with 6x6x6 gauge welded steel mesh or number 3 reinforcing

bars on 12-inch centers (each way) and must be poured off-site rather than on the tank (not on top of a wooden frame over the tank) and be moved onto the tank after hardening and then sealed to the tank with a permanent bonding material or rubber gasket having a one-half inch minimum thickness so as to form a seal between tank and top. Tops must be a minimum of three inches thick.

(H) List of approved manufacturers. All septic tank designs shall be subject to approval of the commission prior to manufacture and sale. All pre-cast or prefabricated tanks shall be clearly marked, tagged or stamped with the manufacturer's name, address, capacity near the level of the outlet so as to be clearly visible. Direction of flow into and out of the tank shall be indicated by arrows or other identification clearly marked at the inlet and outlet. All manufacturers shall be required to keep a written record for commission review of all septic tanks sold detailing purchaser, address of purchaser, address of the installation, size and other pertinent information.

(I) Installation of tanks. Septic tanks must be installed so as to provide at least 12 inches of drop in elevation from the bottom of the outlet pipe to the bottom of the disposal area. A washed sand or gravel 1-1/2 inch maximum with a minimum thickness of four inches shall be placed under all prefabricated tanks. All septic tank excavations must be backfilled with sand, pea gravel, select backfill or loam. It is acceptable to mound soil over a septic tank which would normally be exposed to maintain fall to the drainfield.

(2) Septic tanks (pumped). Pumped septic tanks may be used when the septic tank outlet is at a lower elevation than the disposal field. All requirements in subsection (a) of this section are also applicable to pumped septic tanks. The septic tank shall be followed by, and hydraulically connected to a pump tank designed in accordance with the following specifications:

(A) Pump tank design. When sewage must be pumped to a disposal area, an appropriate pump shall be placed in a separate watertight tank. A check valve shall be provided in the discharge piping between the pump and drainfield. The tank shall be provided with an electrical high-water alarm having a power circuit separate from the pump and activated with a minimum of one-third reserve capacity remaining in the pump tank. The electrical connections located inside the tank shall be "hard-wired" external to the pump chamber.

(B) Pump tank sizing. Tanks designed for wastewater flows equal to or less than 750 gallons per day shall have a liquid volume equal to or greater than the

average daily flow. Tanks designed for flows greater than 750 gallons per day shall have a liquid volume not less than one-half the average daily flow.

(C) Pump specifications. A single pump may be used for flows equal to or less than 750 gallons per day. The pump shall be sized to pump one-third the anticipated daily flow within a 5 to 30 minute interval. Dual pumps are required for flows greater than 750 gallons per day. A dual pump system should have the "alarm on" level below the "second pump on" level, and should have a lock-on feature in the alarm circuit so that once it is activated it will not go off when the second pump draws the liquid level below the "alarm on" level. The alarm should have a manual "reset" switch. Pump switchgear shall be selected such that both pumps shall operate as the first pump on an alternating basis. Each pump shall be designed to pump one-third of the anticipated daily wastewater flow within a 5 to 30 minute interval.

(3) Grease traps and interceptors. Grease traps are floatation chambers where grease floats to the water surface and is retained while the clearer water underneath is discharged. There are no moving mechanical parts and the design is similar to a septic tank. Interceptors are multi-compartment grease traps. Grease traps shall be used on kitchen wastelines from institutions, hotels, restaurants, schools with lunchrooms, and other places that may discharge large amounts of greases and oils to the sewer. Wastes from garbage grinders must not be allowed to enter a grease trap. The trap shall be installed near the plumbing fixture that discharges greasy wastewater and should be easily accessible for cleaning. Grease traps shall be cleaned out periodically to prevent the discharge of grease to the underground sewage facility. Grease traps and interceptors shall be designed in accordance with the following specifications.

(A) Volumetric sizing. No grease trap or interceptor, with a liquid holding capacity of less than 250 gallons, shall be approved for any food preparatory establishment. Sizing of grease traps is based on wastewater flow from sinks receiving the grease waste and must be calculated from the number and kind of fixtures discharging into the trap. The trap must be rated on its grease retention capacity which is the amount of grease (in pounds) that the trap can hold before its efficiency drops below 90%. This grease retention capacity in pounds shall equal at least twice the flow capacity in gallons per minute (i.e. 10 gpm fixture flow would require a trap capable of storing 20 pounds of grease). The total trap volume (in gallons) shall be twice the

grease retention capacity in pounds. For interceptors, the primary compartment shall hold at least 60% of the total required tank. The approximate density of grease is 50 pd/cubic ft. Grease traps shall be connected only to sinks receiving the grease waste, not the total sewage flow.

(B) Grease trap inlets and outlets. Inlets and outlets shall be submerged to within 12 inches of the tank bottom. The compartments of the grease trap should be vented to the open air. Cleanouts at the inlets and outlets should be provided external to the grease trap. All compartments must have visible access ports for grease removal.

(4) Holding tanks. Tanks shall be constructed in accordance with subsection (a) (1) of this section. Inlet and outlet (no outlet shall be provided) fittings are not required. A baffle is also not required. Holding tanks shall be used only on lots where no other methods of sewage disposal are feasible. All tanks shall be equipped with a visual and/or audible alarm to indicate when the tank has been filled to within 75% of its rated capacity. The determination of the alarm type is at the sole discretion of the commission. A port with its smallest dimension being ten inches or greater shall be provided in the tank lid for inspection, cleaning, and maintenance. This port shall be accessible from the ground surface and must be easily removable and watertight.

(A) Minimum capacity. Holding tank minimum capacity shall be sufficient to store the estimated or calculated daily wastewater flow for a period of one week (Wastewater Usage Rate, gallons/day X 7 days).

(B) Location. Holding tanks shall be installed in an area readily accessible to the pump truck under all weather conditions, and at a location that meets the minimum distance requirements in subsection (g) of this section.

(C) Maintenance. A scheduled pumping contract must be provided to the permitting authority before any holding tanks are installed.

(b) Treatment processes—proprietary. Proprietary treatment processes are any processes developed to treat domestic sewage and marketed for sale by an individual, company or corporation. Treated effluent from these processes must utilize subsurface methods for ultimate disposal. Approval of these systems for sale and use in the state may be granted by the commission by the following methods.

(1) The system or unit may be tested by and currently listed by NSF International as a Class I system under the most recent version of NSF Standard 40. The manufacturer must comply with all the provisions of Standard 40 and NSF Certification Policies for Wastewater Treatment Devices.

(2) For systems which NSF will not accept for testing because of system size or type. A complete design and engineering report for the treatment system or unit may be submitted to the commission for review. The system must meet the requirements of the "Design Criteria for Sewerage Systems" as published by the commission. These systems will be reviewed as one of a kind, site specific installations.

(3) System maintenance. Ongoing maintenance contracts in accordance with the maintenance provisions of §285.113(a)(3)(B) of this title (relating to Design Criteria for On-Site Wastewater Systems Utilizing Surface Disposal Methods) shall be required for all systems.

(c) Treatment processes—non-standard. All on-site sewage facilities not described or defined in subsections (a) and (b) of this section will be considered to be non-standard treatment systems. These systems shall be submitted to the commission for review by a registered professional engineer and approval or disapproval will be granted by the commission. Upon approval, a permit will be issued by the commission or its authorized agent.

(1) Types of systems considered non-standard include, but are not limited to, all forms of the activated sludge process, rotating biological contractors, trickling filters, submerged rock biological filters or any system designed to treat more than 1,500 gallons of sewage per day.

(2) The commission shall utilize the latest "Design Criteria For Sewerage Systems" as published by the commission or

the "On-site Wastewater Treatment and Disposal Handbook" as published by the United States Environmental Protection Agency for the review of non-standard systems. Non-standard systems submitted for review and not described in these publications will be analyzed on basic engineering design principals.

(d) Disposal processes—standard. The effluent discharged from an approved treatment process requires further handling to render it safe from a public health standpoint. Acceptable standard disposal methods shall consist of a drainfield designed to disperse the effluent into adjacent soil (absorptive) or into the surrounding air through evapotranspiration (evaporative and transpirative).

(1) Absorptive drainfield. An absorptive drainfield is constructed by excavating a shallow trench or bed in suitable soil. A porous media (crushed rock, stone, etc.) is then placed in the excavation and perforated pipe (drainline) placed in the media and connected to the outlet of the treatment system. The media is covered with a permeable and/or decomposable barrier (geotextile fabric, straw, hay) and the remainder of the excavation backfilled with previously removed soil. The top of the excavation area is seeded with plants or grasses to aid in water elimination. The following design considerations must be met for approval of an absorptive drainfield:

(A) Excavation. The excavation must be constructed in suitable or provisionally suitable soils as defined in §285.112 of this title (relating to Soil Technology and Disposal Method Selection Sizing). The excavation shall not exceed a depth of three feet or six inches below the soil freeze depth, whichever is the larger. Multiple excavations must be separated horizontally by at least four feet of undisturbed soil. After excavation the excavated surfaces (sidewalls and bottom) must be scarified. The bottom of the excavation shall be level to within 0.05 foot per any ten-foot horizontal dimension within the excavation. The size of the excavation shall be calculated using data from §285.115(1) of this title (relating to Table and Figures).

(i) The usable surface area shall be calculated by adding the excavations bottom area to the total excavated perimeter (in feet) multiplied by one foot (bottom area + perimeter X 1 0).

$$\text{Absorptive Area} = L \times W + 2 (L+W)$$

Where: L = Drainfield Length

W = Drainfield Width

(ii) The length of the excavation may be determined as follows when the area and width are known:

$$L = \frac{A - 2W}{W+2}$$

(iii) For excavations three feet wide or less use the following formula or figures 8, 9, 10, and 11 to determine L:

$$L = \frac{A}{W + 2}$$

(B) Porous media. The porous media shall consist of graded gravel, broken concrete, rock, crushed stone or similar aggregate that is generally one uniform size ranging from 3/4-inch to 2.0 inches as measured along its greatest dimension. The media must be clean and must not contain significant amounts of fine particles. Soft media such as oyster shell and soft limestone will not be approved.

(C) Drainline. The drainline shall be constructed of perforated distribution pipe and fittings in compliance with the following specifications:

(i) Three or Four Inch Diameter Polyvinyl Chloride ASTM D3034, SDR 35 and ASTM F789.

(ii) Four Inch Diameter Corrugated Polyethylene ASTM F405.

(iii) Three or Four Inch Diameter Polyethylene Smoothwall ASTM F810.

(D) Installation Requirements. Piping constructed from materials other than those listed in paragraph (C) of this subsection may be submitted to the commission for approval. The drainline shall be placed in the permeable media with at least six inches of media between the bottom of the excavation and the bottom of the drainline. The drainline shall be completely covered by the permeable media and the drainline perforations shall be below the horizontal centerline of the pipe. Excavations greater than three feet in width shall be constructed using two or more drainlines. The drainlines shall be placed parallel to each other and parallel to the

longest horizontal dimension of the excavation. The maximum separation distance between parallel drainlines shall be four feet (center to center). Multiple drainlines shall be manifolded together with solid or perforated pipe which connects to the outlet of the treatment process. The opposite ends of multiple drainlines shall be manifolded together with solid line or looped together using perforated line and bedding.

(E) Permeable soil barrier. A permeable soil barrier shall be placed between the top of the porous media and the backfill soil. The barrier shall consist of geotextile fabric. Straw or hay, four inches thick, may be substituted as an alternative to geotextile fabric. If geotextile fabric is used for the barrier it shall conform to the following specifications for Unwoven, Spun-Bounded Polypropylene, Polyester or Nylon Filter Wrap:

Minimum values

Weight oz/sq yd (ASTM D3776)	0.70
Grab Strength lbs (ASTM D4632)	11
Air Permeability cfm/sq ft (ASTM D737)	500
Water Flow Rate gpm/sq ft @ 3" head (ASTM D4491)	33
Trapezoidal Tear Strength Lbs (ASTM D4553)	6

(F) Backfilling Backfilling is the process of replacing the soil removed during excavating back into the drainfield and on top of the porous barrier. Only soils identified as suitable or provisionally suitable as defined in §285.112(b) of this title (relating to Soil Technology and Disposal Method Selection and Sizing) shall be used for backfill. Fractured rock and high shrink-swell clays are specifically forbidden for use as a backfill material. The backfill material shall be mounded over the excavated area so that the center of the excavation slopes down to the outer perimeter with an average slope no less than 50:1.

(G) Drainfields on irregular terrain Where topography or ground slope is too great (15% slope or more) for the construction of a level single drainfield, multiple long narrow drainfields may be constructed along descending contours. An overflow line shall be provided from the

upper excavations, in series, to the lower excavations. This overflow line shall be constructed from solid pipe and the excavation carrying the overflow pipe shall be backfilled with soil only.

(H) Drainfield design plans. A number of approved design sketches for drainfield construction are provided in §285.115(14) and (15) of this title (relating to Tables and Figures) Specifications and design details contained in these figures shall be considered rules under this section.

(2) Evapotranspirative drainfield (ET) An ET drainfield is a standard disposal process which may be used in soils which are classified as unsuitable in §285.112 of this title (relating to Soil Technology and Disposal Method Selection and Sizing) ET drainfields are generally constructed in accordance with the specifications for absorptive drainfields with the following exceptions:

(A) Liners. An impervious liner must be used between the excavated surface and the constructed drainfield in all Type Ia soils classified as unsuitable due to the possibility of groundwater contamination. Liners are also required for Type IVb soils with seasonal groundwater tables which penetrate the excavation. Liners shall be constructed from impervious rubber or plastic material having a thickness of 20 mil or greater. Reinforced concrete, gunite, and compacted and tested clay (one foot thick or more having a permeability of 10^{-7} cm/sec or less as tested by a certified soil laboratory) may also be used for liner material. Rubber or plastic liners must be protected from rocks and stones (when exposed) by covering the excavated surface with a sand cushion at least four inches thick.

(B) ET drainfield sizing. The following formula shall be used to calculate the TOP surface area of a constructed ET drainfield:

$$A = 1.6 Q/Ret$$

Where:

A = is the total top surface area of the excavation.

Q = estimated daily water usage in gallons/day in §285.115 (Table III) of this title (relating to Tables and Figures).

Ret = net local evaporation rate in §285.115 (7) of this title (relating to Tables and Figures).

The proper selection of the estimated daily water usage, Q, is of vital importance for proper operation of an ET drainfield. The owner of the system must be advised of the limits placed on the system by the Q selected. This notification shall be in the form of a statement included on or attached to the permit for the system.

(C) Water use and conservation. The proper functioning of an ET drainfield is directly related to the amount of water discharged daily into the system. For this reason, owners of these systems have a responsibility to monitor their water use and adjust it as necessary to prevent the surfacing of effluent. The use of water-saving fixtures is highly recommended and their use shall allow the system's designer to use a lower value of Q for establishing the drainfield size provided concurrence is granted by the system's owner and so stated on the permit.

(D) Backfill material. Backfill material shall consist of soil Type II as defined in §285.112(b) of this title (relating to Soil Technology and Disposal Method Selection and Sizing). Excavations containing two or more drainlines may eliminate the porous media between the drainlines to allow the backfill material to contact the bottom of the excavation. This construction procedure will enhance the wicking action of the soil and improve wa-

ter transfer. The porous media should extend at least one foot beyond the edge of the drainline horizontally.

(E) Vegetative cover for transpiration. The excavated surface shall be covered with vegetation designed to take maximum advantage of transpiration, depending on the season and the site's location. Evergreen bushes having shallow root systems may be planted in the drainfield to assist in water uptake. Grasses with dormant periods should be overseeded to provide year-round transpiration.

(F) Multiple ET drainfields. ET drainfields shall be divided into two or more separate units connected by flow control valves. One of the units may be removed from service for an extended period of time to allow it to dry out and decompose biological material which might tend to plug the drainfield. If one of the units is removed from service, the daily water usage must be reduced to prevent overloading of the units still in operation. Normally, a unit must be removed from service for two to three dry months for biological breakdown to occur.

(G) Geographical location. ET drainfields shall only be used in those areas of the state where the annual mean pan evaporation greatly exceeds the annual rainfall. As the annual rainfall approaches the annual evaporation, the required ET drainfield size becomes very large and ex-

pensive to construct (see data in §285.115(7) of this title (relating to Tables and Figures)).

(H) ET drainfield design plans. A number of approved design sketches for ET drainfield construction are provided in §285.115(14) and (15) of this title (relating to Tables and Figures). Specifications and design details contained in these figures shall be considered rules under this section.

(e) Disposal processes—proprietary. Proprietary disposal processes are any system, component or material marketed for sale and used in the construction of a subsurface sewage facility that is not identified in this chapter as a standard system. These systems, components or materials shall be tested and approved by the commission before marketed for sale in the state. Testing will be accomplished by allowing a number of the items (less than 25) to be installed and monitored by the commission or its authorized agents for a period of one year. Approval or disapproval of these systems, components or materials will be based on their performance over the test period. Failure of one or more of the installed units will be cause for disapproval of the proprietary item. The monitoring method for the units being tested must be agreeable to the commission and system failures shall be replaced by the manufacturer at the manufacturer's expense.

(1) Gravelless drainfield piping. Gravelless pipe may be used only on sites

suitable for standard subsurface sewage disposal methods. Gravelless pipe is available in eight-inch or ten-inch diameter corrugated polyethylene pipe having two rows of perforations located approximately 120 degrees apart along the pipe's bottom half. The eight-inch and ten-inch diameter gravelless pipe is available in standard

20-foot lengths, weighing approximately 25 lbs., and 32 lbs., respectively. The pipe is enclosed in a layer of unwoven spun-bonded polypropylene, polyester or nylon filter wrap. Gravelless pipe shall meet American Society for Testing and Materials, ASTM F-667 Standard Specifications for large diameter corrugated high-density

polyethylene (ASTM D 1248) tubing. Perforations shall be 1/2-inch diameter in ten-inch diameter pipe and 3/8-inch diameter in eight-inch diameter pipe. Perforations shall be arranged and spaced so that only one hole exists in each inner corrugation. The filter cloth must meet the following material specifications:

Minimum Values

Weight, oz. per sq. yd. (ASTM D3776).....0.70

Grab Strength, lbs. (ASTM D4632). 11

Air Permeability, cfm per sq. ft. 500
(ASTM D737)

Water Flow Rate, gpm/sq. ft. @ 3"
head (ASTM D4491).....33

Trapezoidal Tear Strength, lbs.6
(ASTM D4533)

(A) Design parameters
 Gravelless drainfield pipe may be substituted for pipe in both absorptive or ET drainfields. When gravelless pipe is substituted, the porous media around conventional pipe will not be required. ET drainfields shall be backfilled with Type II soils only. Gravelless pipe shall not be used for absorptive drainfields in Type IV soils. All other design parameters for absorptive or ET drainfields apply to gravelless pipe.

(B) Installation. The proper installation of adequate construction materials is vitally important to the success of gravelless drainfield systems. Materials include gravelless pipe, backfill, end caps, offset connectors and filter cloth. All connections from the house to the septic tank shall be in accordance with

§285.111(a)(1)(A) of this title (relating to Design Criteria for Subsurface Sewage Systems). The connection from the septic tank to the gravelless line shall be made by using an eight- or ten-inch offset connector. It is important that the gravelless line be laid level with the continuous stripe up, and joined with couplings. The filter cloth must be pulled over the joint to eliminate soil infiltration. The gravelless pipe must be held in place during initial backfilling to prevent movement of the pipe in the trench. The end of each gravelless line should have an end cap or inspection port installed. An inspection port is recommended in lieu of an end cap because the amount of sludge or suspended solids in the line can be easily monitored and the distribution lines can be backflushed.

(C) Drainfield Sizing. Eight-inch diameter gravelless pipe shall use W = 2.0 and ten-inch gravelless pipe shall use W = 2.5 for absorptive drainfield sizing.

(2) Leaching chambers.
 Leaching chambers are bottomless chambers designed to be installed in a drainfield excavation with the open bottom of the chamber in direct contact with the excavation. The chambers are linked together with sewer pipe (no perforations) in such a manner as to completely cover the excavation with adjacent chambers in contact with each other. The chambers may be covered with the soil removed from the excavation provided the soil meets Type I, II or III as described in §285.112(b) of this title (relating to Soil Technology and Disposal Method Selection and Sizing). Other special conditions for leaching chambers are as follows:

(A) The bottom area (not sidewalls) of the excavation may be reduced by 40% from the value calculated using §285.115(1) of this title (relating to Tables and Figures) (see the following formula).

$$\text{Drainfield Area} = 1.6 L \times W + 2 (L+W)$$

Where: L = Drainfield Length

W = Drainfield Width

(B) These chambers shall not be used for absorptive drainfields in Type IVb soils.

(C) Chambers used for absorptive drainfields in Type IVa soils shall be backfilled using Type I, II or III soils only.

(3) Pressure emitters Pressure emitters consist of small-diameter pressurized lines directly buried in the soil to a nominal depth of six inches. The lines contain pressure reducing devices spaced at 24-inch maximum intervals. The purpose of the pressure reducing device is to restrict the flow of effluent from the pipe into the surrounding soil to a very low rate. This distribution method promotes uniform wetting of the soil in the root zone of surface vegetation. Since the near surface root zone of plants will absorb water, even in Type IVb soils (clays with high shrink-swell properties), this type of system may be used for on-site disposal in these soils.

(A) Drainfield layout. The drainfield shall consist of a matrix of lines and emitters arranged in almost any configuration provided the lines are separated by a maximum of two feet horizontally.

(B) Effluent quality Treatment preceding this disposal process shall remove sufficient total suspended solids from the wastewater to preclude plugging of the emitters. This quality shall be established by the manufacturer of the emitters and approved by the commission. Direct septic tank discharge into the emitters without additional treatment will not be approved.

(C) System maintenance On-going maintenance contracts in accordance with the maintenance provisions of §285.113(a)(3)(B) of this title (relating to Design Criteria for On-Site Wastewater Systems Utilizing Surface Disposal Methods) shall be required for all emitter systems.

(D) Loading Rates. Pressure emitters can be used in Type I and IVb soils using 0.1 gallon/sq. ft./day with a maximum emitter spacing of two feet.

(f) Disposal processes-non-standard Non-standard disposal processes are all systems, components and materials not described as standard and not marketed for sale in the state as a proprietary item. The commission will review and either approve or disapprove the design on a case-by-case basis. The review of non-standard systems in common use may be delegated by the commission to authorized agents if requested. Design criteria will be derived from basic engineering analysis and scientific investigation of the proposed disposal process.

(1) Low-pressure dosed drainfield A low-pressure dosing system consists of an approved treatment system as specified in §285.111(e)(3)(A)-(C) of this title (relating to Design Criteria for Subsurface Sewage Systems). Effluent from this system is pumped, under low pressure, into a solid wall force main and then into a perforated distribution pipe which is installed within the drainfield area. The effluent pump in the pump tank must be capable of an operating range that will assure that effluent is delivered to the most distant point of the perforated piping network, yet not be excessive to the point that "blow-outs" occur. A programmed start/stop switch must be included in the system which will allow the pump to operate at least three times during a 24-hour day. A high-water alarm, on an electric circuit separate from the pump, must be provided.

(A) Drainfield design criteria Pressure dosing systems may be designed in accordance with design criteria in the North Carolina State University Sea Grant College Publication UNC-S82-03, the United States Environmental Protection Agency's On-site Wastewater Treatment and Disposal Systems Design Manual, 1980 or later editions or other publications containing design data on pressure dosed systems which are acceptable to the commission. The following design parameters are required for all low-pressure subsurface drainfields.

(i) The low-pressure dosed drainfield area shall be sized in accordance with §285.115(1) of this title (relating to Tables and Figures). Use 1.5 square feet of wetted area per lineal foot of dosing pipe for all excavated areas less than one foot wide.

(ii) Each dosing pipe shall be placed with the drain holes facing down and placed on at least two inches of porous media (pea gravel or larger) between the bottom of the excavation and pipe.

(iii) Geotextile fabric or equivalent shall be placed over the pipe and the excavation filled with soil removed from the excavation.

(iv) Low-pressure dosed systems shall be placed only in Soil Types Ib, II, III and IVa as defined in §285.112(b) of this title (relating to Soil Technology and Disposal Method Selection and Sizing).

(v) All other design criteria are found in the North Carolina State University Sea Grant College Publication UNC-S82-03, and the United States Environmental Protection Agency's On-Site Wastewater Treatment and Disposal Systems Design Manual may be used for system design.

(2) Mound systems. A mound drainfield is an absorptive drainfield constructed above the native soil surface and is required due to a restrictive horizon less than 36 inches below the ground surface (groundwater, fissured rock, etc.). A scarified interface (for absorptive mounds) between the native soil, a porous media around the distribution pipe, the distribution piping, and a topsoil cover are all components of the mound system. The depth of the material between the distribution pipe and the restrictive horizon shall be at least two feet. The preferred constructed shape is a long narrow rectangle, with the long dimension laid out along a contour. Effluent shall be pressure dosed into the distribution piping to ensure equal distribution and to control application rates. Design criteria for mound construction may be as specified in the UNC Sea Grant College Publication UNC-SG-82-04, the United States Environmental Protection Agency's On-site Wastewater Treatment and Disposal Systems Design Manual, 1980 or later edition or any

technical publication containing mound design criteria and acceptable to the commission.

(3) Deep trench drainfields A deep trench drainfield consists of an excavation deeper than the three feet allowable for conventional drainfields with an excavated width less than three feet. The depth of this drainfield shall not exceed six feet and the highest periodic water table must be at least two feet below the bottom of the excavation. The overall length of the excavation is sized in accordance with the formula in §285.111(d)(1)(A) of this title (relating to Design Criteria for Subsurface Sewage Systems). This drainfield design may be used to penetrate shallow clay layers in order to extend the drainfield into more permeable sub-layers of soil. When used in this manner, the excavation shall penetrate at least one foot but not more than two feet into the permeable soil. Soil Types Ib, II and III shall be used for backfilling in this type of disposal field.

(4) Soil substitution drainfields Soil substitution drainfields may be constructed in Class Ia soils, fractured rock, fissured rock, or other conditions of high permeability where septic tank effluent could rapidly reach groundwater without undergoing adequate treatment through soil contact. A soil substitution drainfield is constructed similar to a standard absorptive drainfield with one exception. The exception consists of a 30-inch thick Class II or Class III soil buffer placed below and on all sides of the drainfield excavation. The Class II or Class III soil acts as a filter medium to remove contaminants from the wastewater prior to its contacting the highly permeable natural ground. It is recommended, but not mandatory, that low-pressure dosing be used for effluent distribution.

(5) System maintenance Ongoing maintenance contracts in accordance with the maintenance provisions of §285.113(a)(3)(B) of this title (relating to Design Criteria for On-Site Wastewater Systems Utilizing Surface Disposal Methods) shall be required for all non-standard systems which utilized mechanical components. Periodic inspections will not be required for any facility utilizing electronic monitoring and automatic telephone access which will notify the maintenance company of system or component operational failure.

(g) Setback and separation requirements. The construction of an on-site sewage facility and disposal field must be isolated from certain areas such as water wells, lakes, roads, fences and other objects subject to contamination from the on-site sewage facility or which may prevent the proper operation of the system. The following are minimum setback and separation requirements as defined in §285.115(10) of this title (relating to Tables and Figures) for on-site sewage facilities:

(1) Existing public water wells. The minimum separation shall be 50 feet to a treatment process, 150 feet to an absorptive drainfield and 50 feet to a lined ET drainfield for those wells not having a 150-foot sanitary easement. No component of an on-site sewage facility shall be constructed within the sanitary easement of a public water well.

(2) Existing private water well (pressure cemented or grouted to a depth of 100 feet or to the water bearing strata if less than 100 feet). The minimum separation shall be 50 feet for a treatment process or absorptive drainfield and 50 feet to a lined ET drainfield.

(3) Existing private water well (unknown depth to aquifer or cementing). The minimum separation distance shall be 50 feet to any on-site sewage facility, 100 feet to an absorptive drainfield and 50 feet to a lined ET drainfield.

(4) Water supply lines. The minimum separation shall be ten feet from all components of the on-site sewage facility.

(5) Streams, ponds, lakes, rivers and saltwater bodies (high tide only). The minimum separation shall be 75 feet for all components of the on-site sewage facility with the exception of a lined ET drainfield which may be separated by 50 feet.

(6) Foundations, buildings, surface improvements, property lines, easements, swimming pools or other structures. The minimum separation shall be five feet for all components of the on-site sewage facility.

(7) Steep slopes and rock outcrops. The minimum separation shall be 25 feet for all components of the on-site sewage facility.

§285.112. Soil Technology and Disposal Method Selection and Sizing

(a) Soil evaluation procedures.

(1) At least two soil borings shall be taken in the area to be used for soil absorption systems. These borings shall be taken to the depth of at least two feet below the drainfield bottom. The back-hoe pit should be dug adjacent to the soil absorption area. The type and size of an on-site sewage facility shall be determined by the most restrictive soil type.

(2) Evaluation of these borings and overall site evaluation shall be performed by certified individuals possessing a Site Evaluator certificate issued by the commission. The evaluation of borings, and overall site evaluation and soil analysis shall not be conducted by the registered installer of the system. Characteristics in-

cluding soil texture, soil structure, soil drainage, shrink-swell potential, soil depth, and soil permeability shall be evaluated. The soils on a site shall then be placed in one of four soil classes as follows:

(A) Class Ia-sandy, with 30% or more gravel;

(B) Class Ib-sandy, fine to medium grained;

(C) Class II-coarse loamy;

(D) Class III-fine loamy;

(E) Class IVa-clay, low to moderate shrink-swell potential, and

(F) Class IVb-clay, high shrink-swell potential. Soil classes are further defined in §285.115(8) of this title (relating to Tables and Figures).

(3) If the site and soil evaluation proves to be suitable or provisionally suitable, the size of the subsurface absorption system may be calculated using data in §285.115(1) of this title (relating to Tables and Figures). Unsuitable sites must use appropriate proprietary or non-standard systems which do not require subsoil absorption for effluent disposal.

(b) Soil texture analysis. The soil classes shall be determined by a general texture analysis approved by the commission.

(1) Soil Class Ia. Sandy texture soils containing more than 30% gravel shall be considered unsuitable with respect to texture.

(2) Soil Class Ib. Sandy soils containing less than 30% gravel shall be considered suitable with respect to texture.

(3) Soil Class II. This class is considered suitable with respect to texture.

(4) Soil Class III. This class is considered provisionally suitable with respect to texture.

(5) Soil Class IVa. This class is considered provisionally suitable with respect to texture.

(6) Soil Class IVb. This class is considered unsuitable with respect to texture.

(c) Soil structure analysis. The soil structure shall be determined by an analysis approved by the Commission. Structure is not as important in Class Ia, Class Ib, Class II and Class III soils. These types of soils are generally considered suitable as to structure. However, structure is important in

Class IVa and Class IVb soils. The three kinds of soil structure that are most significant in the movement of sewage effluent through Class IVa and Class IVb soils are blocky, platy, and massive

(1) Massive soil structure A massive soil structure is considered unsuitable with respect to structure

(2) Blocky soil structure A blocky soil structure is considered provisionally suitable with respect to structure.

(3) Platy soil structure A platy soil structure is considered unsuitable with respect to structure.

(d) Soil depth analysis The depth of soils classified as suitable or provisionally suitable as to texture and structure shall be at least 24 inches below the bottom of the disposal area when conventional ground absorption systems are to be utilized

(e) Restrictive horizons analysis Dense clay subsoils, rock and plugged laminar caliche are considered to be restrictive horizons. They can be recognized by an abrupt change in texture from a sandy or loamy surface horizon to a clayey subsoil or rock-like material which an auger will not penetrate. Soils in which restrictive horizons are less than 42 inches below the ground surface shall be considered unsuitable.

(f) Soil drainage analysis The presence of groundwater shall be determined by an analysis approved by the commission. Any soil profile that is indicative of high water tables within 36 inches of the surface or less than two feet below the bottom of the drainfield, shall be considered unsuitable as to drainage

(g) Site factors and evaluation. All sites proposed to be used for the treatment and disposal of septic tank effluent should be investigated and evaluated according to the following factors

(1) Topography Uniform slopes under 15% are considered suitable with respect to topography. When slopes are less than 20%, provisions should be made to insure good surface drainage of rainfall or runoff from covering the soil absorption field. When slopes are greater than 40%, the drainfield excavation should follow the contour of the ground. Slopes between 15% and 30% shall be considered provisionally suitable.

(2) Landscape position Soil absorption systems shall not be located in a depression or in areas of complex slope patterns where slopes are dissected by gullies and ravines

(3) Flood hazard. Sites located within the regulated 100-year floodway should be considered unsuitable

(h) Determination of over-all site suitability. The following criteria shall determine if the site can be utilized for standard subsurface disposal methods without need of any significant modification of the site Section 285.115(5) of this title (relating to Tables and Figures) summarizes soil and site criteria for construction of a conventional septic tank-soil absorption system

(1) If all of the soil or site criteria categories are suitable, standard subsurface disposal methods may be utilized

(2) If one or more of the soil or site criteria categories are evaluated as provisionally suitable, standard subsurface disposal methods may still be utilized. However, these sites may be better suited to non-standard disposal methods

(3) If one or more of the soil or site criteria categories are evaluated as unsuitable, standard subsurface disposal methods cannot be utilized. However, the site can still be utilized for on-site wastewater treatment by using non-standard disposal methods

(i) Percolation tests Percolation test results will not be accepted as criteria for soil permeability or drainfield size requirements

§285.113 Design Criteria for On-site Wastewater Systems Utilizing Surface Disposal Methods

(a) Surface irrigation systems Surface irrigation methods include, but are not limited to, spray irrigation, drip irrigation, landscape irrigation or any other method of applying treated effluent onto the surface of the ground

(1) Types of wastewater treatment

(A) Standard treatment systems A standard wastewater system shall consist of a septic tank and an intermittent sand filter arranged in series. The system components shall meet the following specific design criteria

(i) The septic tank and related appurtenances shall be designed and constructed in accordance with §285.111(a) of this title (relating to Design Criteria for Subsurface Sewage Systems)

(ii) The intermittent sand filter shall have a media depth of at least 30 inches and contain an underdrain and sand

media acceptable to the commission. The container shall be constructed in accordance with §285.111(a) of this title (relating to Design Criteria for Subsurface Sewage Systems). The surface loading rate shall not exceed 12 gallons/sq ft/day

(B) Proprietary aerobic treatment systems All approved proprietary systems will be identified and published in a list of approved systems which may be obtained from the commission. Only treatment systems which have been tested by and are currently listed by NSF International as Class I systems under the most recent version of NSF Standard 40 shall be included on the list. The manufacturers of approved systems must comply with all the provisions of Standard 40 and NSF Certification Policies for Wastewater Treatment Devices as published by NSF International. Any proprietary wastewater system which has been approved for use in this state by the commission on or before the effective date of this rule will continue to be approved for use in this state only upon compliance with the following conditions

(i) such system has been tested and certified as an approved system by NSF International and is currently listed by NSF International under Standard 40, Class I treatment units,

(ii) such system has been submitted to NSF International for certification and testing within 90 days of the effective date of this chapter,

(iii) proof of contracting with NSF International for certification and testing has been submitted to the commission on or before the expiration of 90 days after the effective date of this chapter, and

(iv) such system is certified as approved by NSF International within 12 months of the date such unit has been submitted to NSF International for certification and testing, and is listed by NSF International under Standard 40, Class I treatment units.

(C) Non-standard treatment systems Non-standard systems include, but are not limited to, all treatment processes, both aerobic and anaerobic, used in conventional wastewater plants for the treatment of domestic sewage but not described in the "Construction Standards for On-site Sewerage Facilities". These systems are considered to be one-of-a-kind, site-specific installations. Effluent quality must meet or exceed commission secondary criteria. Secondary criteria are

BOD & TSS:	30 day average	20 mg/l
	7 day average	30 mg/l
	Daily Maximum	45 mg/l
	Single Grab	65 mg/l
PH		6.0 - 9.0

(2) Submittal requirements

(A) Technical report. Each permit application shall be accompanied by an engineering report outlining the design of the wastewater treatment and disposal system. A basis of design, construction drawings, calculations and system flow diagram shall be included in this report. Proprietary aerobic systems may reference their approved list number instead of furnishing construction drawings for the unit. All other information except construction drawings will be required for proprietary submittals.

(B) Site drawing. A scale drawing and legal description of all land which is to be a part of the disposal operation will be included in the submittal. The drawing will show the location of all existing and proposed buildings, wastewater disposal area, buffer zones, and water wells. All buildings and water wells within 150 feet of the irrigated area on adjacent property must also be included in the site drawing.

(C) Soil evaluation. Soil evaluation tests shall be performed on the irrigation site to determine the suitability of the soil to grow flora and provide a barrier to direct infiltration of the effluent. These tests should be conducted to a depth of at least three feet and located in the area to be irrigated. Sites that are suitable for subsurface absorptive disposal should not be considered for surface disposal methods unless water reuse and conservation factors are determined to be significant.

(D) Landscape plan. The area irrigated by the surface application of effluent must be described with the type of vegetation noted on the plan. Residential yards must be seeded prior to system start up. Commercial installations may irrigate existing vegetation provided all areas of bare ground are seeded or covered with vegetation prior to system start up.

(3) Review and permitting.

(A) Review authority. Designs for standard treatment systems and proprietary aerobic treatment systems shall

be reviewed and approved or disapproved by the permitting authority. If requested, commission personnel will assist in this review process. Non-standard treatment system designs will be reviewed and approved or disapproved by the commission.

(B) Maintenance requirements. A permit will be issued after design approval, provided the applicant furnishes an acceptable signed maintenance contract with a valid maintenance company. The maintenance company will verify that the system is operating properly and will provide ongoing maintenance of the installation. The initial maintenance contract must be valid for a minimum of two years.

(i) Maintenance contract. An acceptable signed maintenance contract is a contract between the system owner and an individual or company in which the company agrees to provide periodic inspections for system compliance with effluent standards as specified in §285.115(4) of this title (relating to Tables and Figures). This contract will also authorize the maintenance company to operate, maintain and repair the system as needed and the costs of this service will be paid by the system's owner. A copy of the signed maintenance contract between the property owner and the approved maintenance company shall be provided to the local permitting authority.

(ii) Maintenance company. At least one employee of the company shall hold an Installer II certificate issued by the commission and has been certified by the appropriate manufacturers maintenance program for the proprietary unit being maintained.

(iii) Ongoing maintenance. Ongoing maintenance shall be provided by maintenance companies.

(I) The owner of each surface application system shall continuously maintain a signed written contract with a valid maintenance company and shall submit a copy of the contract to the local permitting authority at least 30 days prior to expiration of the previous contract.

(II) If the property owner or maintenance company desires to

discontinue the provisions of the maintenance contract, the maintenance company shall notify in writing to the local permitting authority at least 30 days prior to the discontinuance of service.

(III) If a maintenance company discontinues business, the property owner shall, within 30 days of the termination date, contract with another approved maintenance company and provide the designated representative with a copy of the newly signed maintenance contract.

(iv) Affidavit. Upon issuance of a permit, the local permitting authority shall submit an affidavit to the county/city clerk's office to be added to the real property deed on which the surface application system is installed. This affidavit, similar to §285.115(12) of this title (relating to Tables and Figures), shall state that the property shall not be transferred to a new owner without:

(I) the new owner advised that the property contains a surface application system for wastewater disposal;

(II) the permit issued to the previous owner of the property being transferred to the new owner; and

(III) the new owner submitting a valid signed maintenance contract to the designated representative.

(C) Testing and reporting. The maintenance company shall inspect each permitted system as directed by a testing and reporting schedule which will be included on the permit. The testing and reporting schedule shall contain the frequency of site visits, type of tests to conduct during the visits, and minimum acceptable test results. The maintenance company shall report the results of their maintenance findings to the local permitting authority at the specified reporting frequency or whenever an inspection is necessary. A testing and reporting schedule is shown in §285.115(13) of this title (relating to Tables and Figures) of this document. A schedule of required tests and frequency of site visits is shown in §285.115(4) The

number of site visits may be reduced to two per year for all systems having electronic monitoring and automatic telephone access which will notify the maintenance company of system or component failure. This system shall also monitor effluent disinfection.

(D) Effluent disinfection. Treated effluent must be disinfected prior to surface application. Approved disinfection methods shall include but not be limited to chlorination, ozonization or ultraviolet radiation. The efficiency of the disinfection procedure will be established by monitoring the fecal coliform count or chlorine residual from effluent grab samples as directed in the testing and reporting schedule. The frequency of testing and type of tests required are shown in §285.115(4)

(E) Acceptable application surfaces. Acceptable land for surface application will include generally flat terrain covered with grasses, evergreen shrubs, bushes, trees or landscaped beds containing

mixed flora. Sloped land may be acceptable if properly landscaped and terraced to minimize runoff. All irrigated surfaces shall be covered with approved vegetation or seeded and landscaped prior to system start up.

(F) Unacceptable application surfaces. Land which can not be used for surface irrigation includes land for growing edible food, gardens, orchards or crops which may be used for human consumption. Additionally, effluent shall not be applied to bare ground under any circumstances

(G) Buffer zones. All treatment units and land surfaces used for the application of treated wastewater shall be isolated in accordance with the setback and separation requirements in §285.111(g) of this title (relating to Setback and separation requirements) with the following exceptions.

(i) aerosol producing sprinkler heads shall be setback 50 feet or more from property lines.

(ii) flower beds and shrubs may be sprinkler irrigated adjacent to dwellings and building structures;

(iii) low aerosol sprinkler heads shall not be located and shall not distribute effluent closer than ten feet to property lines, 150 feet to public water wells and 100 feet from any lake or reservoir used as a source of drinking water; and

(iv) non residential land application areas must be fenced with a man-proof fence to isolate the area from public contact

(H) Minimum required application area. The minimum surface application area required shall be determined by dividing the daily usage rate (Q) as established in §285.115(3) by the allowable surface irrigation application rate (Ri) found in §285.115(11).

$$\text{Reqd Surface area} = \frac{Q \text{ gal/day}}{\text{Ri gal/sq ft/day}}$$

(square feet)

(I) Uniform application of effluent. Regardless of the method used for the surface application of effluent, the main consideration for acceptability will be the uniform distribution of the water over the land surface. Distribution pipes, sprinklers, flow channels and other application devices must be designed to provide this uniform distribution of treated effluent. The application rate must be adjusted so as not to produce runoff

(i) Sprinkler design. When sprinklers are used as the application method they shall be limited to impact or gear-driven rotary design with a maximum inlet pressure of 40 psi. Low-angle nozzles shall be used in the sprinklers to keep the spray stream low and reduce aerosols

(ii) Sprinkler head requirements. Circular spray patterns may overlap to cover all irrigated area including rectangular shapes. However, the overlapped area will be only counted once toward the total application area. For large systems, multiple sprinkler heads are preferred to single-gun delivery systems

(iii) Sprinkler heads on sloping terrain. When sprinkler heads are placed at a higher elevation than the pump tank, the line shall be provided with a check valve to prevent return siphonage into the pump tank.

(iv) Effluent storage requirements. Storage requirements and pump tank design shall be in accordance with §285.111(a)(2) of this title (relating to Design Criteria for Subsurface Sewage Systems).

(b) Greywater systems. Greywater from sinks used for food preparation shall be treated and disposed of in a blackwater facility. Generally, blackwater and greywater are approximately 40% and 60% of the total domestic sewage flow, respectively. Studies have shown greywater as having a potential for spreading pathogens when used for irrigation. Therefore, their removal or reduction shall be required in order to insure the health and safety of the public sector. The removal of microorganisms including bacteria, viruses, parasitic protozoa and helminths can be accomplished by filtration, absorption, radiation, and disinfection or exposure to other adverse conditions. There should be no direct

human or animal contact with untreated greywater

(1) Greywater system design. Since greywater has many potential uses, it is necessary to establish minimal water quality and design standards for each anticipated application. Modification to an existing plumbing system must be carried out in accordance with the Uniform Plumbing Code or any other code adopted by the State Board of Plumbing Examiners. This modification will separate the blackwater from the greywater and provide a discharge point for the greywater into an approved treatment process. The blackwater shall be discharged into a sewer system or approved on-site sewage facility. The following greywater treatment and disposal methods are considered acceptable to the commission:

(A) Surface irrigation. Disposal systems employing surface irrigation of all greywaters combined shall be designed in accordance with subsection (a) of this section with the following exceptions. The treatment process may consist of filtration only and effluent testing will not be required. All other design, construction and permitting requirements found in subsection

(a) of this section shall be required.

(B) Subsurface disposal. Subsurface greywater treatment and disposal systems shall be designed in accordance with §285.111(a)-(g) of this title (relating to Design Criteria for Subsurface Sewage Systems) with the following exceptions: Treatment tankage volume and disposal drainfield area may be reduced by 40% due to the elimination of blackwater from the system.

(C) Special allowances for residential lots greater than one acre. Greywater disposal systems which isolate greywater strictly from residential laundry machines may be discharged directly onto

the ground surface under the following conditions:

(i) irrigation must not create a public health nuisance such as surface ponding;

(ii) the irrigated area must support plant growth such as bushes or be overlaid with a vegetative cover; and

(iii) ground surface irrigation should not be used for disposal of washwater containing fecal material from diapers.

(2) Maintenance Requirements. Maintenance requirements for surface irrigation of greywater will be identical to those described in subsection (a) of this section for surface irrigation systems. Greywater systems using standard disposal

processes are not required to continue a valid maintenance contract. However, it is recommended that the septic tanks serving these systems are pumped out every two years.

(c) Composting toilets. Composting toilets will be approved by the commission provided the system complies with the most current NSF International Standard 41.

§285.115. *Tables and Figures. Tables 1-X and Figures 1-11 are necessary for the design of an on-site sewage facility and which will aid the designers of these systems.*

(1) Table I.

TABLE I

EFFLUENT LOADING AND ABSORPTIVE AREA REQUIREMENTS BASED ON SOIL CLASSIFICATION

SOIL CLASS	LONG TERM APPLICATION (R_a) **GALLONS PER ABSORPTIVE AREA (SF) PER DAY
Ia Coarse Sand With Gravel	* > 0.50
Ib Medium to Fine Sand	0.38
II Coarse Loamy	0.25
III Fine Loamy	0.20
IVa Silty Clay, Clay	0.16
IVb Clay (High Shrink-Swell)	* < 0.1

*No standard absorptive subsurface disposal methods may be used in Soil Classes Ia and IVb. Use only non-standard subsurface designs or surface application methods.

**The absorptive area consists of the bottom area of the excavation PLUS one foot of sidewall area around the full perimeter of the excavation.

The required absorptive area shall be calculated by the following formula:

$$\text{ABSORPTIVE AREA} = \frac{Q}{R_a}$$

Where Q is the loading rate in gallons per day (see Table III).

TABLE II

SEPTIC TANK MINIMUM LIQUID CAPACITY

- A. Determine the applicable wastewater usage rate (Q) in TABLE III of 31 TAC Chapter 285.
- B. Calculate the minimum septic tank volume (V) as follows:
1. For Q equal to or less than 250 gal/day:
 $V = 750$ gallons
 2. For Q greater than 250 gal/day but less than 351 gal/day:
 $V = 1000$ gallons
 3. For Q greater than 351 gal/day but less than 501 gal/day:
 $V = 1250$ gallons
 4. For Q greater than 501 gal/day but less than 1501 gal/day:
 $V = 2.5 Q$
 5. For Q greater than 1501 gal/day:
 $V = 1,875 + 0.75 Q$

NOTES: The inside liquid depth of the tank shall not be less than 30 inches.

Tank sizing in B (1)(2)(3) correspond to two, three and four bedroom single family dwellings.

(3) Table III.

TABLE III

WASTEWATER USAGE RATE

This table shall be used for estimating the daily wastewater usage rate (Q) for sizing septic tank liquid capacity and drainfield area. Actual water usage data or other methods of calculating wastewater usage rates may be used by the system designer if it is accurate and acceptable to the Texas Natural Resource Conservation Commission or its authorized agents.

TYPE OF FACILITY	USAGE RATE GALLONS/DAY
Single family residence (one or two bedrooms)	250
Single family residence (three bedrooms)	350
Single family residence (four bedrooms)	450
Single family residence (each additional bedroom)	100
Single family residence (over 2,500 sq. ft. - for each additional 1,000 sq. ft.)	100
Condominium or Townhouse (one or two bedrooms)	250
Condominium or Townhouse (each additional bedroom)	75
Mobile home (one or two bedrooms)	250
Mobile home (each additional bedroom)	75
Country Clubs (per member)	25
Apartment houses (per bedroom)	75
Boarding schools (per room capacity)	50
Day care centers (per child with kitchen)	25
Day care centers (per child without kitchen)	15
Factories (per person per shift)	15
Hospitals (per bed)	200
Hotels and motels (per bed)	75
Nursing homes (per bed)	100
Laundries (self service per machine)	250
Lounges (bar and tables per person)	10
Movie Theaters (per seat)	5
Office buildings (no food or showers per occupant)	5
Office buildings (with food service per occupant)	10
Parks (with bathhouse per person)	15
Parks (without bathhouse per person)	5
Restaurants (per seat)	35
Restaurants (fast food per seat)	15
Schools (with food service & gym per student)	25
Schools (without food service)	15
Service stations (per vehicle)	10
Stores (per washroom)	200
Swimming pool bathhouses (per person)	10
Travel trailer/RV parks (per space)	50
Vet clinics (per animal)	10
Construction sites (per worker)	50
Youth camps (per camper)	30

(4) Table IV.

Table IV

REQUIRED TESTING AND REPORTING

Type and Size of Treatment Unit	Frequency of Site Visits	Required Tests	Minimum Acceptable Test Results
Standard Treatment Proprietary Treatment 500 GPD or Less and all Single Family Dwellings	3 Per Year	Chlorine Residual or Fecal Coliform at Each Site Visit	1 mg/l Residual in Pump Tank or Fecal Coliform Not To Exceed 200 MPN/1000 ml
Standard Treatment Proprietary Treatment 500 GPD to 1500 GPD	4 Per Year	Same As Above Plus One BOD ₅ Grab Sample Per Year	Same As Above BOD ₅ Grab Sample Not To Exceed 65 mg/l
All Non Standard Systems Standard Treatment Over 1500 GPD Proprietary Treatment Over 1500 GPD	One Each Month	Same As Above BOD ₅ Grab Sample Taken at Each Visit TSS Grab Sample Taken Every Six Months	Same As Above TSS Grab Sample Not To Exceed 65 mg/l

(5) Table V.

TABLE V

Summary of criteria for ground absorption of sewage effluent developed for site specific evaluations and using standard subsurface disposal methods.

FACTORS	SUITABLE (S)	PROVISIONALLY UNSUITABLE (PS)	UNSUITABLE (U)
Topography	Slopes 0-15 %	Slopes 15-30 %	Slopes greater than 30 % Complex slopes.
Subsoil Texture	Soil Class Ib, II & III Sandy Soils Loamy Soils	Soil Class IVa Clayey soils with low shrink-swell potential.	Soil Class Ia & IVb Clayey soils with high shrink-swell.
Subsoil Structure	Sandy Soils Loamy Soils	Angular or subangular blocky.	Platy structure. Weathered rock. Massive clayey soil.
Soil Depth	Weathered rock or consolidated bedrock greater than 48 inches below ground surface.	Weathered bedrock or consolidated rock from 24 to 48 inches below ground surface.	Weathered rock or consolidated bedrock less than 24 inches below ground surface.
Restrictive Horizon	None within 36 inches of the ground surface.		Restrictive horizon within 42 inches of the ground surface.
Soil Drainage	No drainage mottles within 36 inches of the ground surface. No flooding potential.		Drainage mottles (chroma 2 or less) within 36 inches of the ground surface.
a. Internal			
b. External		Areas subject to a 100-year flood frequency and not located in floodway.	Areas located in 100-year floodway. Depressional areas without adequate drainage.
Other			Fill material. Potential health hazards or groundwater contamination.

(6) Table VI

(7) Table VII.

TABLE VII

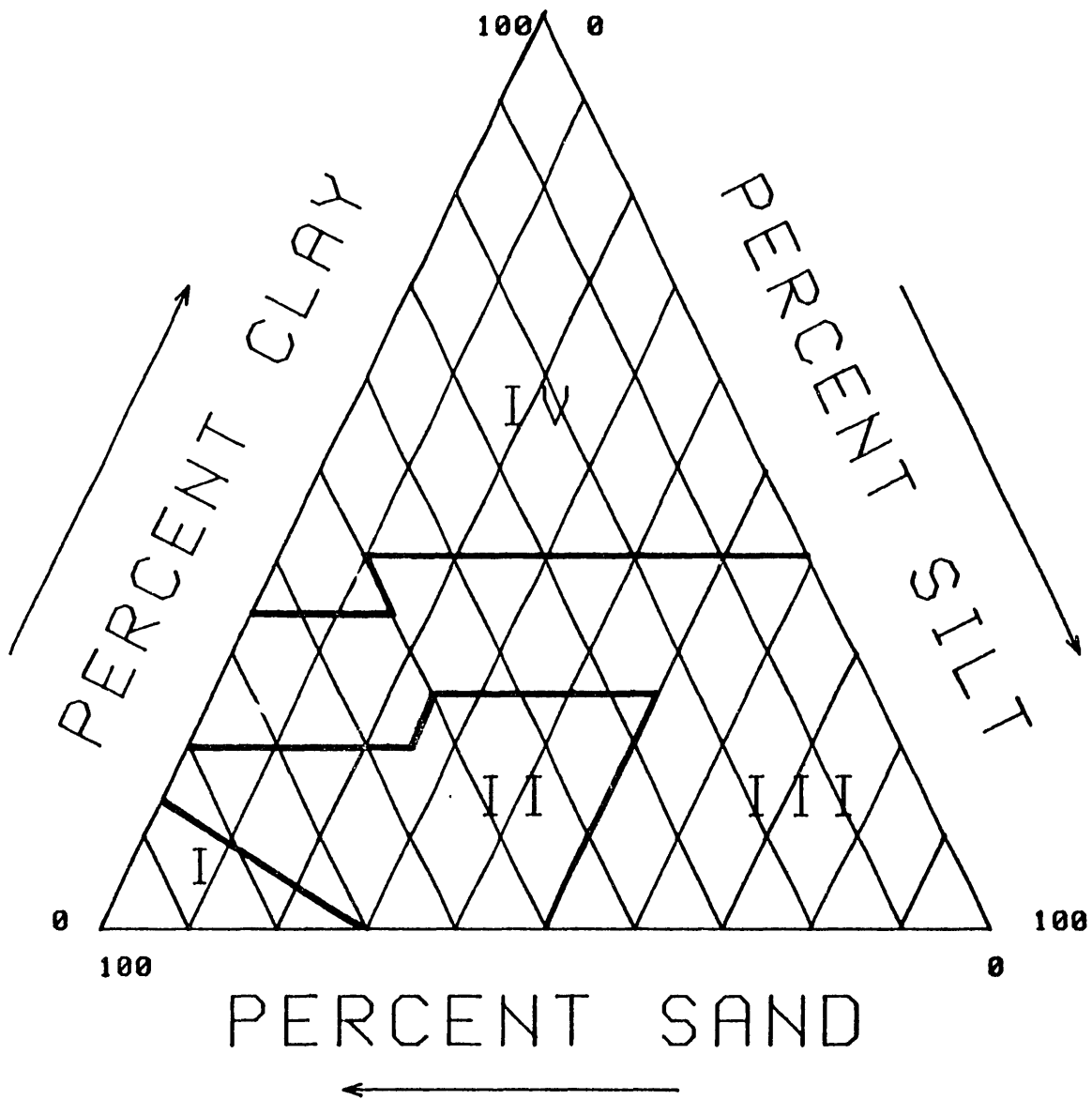
YEARLY AVERAGE NET EVAPORATION (EVAPORATION - RAINFALL)

REPORTING STATION	NET EVAPORATION, RET INCHES/DAY
Amarillo	0.19
Austin	0.10
Beaumont	0.00
Big Spring	0.17
Brownsville	0.08
Chilicothe	0.12
Daingerfield	0.08
Dallas	0.13
El Paso	0.27
Fort Stockton	0.26
Houston	0.00
Lake Somerville	0.09
Laredo	0.24
Lubbock	0.19
Nacogdoches	0.00
San Antonio	0.10
San Angelo	0.25
Temple	0.09
Throckmorton	0.15
Tyler	0.01

NOTE: These net evaporative rated are based on best available records. However, local meteorological data may yield a more conservative design. Designers are advised to utilize local data where available.

(8) Table VIII.

TABLE VIII
 MODIFIED USDA SOIL TEXTURAL CHART



(9) Table IX.

TABLE IX

OSSF SYSTEM DESIGNATION

SYSTEM DESCRIPTION	SYSTEM TYPE	PROFESSIONAL DESIGN REQUIRED?	INSTALLER REQUIREMENTS
Septic Tank & Absorptive Drainfield	Standard	No	Class I or II
Septic Tank & ET Drainfield (Unlined) (Lined)	Standard Standard	No No	Class I or II Class II
Septic Tank & Pumped Drainfield	Standard	No	Class I or II
Septic Tank & Leaching Chamber	Proprietary	No	Class I or II
Septic Tank & Gravelless Pipe	Proprietary	No	Class I or II
Septic Tank, Filter & Drip Emitter	Proprietary	Yes	Class II
Septic Tank & Low Pressure Dosing	Non-standard	Yes	Class II
Septic Tank & Absorptive Mounds	Non-standard	Yes	Class II
Septic Tank, Filter & Surface Irrigation	Standard	Yes	Class II
Aerobic Treatment & Absorptive Drainfields	Proprietary	Yes	Class II
Aerobic Treatment & ET Drainfield	Proprietary	Yes	Class II
Aerobic Treatment & Leaching Chamber	Proprietary	Yes	Class II
Aerobic Treatment & Gravelless Pipe	Proprietary	Yes	Class II
Aerobic Treatment, Filter & Drip Emitter	Proprietary	Yes	Class II
Aerobic Treatment & Low Pressure Dosing	Proprietary	Yes	Class II
Aerobic Treatment & Absorptive Mounds	Proprietary	Yes	Class II
Aerobic Treatment & Surface Irrigation	Proprietary	Yes	Class II
Any Other Treatment System	Non-standard	Engineer Only	Class II
Any Other Subsurface Disposal System	Non-standard	Yes	Class II
Any Other Surface Disposal System	Non-standard	Engineer Only	Class II

(10) Table X

TABLE X

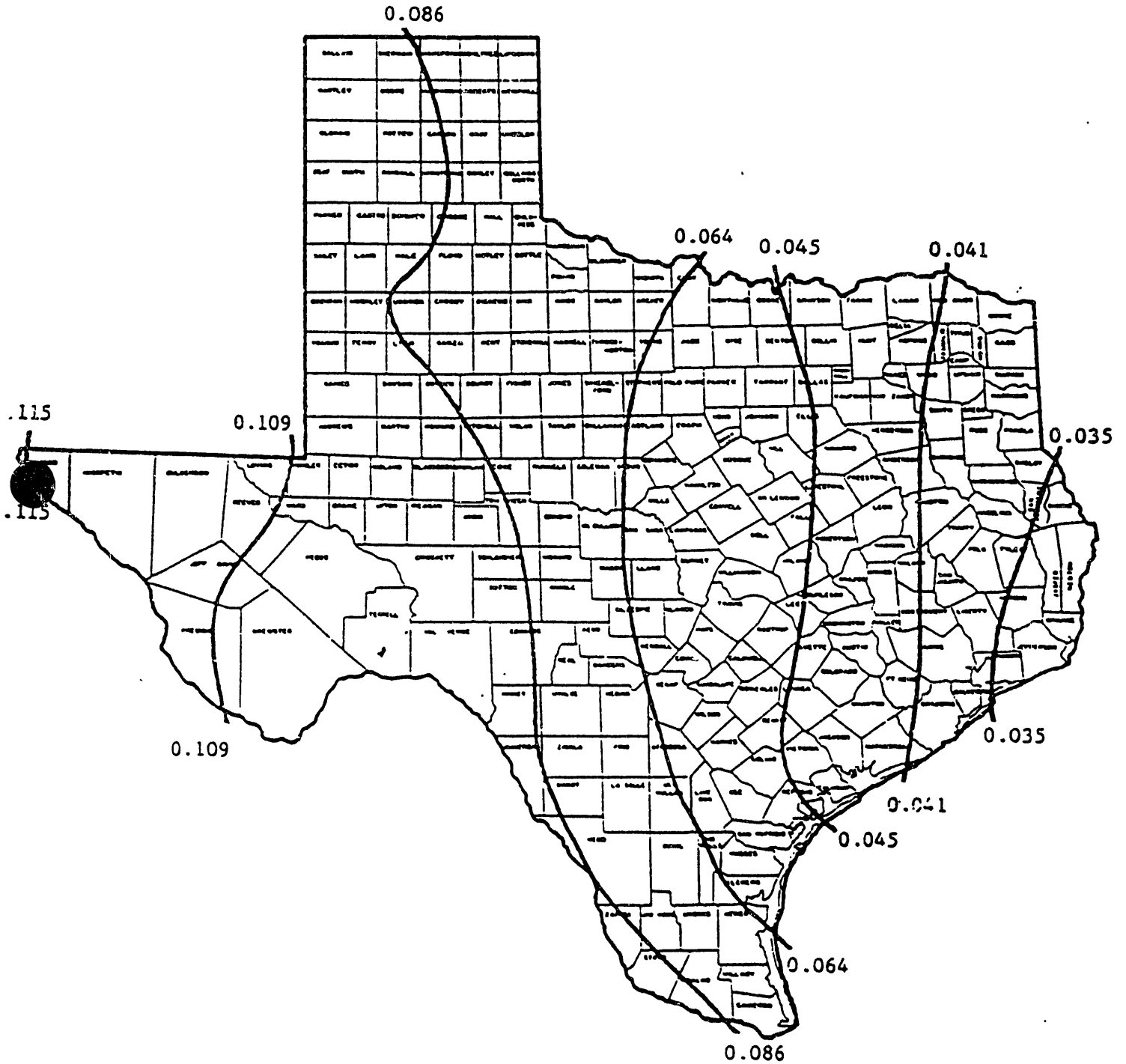
MINIMUM REQUIRED SEPARATION DISTANCES IN FEET FOR ON-SITE SEWAGE FACILITIES

FROM	TO	Sewage Treatment Tanks or Holding Tanks	Lined Evapotranspiration Beds	Soil Absorption Systems or Unlined ET Beds	Sewer Pipe With Watertight Joints
Public Water Wells		50 ⁽¹⁾	150	50 ⁽¹⁾	20 ⁽¹⁾
Private Water Well		50	100	50	20
Private Water Well (Pressure Cemented or Grouted to 100 ft. or Cemented or Grouted to Watertable if Watertable is Less Than 100 ft. deep)		50	50	25	20
Water Supply Lines		10	10	10	10
Streams, Ponds, Lakes, Rivers and Salt Water Bodies at High Tide		75	75	50	20
Foundations, Buildings, Surface Improvements, Property Lines, Easements, Swimming Pools and Other Structures		5	5	5	5
Steep Slopes and Rock Outcrops		25	25	25	20

(1) Only for Public Water Wells Not Having a 150 ft. Sanitary Easement

(11) Figure 1.

Figure 1
Maximum Application Rates For
Land Disposal of Treated Effluent in Texas
 (Gal./Sq. Ft./Day)



(12) Figure 2.

FIGURE 2

AFFIDAVIT TO THE PUBLIC

THE COUNTY OF _____ *
STATE OF TEXAS _____ *

Before me, the undersigned authority, on this day personally appeared (names of homeowner(s) who, after being by me duly sworn, upon oath states that he/she is the owner of record of that certain tract or parcel of land lying and being situated in _____ County, Texas, and being more particularly described as follows:

(Here insert legal description of property.)

The undersigned further states that he/she will, upon any sale or transfer of the above-described property, request a transfer of the permit to operate such surface application system to the buyer or transferee. Any buyer or transferee is hereby notified that a maintenance contract with an approved maintenance company will be required for use of the system.

WITNESS MY/OUR HAND(S) ON THIS _____ DAY OF _____, _____.

SWORN TO AND SUBSCRIBED BEFORE ME ON THIS _____ DAY OF _____, _____, BY
(PRINTED NAME OF HOMEOWNER(S)).

Notary Public, State of Texas
Notary's Printed Name:
My Commission Expires:

(13) Figure 3.

FIGURE 3

TESTING AND REPORTING RECORD (SAMPLE)

This testing and reporting record shall be completed, signed and dated after each inspection. One copy shall be retained by the maintenance company. The second copy is sent to the local permitting authority and the third copy is sent to the system owner along with an invoice for services by the maintenance company.

1. Required frequency of visits - (daily, weekly, monthly, quarterly).
Actual date of visit _____

2. System inspection

<u>Inspected Item</u>	<u>Operational</u>	<u>Inoperative</u>
Aerators		
Filters		
Irrigation Pumps		
Recirculation Pumps		
Disinfection Device		
Chlorine Supply		
Electrical Circuits		
Distribution System		
Other as Noted		

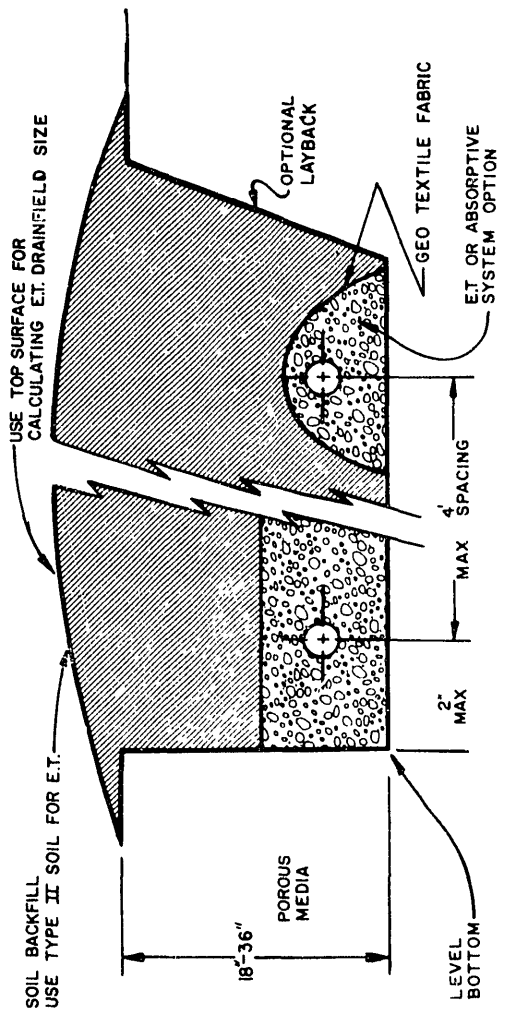
3. Repairs to system (list all components replaced) _____

4. Tests required and results

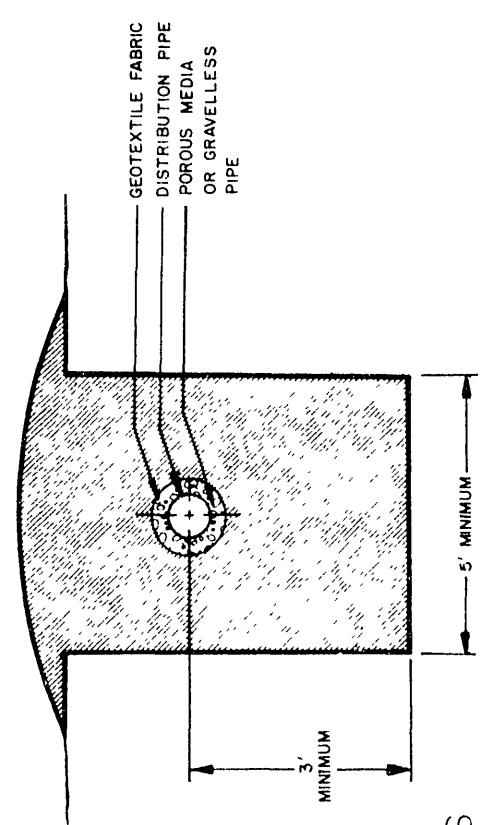
<u>Test</u>	<u>Required</u>		<u>Results</u> <u>mg/l, mpn/100 ml, or trace</u>
	<u>Yes</u>	<u>No</u>	
BOD (Grab)			
TSS (Grab)			
Cl ₂ (Grab)			
Fecal Coliform			

5. General comments or recommendations _____

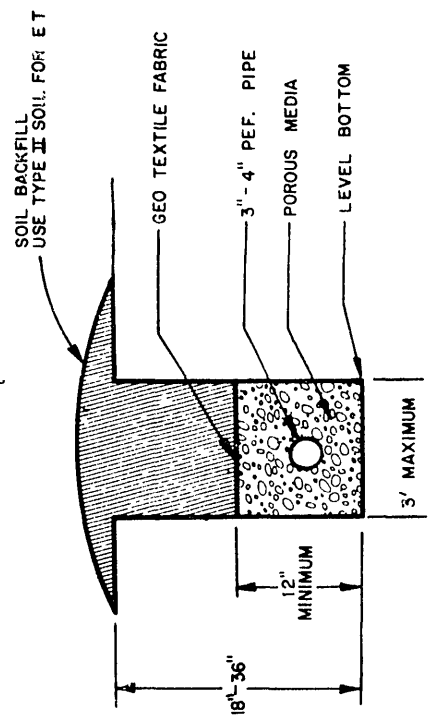
(14) Figure 4



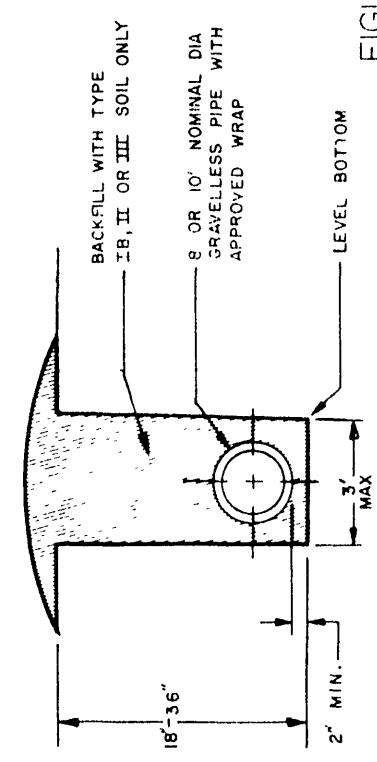
MULTIPIPE DRAINFIELD WITH OPTIONS ABSORPTIVE OR E.T.



ARTIFICIAL DRAINFIELD CONSTRUCTED OVER HIGHLY PERMEABLE GROUND (FRACTURED ROCK GRAVEL GEOLOGIC FAULT)



SINGLE PIPE DRAWING ABSORPTIVE OR E.T.



GRAVELLESS SINGLE PIPE DRAINFIELD

FIGURE 4 TYPICAL DRAINFIELDS SECTIONAL VIEW

(15) Figure 5.

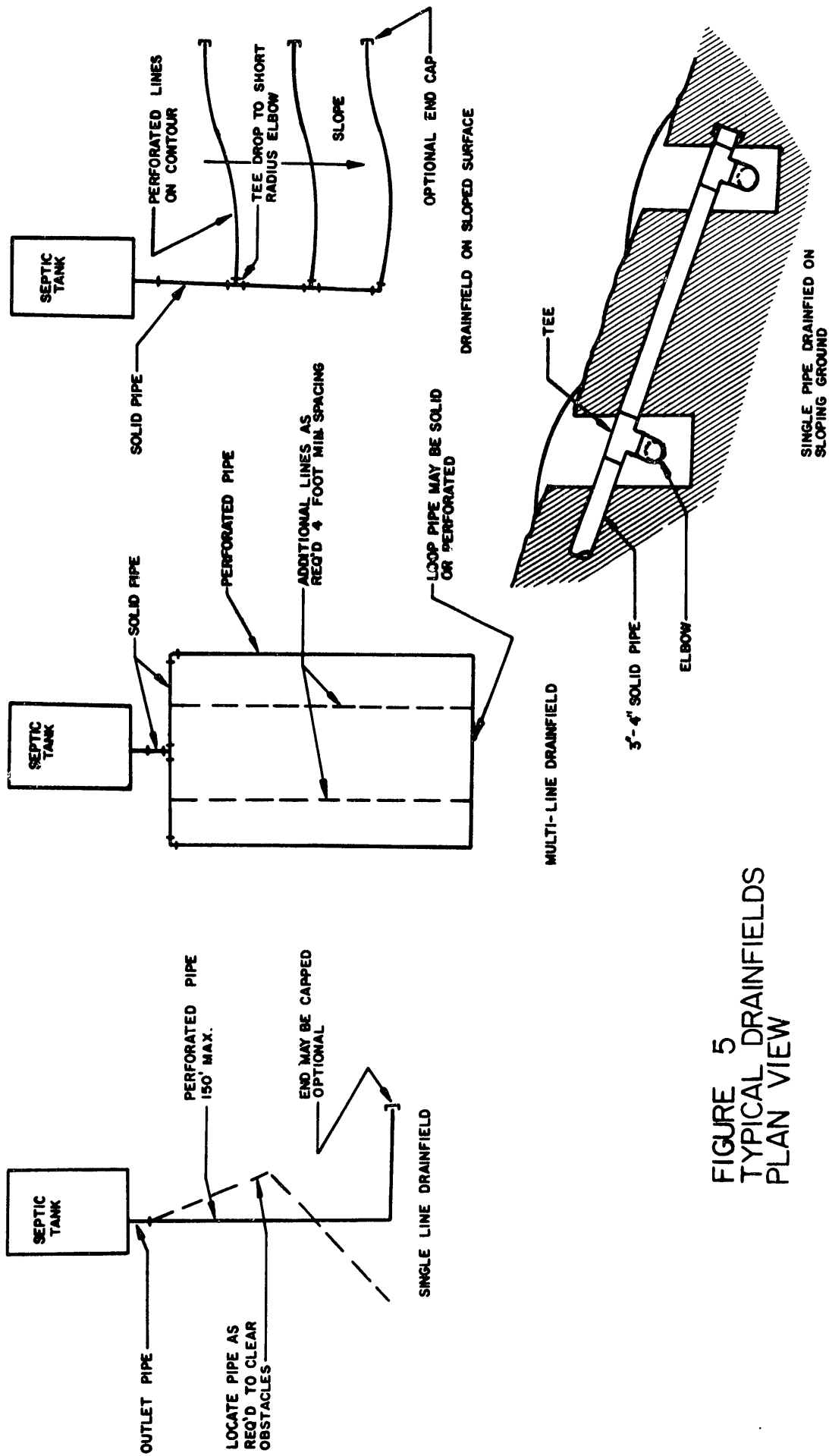
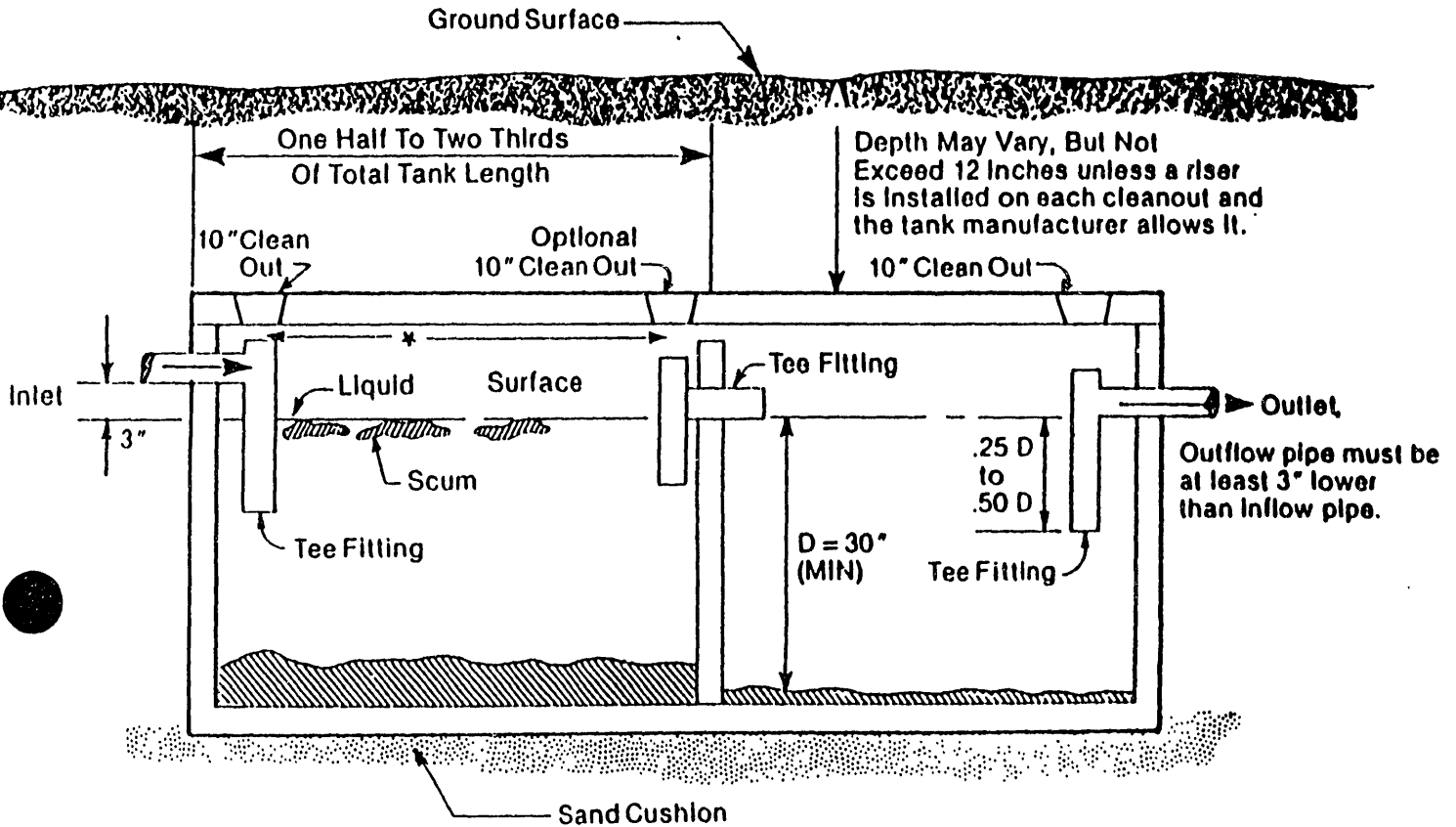


FIGURE 5
TYPICAL DRAINFIELDS
PLAN VIEW

(16) Figure 6.

FIGURE 6

TWO COMPARTMENT SEPTIC TANK



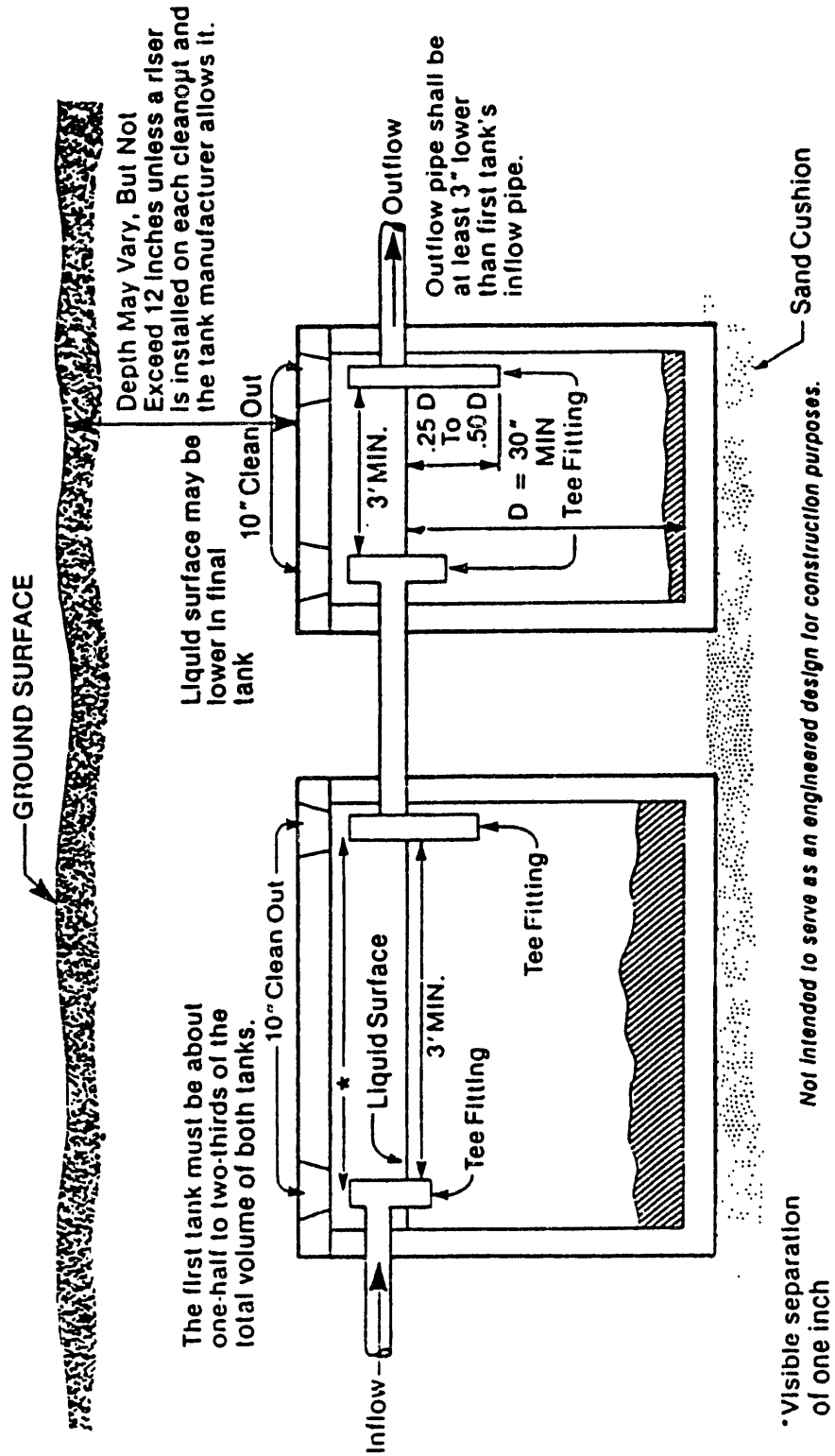
*Visible separation of one inch

Not intended to serve as an engineered design for construction purposes

(17) Figure 7.

FIGURE 7

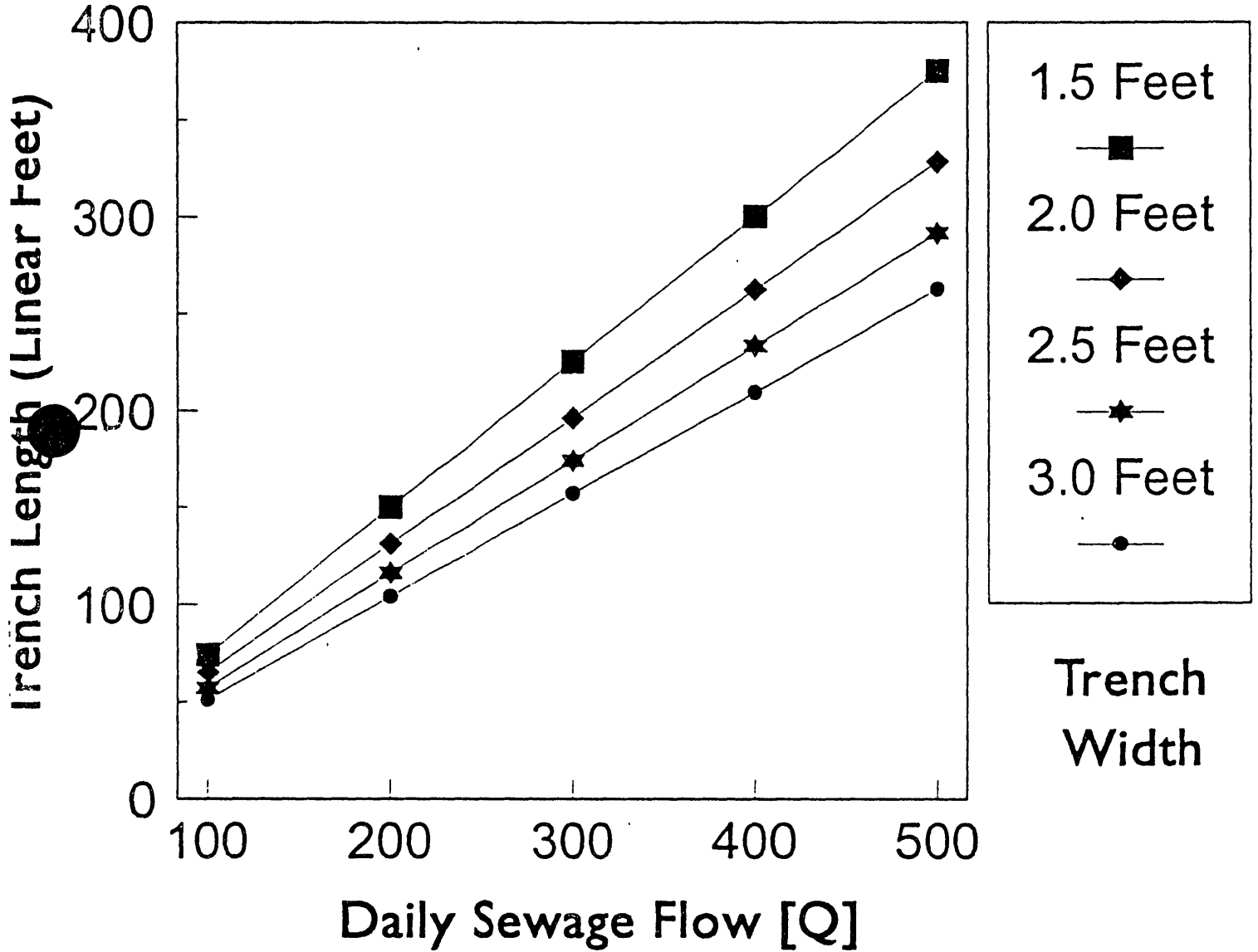
TWO SEPTIC TANKS IN SERIES



(18) Figure 8

Figure 8

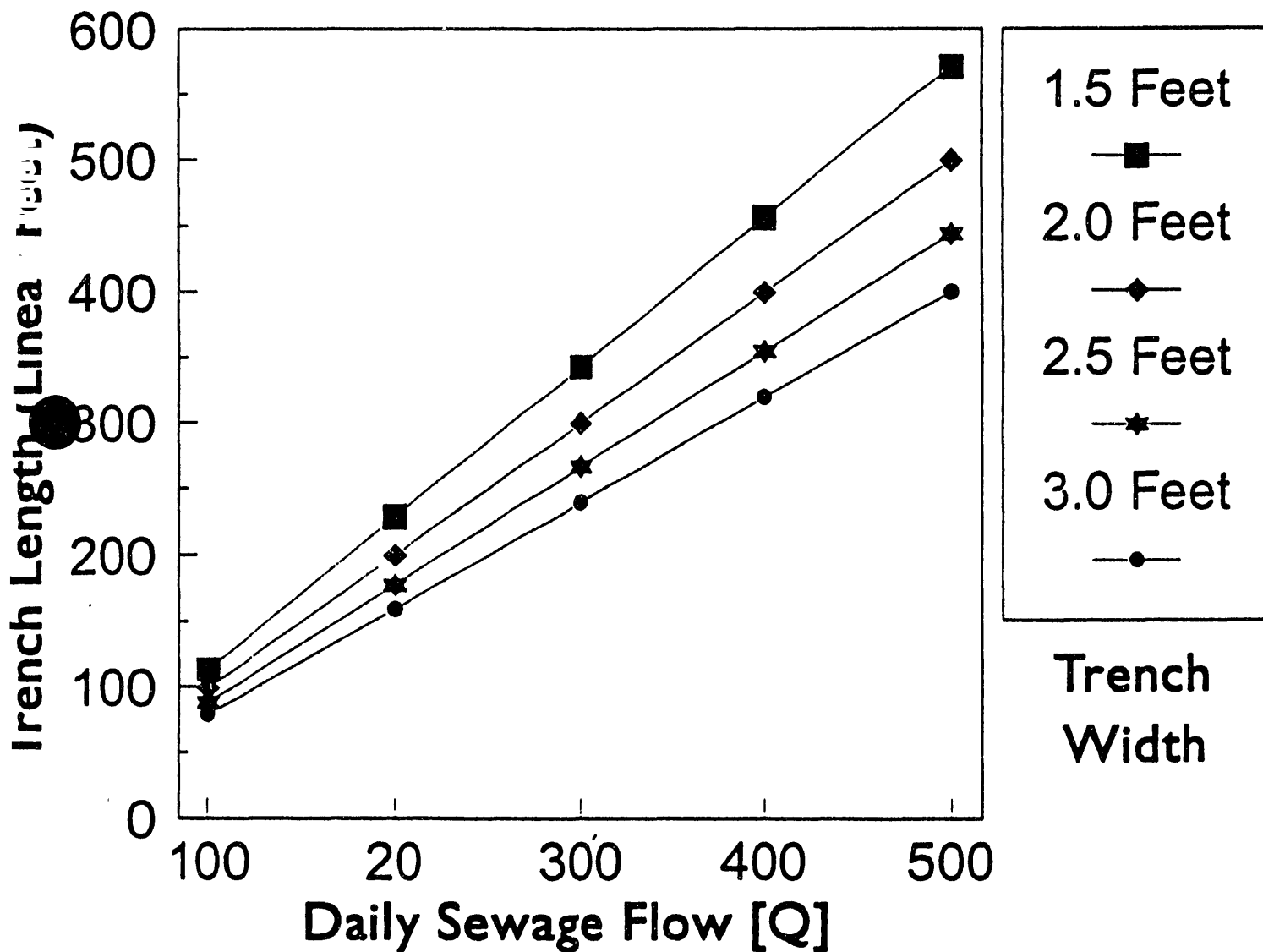
OSSF Trench Length Chart Type Ib Soil



(19) Figure 9.

Figure 9

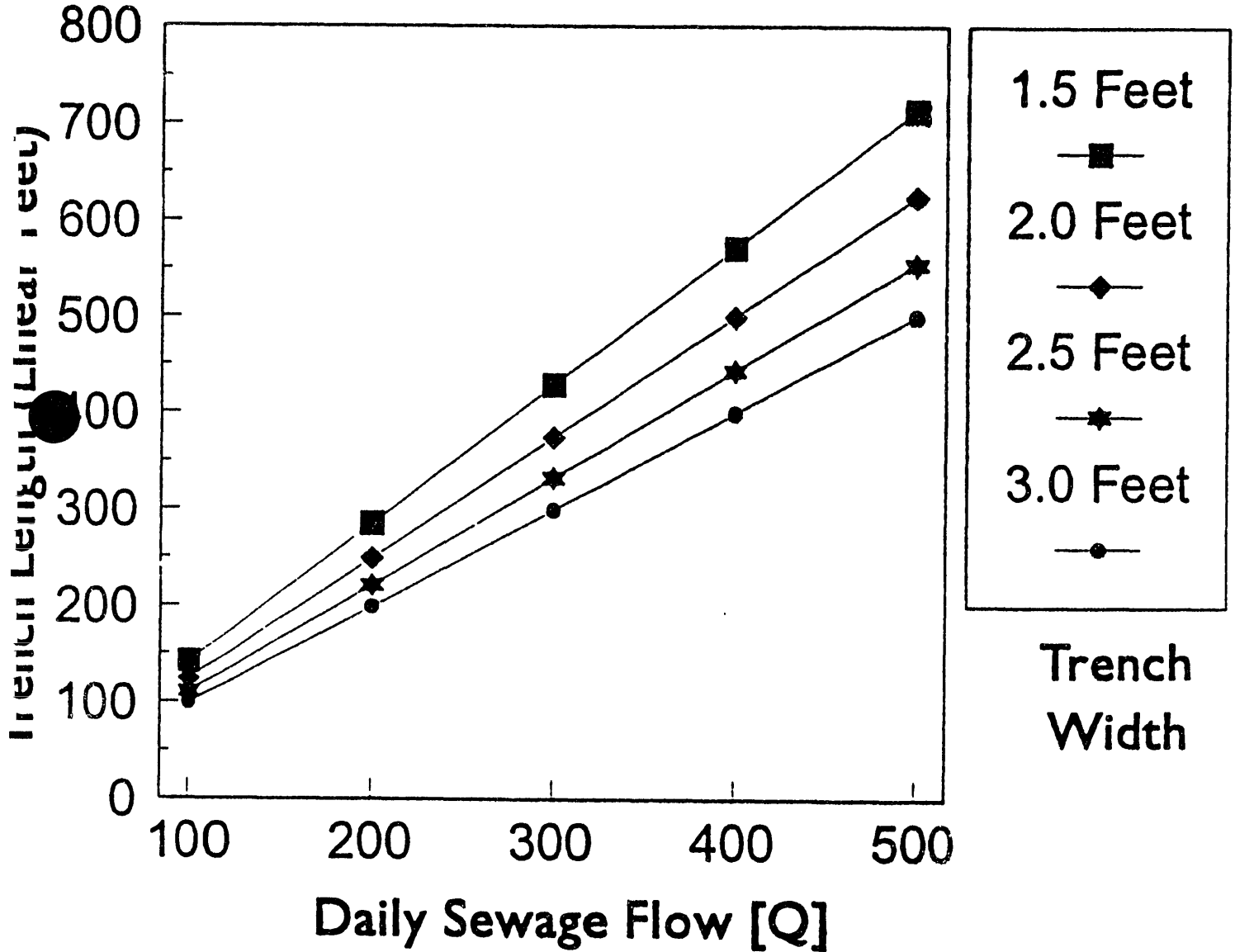
OSSF Trench Length Chart Type II Soil



(20) Figure 10.

Figure 10

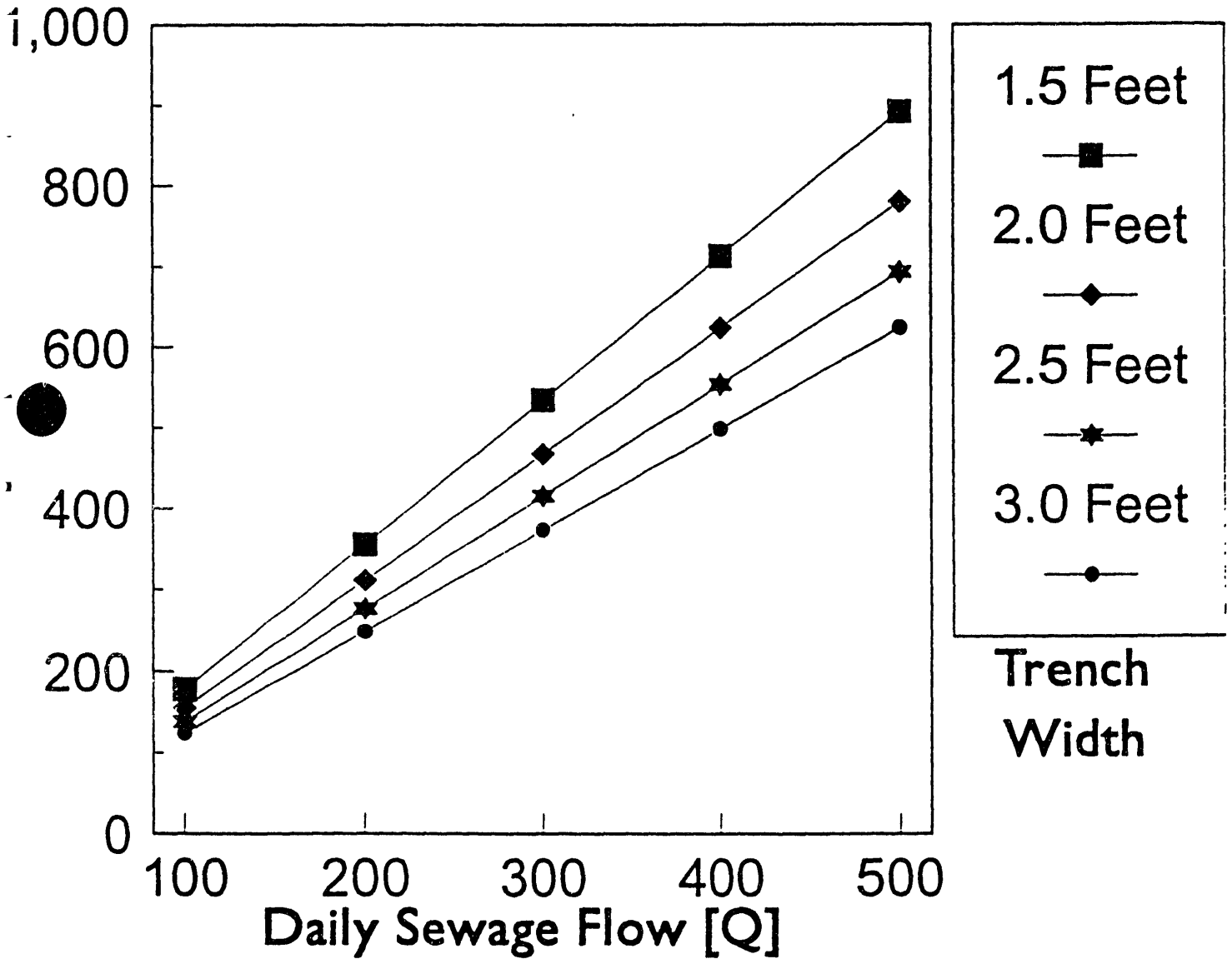
OSSF Trench Length Chart
Type III Soil



(21) Figure 11.

Figure 11

OSSF Trench Length Chart
Type IVa Soil



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 January 12, 1994.

TRD-9434644

Mary Ruth Holder
Director, Legal Division
Texas Natural Resource
Conservation
Commission

Earliest possible date of adoption: February 25, 1994

For further information, please call: (512) 463-8069

Chapter 290. Water Hygiene

The Texas Natural Resource Conservation Commission (Commission) proposes the repeal of §§290.1-290.19 and proposes new §§290.101-290.119, concerning drinking water standards for drinking water quality and reporting requirements for public water systems (PWS). The new sections reflect a renumbering in the one-hundred series to accommodate future expansion which the present numbering system does not allow. In addition to the revised numbering scheme, substantive revisions have been made to §§290.102, 290.103, 290.105, 290.108, 290.109, 290.113, 290.117, and 290.119. All references to the Texas Department of Health, Board of Health, and department have been replaced with appropriate references to the Commission. Senate Bill 2, First Called Session, 72nd Legislature, transferred all the powers, duties, rights, and obligations of the Texas Department of Health pertaining to the setting of sanitary standards for drinking water and the protection of public water supplies and bodies of water to the Texas Water Commission effective March 1, 1992. The Texas Water Commission became Texas Natural Resource Conservation Commission effective September 1, 1993.

Section 290.101 summarizes the purpose of the standards as necessary to ensure safe public water supplies and to satisfy the requirements of the Federal Safe Drinking Water Act

New §290.102 contains the definitions currently found in §290.2, except for laboratory checks and status report. The section also defines the following additional terms: compliance cycle, compliance period, commission, entry point, executive director, MCL (maximum contaminant level), and repeat compliance period.

The maximum contaminant levels for inorganics and organics are set forth in §290.103. The table listings in each category have been expanded. The MCLs for organic compounds are further categorized into synthetic organic chemicals (SOCs) and volatile organic chemicals (VOCs). The section includes a reference to Code of Federal Regulations (CFR) provisions identifying the best available technology to address MCL violations.

Section 290.104 prescribes various control tests required of public water systems and attendant reporting requirements

Section 290.105 describes the MCLs for microbiological contaminants.

Section 290.106 illustrates the minimum number of samples per month required for bacteriological monitoring based on the population served by the system.

Section 290.107 sets forth turbidity monitoring and analytical requirements for samples collected from surface water systems.

Proposed §290.108 describes the new inorganic chemical monitoring and analytical requirements. The section addresses recent revisions to the Safe Drinking Water Act and related regulations. Specifically, the section defines the parameters for acceptable sampling locations, sampling frequency, confirmation sampling and various other sampling procedures applicable to inorganic contaminants. Special emphasis on nitrate and nitrite monitoring is also reflected in the section.

Similarly, the new organic chemical monitoring, analytical requirements and treatment techniques are outlined in §290.109. Separate requirements for SOC's and VOC's are described.

Section 290.110 describes radiological sampling and analytical requirements.

Section 290.111 directs compliance with construction and siting requirements.

Section 290.112 lists various water system records to be maintained on site.

The recommended secondary constituent levels found in new §290.113 have been expanded to apply to all existing public water systems and includes a recommended level for aluminum.

Section 290.114 sets forth the variance mechanism applicable to monitoring requirements for interconnected public water systems.

The criteria a PWS must satisfy to be exempted from compliance with the drinking water standards is listed in §290.115.

Section 290.116 lists specific definitions, MCLs, and sampling and analytical requirements for total trihalomethanes.

Section 290.117 describes disinfection treatment requirements and precludes allowing disinfectant concentrations in the treatment process to fall below acceptable levels for more than four hours.

Section 290.118 sets forth the filtration requirements applicable to surface water sources and groundwater sources under the direct influence of surface water.

The monitoring requirements relating to turbidity and disinfection for systems using surface water treatment are described in §290.119. Also included are additional monitoring requirements for wholesale providers and other disinfectant residual levels monitoring

Stephen Minick, Division of Budget and Planning, has determined that for the first five years these sections are in effect there will be fiscal implications as a result of administration and enforcement of the sections. These

sections are adopted to satisfy requirements of the federal Safe Drinking Water Act. The effect of these rules will be to incorporate into state regulations provisions of existing federal regulations. It is not anticipated that enforcement of these sections by the state will have significantly different fiscal implications for affected entities than would enforcement of the equivalent federal rules. Fiscal implications are presented here in order to represent the effects of the rules on facilities in Texas.

The effect on state government will be an increase in cost of approximately \$700,000 in fiscal year 1994 and \$1.3 million in each of the fiscal years 1995-1998. The effect on local governments will be an increase in sampling and chemical monitoring requirements and related increases in costs of operation of public water supply systems. Increases in cost will be based on the number of entry points to public water supply distribution systems subject to additional sampling and monitoring requirements. It has been estimated that the average annual costs of compliance with these provisions will vary from \$120 up to \$3,000 per entry point for different sizes and classes of public water supplies. The maximum annual cost per entry point could increase by as much as \$8,500 for some systems. These sections will have effects on small businesses operating public water systems. These businesses will realize equivalent average annual cost increases of \$120-\$3,000 per entry point depending on the number of points of entry.

Mr. Minick has also determined that for the first five years these sections are in effect the public benefit anticipated as a result of enforcement of and compliance with the sections will be a broader and more comprehensive assessment of the quality of the sources of drinking water in the state, preservation and improvement in the quality of the drinking water supplies and the increased protection of public health standards. These sections as proposed are not anticipated to have implications for individuals required to comply with the sections. There will be indirect effects, however, in that any customer of a public water supply system may realize increases in costs of service due to recovery of increased operating costs by system operators

Written comments on the proposal may be submitted to Anthony E. Bennett, Monitoring and Enforcement Section, Water Utilities Division, P.O. Box 13087, Austin, Texas 78711-3087. In order to be considered, written comments must be received in the Water Utilities Division by 5:00 p.m., 30 days after the publication date of this proposal.

Drinking Water Standards Governing Drinking Water Quality and Reporting Re- quirements for Public Water Supply Systems

• 30 TAC §§290.1-290.19

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

Texas Natural Resource Conservation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin)

The repeals are proposed under Texas Water Code, §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state.

The repeals implement the Texas Health and Safety Code, Chapter 341, Subchapter C, which governs sanitary standards of drinking water, protection of public water supplies, and bodies of water.

§290.1. Purpose.

§290.2. Definitions.

§290.3. Standards of Chemical Quality.

§290.4. Control Tests.

§290.5. Maximum Contaminant Levels (MCLs) for Microbiological Contaminants.

§290.6. Coliform Sampling.

§290.7. Turbidity Sampling and Analytical Requirements.

§290.8. Inorganic Chemical Sampling and Analytical Requirements.

§290.9. Organic Chemical Other Than Total Trihalomethanes. Sampling and Analytical Requirements.

§290.10. Radiological Sampling and Analytical Requirements.

§290.11. Construction and Siting Requirements.

§290.12. Record Keeping and Reporting Required of Water Systems.

§290.13. Recommended Secondary Constituent Levels Applicable to All Public Water Systems.

§290.14. Modified Monitoring.

§290.15. Exceptions to These Standards.

§290.16. Control of Trihalomethanes in Drinking Water.

§290.17. Disinfection.

§290.18. Filtration.

§290.19. Monitoring Requirements for Systems Using Surface Water Treatment.

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 January 21, 1994.

TRD-9434895

Mary Ruth Holder
Director, Legal Division
Texas Natural Resource
Conservation
Commission

Earliest possible date of adoption: February 25, 1994

For further information, please call: (512) 463-8069

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**Drinking Water Standards
Governing Drinking Water
Quality and Reporting Re-
quirements for Public Water
Supply Systems**

• 30 TAC §§290.101-290.106,
290.108-290.119

The new sections are proposed under the Texas Water Code, §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state. The new sections implement the Texas Health and Safety Code, Chapter 341, Subchapter C, which governs sanitary standards of drinking water, protection of public water supplies, and bodies of water.

§290.101. Purpose. The purpose of these standards is to assure the safety of public water supplies with respect to microbiological, chemical, and radiological quality and to further efficient processing through control tests, laboratory checks, operating records and reports of public water supply systems. These standards are written so as to comply with the requirements of Public Law 93-523, the Federal "Safe Drinking Water Act," and the "Primary Drinking Water Regulations" which have been promulgated by the Environmental Protection Agency, under the authority granted by Public Law 93-523.

§290.102. Definitions. The following definitions shall apply in the interpretation and enforcement of these standards.

Approved laboratory—A laboratory certified and approved by the Texas Department of Health to analyze water samples to determine their compliance with maximum allowable constituent levels.

Commission—The Texas Natural Resource Conservation Commission.

Community water system—A public water system which has a potential to serve at least 15 service connections on a year-

round basis or serves at least 25 individuals on a year-round basis. Service connections shall be counted as one for each single family residential unit or each commercial or industrial establishment to which drinking water is supplied from the system.

Compliance cycle—The nine-year (calendar year) cycle during which public water systems must monitor. Each compliance cycle consists of three three-year compliance periods. The first calendar-year cycle begins January 1, 1993 and ends December 31, 2001; the second begins January 1, 2002 and ends December 31, 2010; the third begins January 1, 2011 and ends December 31, 2019.

Compliance period—A three-year (calendar year) period within a compliance cycle. Each compliance cycle has three three-year compliance periods. Within the first compliance cycle, the first compliance period is called the initial compliance period and runs from January 1, 1993 to December 31, 1995; the second from January 1, 1996 to December 31, 1998; the third from January 1, 1999 to December 31, 2001.

Control tests—Chemical, physical, or microbiological tests made by the operator of the water system to control the quality or quantity of water served to the public and recorded regularly in the operating records.

Drinking water—All water distributed by any agency or individual, public or private, for the purpose of human consumption or which may be used in the preparation of foods or beverages or for the cleaning of any utensil or article used in the course of preparation or consumption of food or beverages for human beings. The term "Drinking Water" shall also include all water supplied for human consumption or used by any institution catering to the public.

Entry Point—An entry point to the distribution system is a point which is representative of the water from each well after treatment or for surface water systems or a combination of surface and ground water systems; a point which is representative of each source or treatment point after any application of treatment.

Executive Director—The Executive Director of the Commission.

Human consumption—Uses by humans in which water can be ingested into or absorbed by human body. Examples of these uses include, but are not limited to drinking, cooking, brushing teeth, bathing, washing hands, washing dishes, and preparing foods.

MCL—is an acronym for Maximum Contaminant Level.

Monthly Reports of Water Works Operations—The daily record of data relating to the operation of the system facilities compiled in a monthly report.

Non-community water system—Any public water system which is not a community water system.

Non-transient non-community water system or "NTNCWS"—A public water system that is not a community water system and that regularly serves at least 25 of the same persons over six months per year.

Public water system—A system for the provision to the public of piped water for human consumption. Such a system must have a potential to serve at least 15 service connections or 25 individuals at least 60 days out of the year. This term includes any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Two or more water systems with each having a potential to serve less than 15 connections or less than 25 individuals but owned

by the same person, firm or corporation and located on adjacent land will be considered a public water system when the total potential service connections in the combined systems are 15 or greater or if the total number of individuals served by the combined systems total 25 or more at least 60 days out of the year. Without excluding other meanings of the terms "individual" or "served," an individual shall be deemed to be served by a water system if he resides in, uses as his place of employment, or works in, a place to which drinking water is supplied from the system. A public water system is either a "community water system" or a "noncommunity water system" as defined in this section.

Repeat Compliance Period—Any subsequent compliance period after the initial compliance period.

Sanitary survey—An onsite review of the water source, facilities, equipment, op-

eration, and maintenance of a public water system, for the purpose of evaluating the adequacy for producing and distributing safe drinking water.

§290.103. Standards of Chemical Quality. All analyses to determine compliance shall be performed by an approved laboratory. Analyses shall be performed on treated water at all entry points to the distribution system except where otherwise stated.

(1) **Inorganic Chemicals.** The maximum contaminant levels for inorganic contaminants listed below apply to community and non-transient, non-community water systems. The maximum contaminant levels for nitrate, nitrite and total nitrate and nitrite also apply to transient non-community water systems.

<u>Contaminant</u>	<u>MCL (mg/l)</u>
Antimony	0.006
Arsenic	0.05
Asbestos	7 million fibers/liter (longer than 10µm)
Barium	2.0
Beryllium	0.004
Cadmium	0.005
Chromium	0.1
Cyanide	0.2 (as free Cyanide)
Fluoride	4.0
Mercury	0.002
Nickel	0.1
Nitrate	10.0 (as Nitrogen)
Nitrite	1.0 (as Nitrogen)
Nitrate & Nitrite (Total)	10.0 (as Nitrogen)
Selenium	0.05
Thallium	0.002

(2) Fluoride. Maximum contaminant level for fluoride in community water systems is 4.0 mg/l. Also, see §290.113 of this title (relating to Recommended Secondary Constituent Levels Applicable to All

Public Water Systems) which establishes a recommended secondary constituent level of 2.0 mg/l.

(3) Maximum Contaminant Levels (MCLs) for Organic Compounds.

(A) Synthetic Organic Chemicals (SOCs). The following maximum contaminant levels for synthetic organic contaminants apply to community and non-transient, non-community water systems.

<u>Contaminant</u>	<u>MCL (mg/l)</u>
Alachlor	0.002
Aldicarb	0.003
Aldicarb Sulfoxide	0.004
Aldicarb Sulfone	0.002
Atrazine	0.003

Benzo[a]pyrene	0.0002
Carbofuran	0.04
Chlordane	0.002
Dalapon	0.2
Dibromochloropropane	0.002
Di(2-ethylhexyl)adipate	0.4
Di(2-ethylhexyl)phthalate	0.006
Dinoseb	0.007
Diquat	0.02
Endothall	0.1
Endrin	0.002
Ethylene dibromide	0.00005
Glyphosate	0.7
Heptachlor	0.0004
Heptachlor epoxide	0.0002
Hexachlorobenzene	0.001
Hexachlorocyclopentadiene	0.05
Lindane	0.0002
Methoxychlor	0.04
Oxamyl (Vydate)	0.2
Pentachlorophenol	0.001
Picloram	0.5
Polychlorinated biphenyls (PBC)	0.0005
Simazine	0.004
Toxaphene	0.003
2,3,7,8-TCDD (Dioxin)	3 X 10 ⁻⁸
2,4,5-TP	0.05
2,4-D	0.07

(B) Volatile Organic Chemicals (VOCs). The following maximum contaminant levels for volatile organic contaminants apply to community and non-transient, non-community water systems.

<u>Contaminant</u>	<u>MCL (mg/l)</u>
1,1-Dichloroethylene	0.007
1,1,1-Trichloroethane	0.2
1,1,2-Trichloroethane	0.005
1,2-Dichloroethane	0.005
1,2-Dichloropropane	0.005
1,2,4-Trichlorobenzene	0.07
Benzene	0.005
Carbon tetrachloride	0.005
cis-1,2-Dichloroethylene	0.07

Dichloromethane	0.005
Ethylbenzene	0.7
Monochlorobenzene	0.1
o-Dichlorobenzene	0.6
para-Dichlorobenzene	0.075
Styrene	0.1
Tetrachloroethylene	0.005
Toluene	1.0
trans-1,2-Dichloroethylene	0.1
Trichloroethylene	0.005
Vinyl chloride	0.002
Xylenes (total)	10.0

(4) Variances and exemptions. Variances and exemptions, as defined previously, may be granted at the discretion of the commission.

(A) Variance—An exception to one or more of the maximum allowable levels which is necessary because the condition of the system's raw water is such that the maximum allowable level cannot be met despite the application of the best available treatment techniques (taking costs into consideration) subject to the following conditions.

(i) the public water system requesting the variance was in operation on the date these standards became effective;

(ii) the granting of the variance will not result in an unreasonable risk to public health;

(iii) a schedule, including increments of progress, is established to bring the system into compliance with the standard in question.

(B) Exemption—Exception to a provision of these standards where, because of compelling factors (which may include economic), the system is unable to comply with a specified allowable level. An exemption may be granted only under the following circumstances:

(i) the public water system requesting the exemption was in operation on the date these standards became

effective, or for a system that was not in operation by that date, only if no reasonable alternative source of drinking water is available to such new system;

(ii) the granting of the exemption will not result in an unreasonable risk to public health;

(iii) a schedule is established to bring the system into compliance with the standard in question.

(C) Applications for such variances and/or exemptions must be submitted by the water system requesting a variance or exemption and must include the following:

(i) a statement of the standard which is not met;

(ii) an estimate of the risk involved to public health with supporting evidence from physicians or dentists in the area;

(iii) a long range plan for the correction of the problem. This plan or compliance schedule must be submitted within one year following written notification that a variance or exemption has been granted;

(iv) a detailed economic evaluation of the current and future situation.

(D) A variance or exemption covering a group or class of systems with a common standard which is not met may be

issued by the commission without individual application. However, individual compliance schedules will be required for each such system within one year following written notification by the commission that such a variance or exemption has been granted. After receiving notification from the commission that a group or class variance or exemption has been issued to their system, each system must submit the previously listed items in accordance with subparagraph (C) (ii)-(iv) of this paragraph.

(E) The commission is required to act upon all requests for variances or exemptions within a reasonable time period, not to exceed 90 days.

(F) Procedures for public comment and public hearings on variances, exemptions, and compliance schedules as a condition of a variance or exemption will be as stated in the EPA National Primary Drinking Water Regulations, of 40 Code of Federal Regulations, §141.4 and §142.20.

(5) Public notification requirements.

(A) Maximum contaminant level (MCL), treatment technique, and variance and exemption schedule violations. The owner or operator of a public water system which fails to comply with an applicable MCL or treatment technique established by this chapter or which fails to comply with the requirements of any schedule prescribed pursuant to a variance or

exemption, shall notify persons served by the system as follows.

(i) Except as provided in clause (iii) of this subparagraph, the owner or operator of a public water system must give notice.

(I) by publication in a daily newspaper of general circulation in the area served by the system as soon as possible, but in no case later than 14 days after notification from the commission of the violation or failure. If the area served by a public water system is not served by a daily newspaper of general circulation, notice shall instead be given by publication in a weekly newspaper of general circulation serving the area; and

(II) by mail delivery (by direct mail or with the water bill), or by hand delivery, not later than 45 days after the violation or failure. The commission may waive mail or hand delivery if it determines that the owner or operator of the public water system in violation has corrected the violation or failure within the 45-day period. The commission must make the waiver in writing and within the 45-day period; and

(III) for violations of the MCLs of contaminants that may pose an acute risk to human health, by furnishing a copy of the notice to the radio and television stations serving the area served by the public water system as soon as possible but in no case later than 72 hours after the violation. The following violations are acute violations.

(-a-) any violations specified by the commission as posing an acute risk to human health.

(-b-) any violation of the MCL for nitrate or nitrite as defined in paragraph (1) of this section and determined according to §290.108 of this title.

(ii) Except as provided in clause (iii) of this subparagraph, following the initial notice given under clause (i) of this subparagraph, the owner or operator of the public water system must give notice at least once every three months by mail delivery (by direct mail or with the water bill) or by hand delivery, for as long as the violation or failure exists.

(iii) Alternate notification requirements shall be as follows

(I) In lieu of the requirements of clause (i)(I) of this subparagraph, the owner or operator of a community water system in an area that is not served by a daily or weekly newspaper

of general circulation must give notice by hand delivery or by continuous posting in conspicuous places within the area served by the system. Notice by hand delivery or posting must begin as soon as possible, but no later than 72 hours after the violation or failure for acute violations (as defined in clause (i)(III) of this subparagraph), or 14 days after notification from the commission of the violation or failure (for any other violation). Posting must continue for as long as the violation or failure exists. Notice by hand delivery must be repeated at least every three months for as long as the violation or failure exists.

(II) In lieu of the requirements of clause (i) and (ii) of this subparagraph, the owner or operator of a noncommunity water system may give notice by hand delivery or by continuous posting in conspicuous places within the area served by the system. Notice by hand delivery or posting must begin as soon as possible, but no later than 72 hours after the violation or failure for acute violations (as defined in clause (i)(III) of this subparagraph) or 14 days after notification from the commission of the violation or failure (for any other violation). Posting must continue for as long as the violation or failure exists. Notice by hand delivery must be repeated at least every three months for as long as the violation or failure exists.

(B) Other violations, variances, exemptions. The owner or operator of a public water system which fails to perform monitoring required by these standards, fails to comply with a testing procedure established by this section, is subject to a variance or exemption granted under paragraph (6) of this section shall notify persons served by the system as follows

(i) Except as provided in clause (iii) of this subparagraph, the owner or operator of a public water system must give notice within three months of the violation or granting of a variance or exemption by publication in a daily newspaper of general circulation in the area served by the system. If the area served by a public water system is not served by a daily newspaper of general circulation, notice shall instead be given by publication in a weekly newspaper of general circulation serving the area

(ii) Except as provided in clause (iii) of this subparagraph, following the initial notice given under clause (i) of this subparagraph, the owner or operator of the public water system must give notice at least once every three months by mail delivery (by direct mail or with the water bill) or by hand delivery, for as long as the violation exists. Repeat notice of the existence of a variance or exemption must be given ev-

ery three months for as long as the variance or exemption remains in effect.

(iii) Alternate notification requirements shall be as follows.

(I) In lieu of the requirements of clauses (i) and (ii) of this subparagraph, the owner or operator of a community water system in an area that is not served by a daily or weekly newspaper of general circulation must give notice, within three months of the violation or granting of the variance or exemption, by hand delivery or by continuous posting in conspicuous places with the area served by the system. Posting must continue for as long as the violation exists or a variance or exemption remains in effect. Notice by hand delivery must be repeated at least every three months for as long as the violation exists or a variance or exemption remains in effect.

(II) In lieu of the requirements of clauses (i) and (ii) of this subparagraph, the owner or operator of a noncommunity water system may give notice, within three months of the violation or the granting of the variance or exemption, by hand delivery or by continuous posting in conspicuous places within the area served by the system. Posting must continue for as long as the violation exists, or a variance or exemption remains in effect. Notice by hand delivery must be repeated at least every three months for as long as the violation exists or a variance or exemption remains in effect.

(C) Notice to new billing units. The owner or operator of a community water system must give a copy of the most recent public notice for any outstanding violation of any maximum contaminant level, or any treatment technique requirement, or any variance or exemption schedule to all new billing units or new hookups prior to or at the time service begins.

(D) General content of public notice. Each notice required by this paragraph must provide a clear and readily understandable explanation of the violation, any potential adverse health effects, the population at risk, the steps that the public water system is taking to correct such violation, the necessity for seeking alternative water supplies, if any, and any preventive measures the consumer should take until the violation is corrected. Each notice shall be conspicuous and shall not contain undue technical language, unduly small print, or similar problems that frustrate the purpose of the notice. Each notice shall include the telephone number of the owner, operator, or designee of the public water system as a

source of additional information concerning the notice. Where appropriate, the notice shall be multi-lingual.

(E) Mandatory health effects language. In complying with subparagraph D of this paragraph, the owner or operator of a public water system shall include the language specified for each contaminant in 40 Code of Federal Regulations, §141.32 and available from the commission.

(F) Proof of public notification. Example copies of all notifications required under this paragraph must be submitted to the commission within 10 days of its distribution as proof of public notification.

(6) Best available technology (BAT) for treatment of violations of MCL's set in this section are listed in 40 Code of Federal Regulations §141.61 for organic contaminants and 40 Code of Federal Regulations §141.62 for inorganic contaminants.

§290.104 *Control Tests*. These tests may be conducted by the operator of the system to judge variations in water quality, to identify objectionable water characteristics, and to detect the presence of foreign substances which may adversely affect the potability of the water. These control tests shall be per-

formed in accordance with procedures approved by the commission. Operators of water treatment plants at all public water systems utilizing coagulation, settling, softening, or filtration shall perform daily chemical control tests on the filtered water for turbidity, PH, alkalinity and residuals. The test results shall be recorded on the Monthly Report of Water Works Operation and a copy of the report shall be submitted to the commission after each month of operation.

§290.105 *Maximum Contaminant Levels (MCLs) for Microbiological Contaminants*

(a) The MCL for microbiological contaminants is based on the presence or absence of total coliform bacteria in a sample.

(1) For a system which collects at least 40 bacteriological samples per month, if no more than 5.0% of the samples collected during a month are total coliform-positive, the system is in compliance with the MCL.

(2) For a system which collects fewer than 40 samples/month, if no more than one sample collected during a month is total coliform-positive, the system is in compliance with the MCL for total coliforms.

(b) Any fecal coliform-positive repeat sample or *Escherichia coli*-positive repeat sample, or any total coliform-positive repeat sample following a fecal coliform-positive or *Escherichia coli*-positive routine sample, constitutes a violation of the MCL. For purposes of the public notification requirements in §290.103(6) of this title (relating to Standards of Chemical Quality), this is a violation that is an acute risk to health.

(c) Compliance with the MCL for total coliform bacteria in subsections (a) and (b) of this section will be determined for each month in which the system is in operation.

§290.106 *Bacteriological Monitoring*

(a) Routine monitoring.

(1) Public water systems must collect routine bacteriological samples at active service connections which are representative of water throughout the distribution system according to a written sample siting plan. Other sampling sites may be used if located adjacent to service connections. These plans are subject to review and revision by the Commission.

(2) The bacteriological monitoring frequency for community and noncommunity water systems is based on the population served by the system, in accordance with the following table:

<u>Population Served</u>	<u>Minimum Number of Samples per Month</u>
1 to 1,000-----	1
1,001 to 2,500-----	2
2,501 to 3,300-----	3
3,301 to 4,100-----	4
4,101 to 4,900-----	5
4,901 to 5,800-----	6
5,801 to 6,700-----	7
6,701 to 7,600-----	8
7,601 to 8,500-----	9
8,501 to 12,900-----	10
12,901 to 17,200-----	15
17,201 to 21,500-----	20
21,501 to 25,000-----	25
25,001 to 33,000-----	30
33,001 to 41,000-----	40
41,001 to 50,000-----	50
50,001 to 59,000-----	60
59,001 to 70,000-----	70
70,001 to 83,000-----	80
83,001 to 96,000-----	90
96,001 to 130,000-----	100
130,001 to 220,000-----	120
220,001 to 320,000-----	150
320,001 to 450,000-----	180

450,001 to 600,000-----	210
600,001 to 780,000-----	240
780,001 to 970,000-----	270
970,001 to 1,230,000-----	300
1,230,001 to 1,520,000-----	330
1,520,001 to 1,850,000-----	360
1,850,001 to 2,270,000-----	390
2,270,001 to 3,020,000-----	420
3,020,001 to 3,960,000-----	450
3,960,001 or more-----	480

(3) The public water system must collect samples at regular time intervals throughout the month, except that a system which uses groundwater (except groundwater under the direct influence of surface water, as described in §290.42 of this title (relating to Rules and Regulations for Public Water Systems), and serves 4,900 persons or fewer, may collect all required samples on a single day if they are taken from different sites.

(4) Special purpose samples, such as those taken to determine whether disinfection practices are sufficient following pipe placement, replacement, or repair, shall not be used to determine compliance with the MCL for microbiological contaminants

(b) Repeat monitoring

(1) If a routine sample is total coliform-positive, the public water system must collect a set of repeat samples within 24 hours of being notified of the positive result, or as soon as possible if the local laboratory is closed

(A) A system which collects more than one routine sample per month must collect no fewer than three repeat samples for each total coliform-positive sample found

(B) A system which collects one routine sample per month must collect no fewer than four repeat samples for each total coliform-positive sample found

(2) The system must collect at least one repeat sample from the sampling tap where the original total coliform-positive sample was taken, and at least one repeat sample at a tap within five service connections upstream and at least one repeat sample at a tap within five service connections downstream of the original sampling site. If a fourth repeat sample is required, it must be collected within five service connections upstream or downstream. If the positive routine sample was collected at the end of the distribution line, one repeat sample must be collected at that point and all other reports must be collected within five connections upstream of that point.

(3) The system must collect all repeat samples on the same day, except that a system with a single service connection may collect daily repeat samples until the required number of repeat samples has been collected.

(4) If one or more repeat samples in the set is total coliform-positive, the public water system must collect an additional set of repeat samples in the manner

specified in paragraphs (1)-(3) of this subsection. The additional samples must be collected within 24 hours of being notified of the positive result or as soon as possible if the local laboratory is closed. The system must repeat this process until either total coliforms are not detected in one complete set of repeat samples or the system determines that the MCL for total coliforms has been exceeded

(5) If a system collecting fewer than five routine samples per month has one or more total coliform-positive samples and the commission does not invalidate the sample(s) in accordance with subsection (c) of this section, it must collect at least five routine samples during the next month the system provides water to the public

(6) After a system collects a routine sample and before it learns the results of the analysis of that sample, if it collects another routine sample(s) from within five adjacent service connections of the initial sample, and the initial sample, after analysis, is found to contain total coliform bacteria, then the system may count the subsequent sample(s) as a repeat sample instead of as a routine sample.

(7) Results of all routine and repeat samples not invalidated by the commission must be included in determining

compliance with the MCL for total coliforms in accordance with §290.105 of this title (relating to Maximum Bacteriological Contaminant Levels (MCLs) for Microbiological Contaminants).

(c) Invalidation of total coliform samples. A total coliform-positive sample invalidated under this subsection does not count towards meeting the minimum monitoring requirements of this section.

(1) The commission may invalidate a total coliform-positive sample only if one of the following conditions is met:

(A) the laboratory establishes that improper sample analysis caused the total coliform-positive result,

(B) the commission, on the basis of the results of repeat samples collected as required by this section, determines that the total coliform-positive sample resulted from a domestic or other nondistribution system plumbing problem. The commission cannot invalidate a sample on the basis of repeat sample results unless all repeat sample(s) collected at the same tap as the original total coliform-positive sample are also total coliform-positive, and all repeat samples collected within five service connections of the original tap are total coliform-negative. Under those circumstances, the system may cease resampling and request the commission invalidate the sample. The system must provide copies of the routine positive and all repeat samples, or

(C) the commission has substantial grounds to believe that a total coliform-positive result is due to a circumstance or condition which does not reflect water quality in the distribution system. In this case, the system must still collect all repeat samples required by this section, and use them to determine compliance with the MCL for total coliforms in §290.105 of this title (relating to Maximum Contaminant Levels (MCLs) for Microbiological Contaminants). The system must provide written documentation which must state the specific cause of the total coliform-positive sample, and what action the system has taken, or will take, to correct this problem. The commission may not invalidate a total coliform-positive sample solely on the grounds that all repeat samples are total coliform-negative.

(2) If a laboratory invalidates a sample, the system must collect another sample from the same location as the original sample within 24 hours of being notified, or as soon as possible if the laboratory is closed, and have it analyzed for the presence of total coliforms. The system must continue to re-sample within 24 hours and

have the samples analyzed until it obtains a valid result.

(d) Fecal coliform bacteria/*Escherichia coli* (*E. coli*) testing. If any routine or repeat sample is total coliform-positive, that total coliform-positive culture medium will be analyzed to determine if fecal coliforms or *E. coli* bacteria are present. If fecal coliforms or *E. coli* are present, the system must notify the commission by the end of the day when the system is notified of the test result, unless the system is notified of the result after the commission office is closed, in which case the system must notify the commission before the end of the next business day.

(e) Notification to the Texas Natural Resource Conservation Commission (TNRCC)

(1) A public water system which has exceeded the MCL for total coliforms in §290.105 of this title (relating to Maximum Contaminant Levels for Microbiological Contaminants) must report the violation to the commission no later than the end of the next business day after it learns of the violation, and notify the public in accordance with §290.103(8) of this title (relating to Standards of Chemical Quality)

(2) A public water system which has failed to comply with a coliform monitoring requirement must report the monitoring violation to the commission within ten days after the system discovers the violation, and notify the public in accordance with §290.103(8) of this title (relating to Standards of Chemical Quality)

§290.108 Inorganic Chemical Monitoring and Analytical Requirements Community water systems and non-transient, non-community water systems shall conduct monitoring to determine compliance with the maximum contaminant levels specified in §290.103 of this title (relating to Standards of Chemical Quality). Transient, non-community water systems shall conduct monitoring to determine compliance with the nitrate and nitrite maximum contaminant levels in §290.103 of this title (relating to Standards of Chemical Quality) (as appropriate) in accordance with this section.

(1) Monitoring locations for inorganic constituents other than asbestos shall be determined as follows:

(A) Groundwater systems shall take a minimum of one sample at every entry point to the distribution system (hereafter called a sampling point)

(B) Surface water systems and systems using a combination of ground water and surface water sources shall take a minimum of one sample at every entry

point to the distribution system (hereafter called a sampling point).

(C) If a system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions (i.e., when water is representative of all sources being used).

(D) Systems shall take subsequent samples at the same sampling points unless conditions make another sampling point more representative of each source or treatment plant.

(E) The commission may reduce the total number of samples which must be analyzed by allowing the use of compositing. Composite samples from a maximum of five sampling points are allowed. Compositing of samples must be done in the laboratory or in the field by commission staff.

(i) If the concentration in the composite sample is greater than or equal to the proportional contribution of the MCL of any inorganic chemical, then a follow-up sample must be collected within 14 days from each sampling point included in the composite, (i.e., 20% of MCL when five points are composited). These samples must be analyzed for the contaminant(s) which were excessive in the composite sample. Detection limits for each analytical method are as listed in 40 Code of Federal Regulations §141.23(a)(4)(i)

(ii) Compositing may be permitted only at ground water sampling points within a single system.

(iii) If duplicates of the original sample taken from each sampling point used in the composite are available, the system may use these instead of resampling. The duplicates must be analyzed within 14 days of the composite.

(2) The frequency of monitoring to determine compliance with the MCL for asbestos specified in §290.103 of this title (relating to Standards of Chemical Quality) shall be as follows:

(A) Each community and non-transient, non-community water system not receiving a waiver is required to monitor for asbestos during the first three-year compliance period of each nine-year compliance cycle beginning with the initial compliance period.

(B) The commission may grant a waiver based on a consideration of the following factors:

(i) potential for asbestos contamination of the water source, and

(ii) the use of asbestos-cement pipe for finished water distribution and the corrosive nature of the water.

(C) A waiver remains in effect until the completion of the three-year compliance period.

(D) A system vulnerable to asbestos contamination due solely to corrosion of asbestos-cement pipe shall take one sample at a tap served by asbestos-cement pipe, under conditions where asbestos contamination is most likely to occur

(E) A system vulnerable to asbestos contamination due solely to source water shall monitor in accordance with the provisions of paragraph (1) of this section

(F) A system vulnerable to asbestos contamination due both to its source water supply and corrosion of asbestos-cement pipe shall take one sample at a tap served by asbestos-cement pipe, under conditions where asbestos contamination is most likely to occur

(G) A system which exceeds the MCL for asbestos as determined in paragraph (9) of this section shall monitor quarterly beginning in the next quarter after the violation occurs.

(H) The commission may decrease the quarterly monitoring requirement to the frequency specified in subparagraph (A) of this paragraph provided the commission has determined that the system is reliably and consistently below the maximum contaminant level. In no case can the commission make this determination unless a groundwater system takes a minimum of two quarterly samples and a surface (or combined surface/ground) water system takes a minimum of four quarterly samples.

(I) If monitoring data collected after January 1, 1990, are generally consistent with the requirements of this paragraph (relating to Standards of Chemical Quality), then the commission may allow systems to use that data to satisfy the monitoring requirement for the initial compliance period.

(3) Monitoring conducted to determine compliance with the maximum contaminant levels in §290.103 of this title (relating to Standards of Chemical Quality) for antimony, arsenic, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium, and thallium shall be as follows.

(A) Beginning in the initial compliance period, groundwater systems shall take one sample at each sampling point once every three years. Beginning in the initial compliance period, surface water systems (or combined surface/ground) shall take one sample annually at each sampling point. Each of the sample frequencies listed in this paragraph constitute one round of sampling for groundwater and surface water systems, respectively.

(B) The commission may grant waivers from the monitoring frequencies specified in subparagraph (3)(A) of this paragraph. The term during which the waiver is effective shall not exceed one compliance cycle.

(C) A condition of the waiver shall be that a system must take a minimum of one sample while the waiver is effective.

(D) The commission may grant a waiver provided surface water systems have monitored annually for at least three years and groundwater systems have conducted a minimum of three rounds of monitoring (At least one sample shall have been taken since January 1, 1990.) Both surface and groundwater systems shall demonstrate that all previous analytical results were less than the MCL. Systems that use a new water source are not eligible for a waiver until three rounds of monitoring from the new source have been completed.

(E) In determining the appropriate reduced monitoring frequency, the commission shall consider

(i) reported contaminant concentrations from all previous monitoring.

(ii) the degree of variation in reported concentrations, and

(iii) other factors which may affect contaminant concentrations such as changes in groundwater pumping rates, changes in the system's configuration, changes in the system's operating procedures, or changes in the flow or characteristics of a reservoir or stream used as the water source.

(F) If a decision by the commission is made to grant a waiver it shall be made in writing and shall set forth the basis for the determination. The determination may be initiated by the commission. The commission shall review and, where appropriate, revise the waiver of monitoring frequency when other data relevant to the system become available.

(G) Systems which exceed the IOC MCL's as calculated in paragraph (9) of this section shall monitor quarterly beginning in the next quarter after the violation occurs.

(H) The commission may decrease the quarterly monitoring requirement to the frequencies specified in subparagraphs (A) and (B) of this paragraph provided it has determined that the system is reliably and consistently below the MCL. In no case can the commission make this determination unless a groundwater system takes a minimum of two quarterly samples and a surface water system takes a minimum of four quarterly samples.

(4) All public water systems (community, non-transient, non-community, and transient, non-community) shall monitor to determine compliance with the maximum contaminant level for nitrate as follows:

(A) Community and non-transient, non-community water systems served by groundwater shall monitor annually beginning January 1, 1993, systems served by surface water shall monitor quarterly beginning January 1, 1993.

(B) Each transient non-community water system shall monitor annually beginning January 1, 1993.

(C) The repeat monitoring frequency for community and non-transient, non-community groundwater systems shall be quarterly for at least one year following any one sample in which the concentration is $\geq 50\%$ of the MCL. The commission may allow a groundwater system to reduce the sampling frequency to annually after four consecutive quarterly samples are reliably and consistently less than the MCL.

(D) The commission may allow community and non-transient, non-community water systems to reduce the sampling frequency to annually if all analytical results from four consecutive quarters are $\geq 50\%$ of the MCL. A surface water system shall return to quarterly monitoring if any one sample is 50% of the MCL.

(E) After the initial round of quarterly sampling for surface water systems is completed, any community or non-transient non-community system which is monitoring annually shall take subsequent samples during the quarter which previously resulted in the highest analytical result.

(5) All public water systems (community; non-transient, non-community; and transient, non-community systems) shall monitor to determine compliance with the maximum contaminant level for nitrite as follows

(A) All public water systems shall take one sample at each sampling point during the initial compliance period.

(B) After the initial sample, systems where the analytical result for nitrite is $\geq 50\%$ of the MCL shall monitor at the frequency specified by the commission.

(C) The repeat monitoring frequency for nitrite for all public water systems shall be quarterly for at least one year following any one sample in which the concentration is $\geq 50\%$ of the MCL. The commission may allow a system to reduce the sampling frequency to annual after determining the system is reliably and consistently less than the MCL.

(D) Systems which are monitoring annually shall take each subsequent sample during the quarter which previously resulted in the highest analytical result.

(6) Confirmation sampling

(A) where the results of sampling for antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium or thallium indicate an exceedance of the MCL, one additional sample from the same sampling point shall be collected as soon as possible after the initial sample.

(B) where nitrate or nitrite sampling results indicate an exceedance of the maximum contaminant level, the system shall take a confirmation sample within 24 hours of the system's receipt of notification of the analytical results of the first sample. Systems unable to comply with the 24-hour sampling requirement must immediately notify the consumers served by the public water system in accordance with §290.103(8)(A)(iii) of this title (relating to Standards of Chemical Quality). Systems exercising this option must take and analyze a confirmation sample within two weeks of notification of the analytical results of the first sample.

(C) if a commission-required confirmation sample is taken for any contaminant, then the results of the initial and confirmation sample shall be averaged. The resulting average shall be used to determine the system's compliance in accordance with paragraph (9) of this section. The commis-

sion has the discretion to delete results of obvious sampling errors.

(7) The commission may require more frequent monitoring than specified in paragraphs (2)-(5) of this section or may require confirmation samples for positive and negative results at its discretion.

(8) Systems may apply to the commission to conduct more frequent monitoring than the minimum monitoring frequencies specified in this section.

(9) Compliance with §290.103 of this title (relating to Standards of Chemical Quality) (as appropriate) shall be determined based on the analytical result(s) obtained at each sampling point.

(A) For systems which are conducting monitoring at a frequency greater than annual, compliance with the MCLs for antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium, and thallium is determined by a running annual average at each sampling point. If the average at any sampling point is greater than the MCL, then the system is out of compliance. If any one sample would cause the annual average to be exceeded, then the system is out of compliance immediately. Any sample below the method detection limit shall be calculated at zero for the purpose of determining the annual average.

(B) For systems which are monitoring annually, or less frequently, the system is out of compliance for antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium, and thallium if the level of a contaminant at any sampling point is greater than the MCL. If a confirmation sample is required by the commission, the determination of compliance will be based on the average of the two samples.

(C) Compliance with the MCLs for nitrate and nitrite is based on one sample if the levels of these contaminants are below the MCLs. If the levels of nitrate or nitrite exceed the MCLs in any sample, a confirmation sample is required in accordance with paragraph (6)(B) of this section, and compliance shall be based on the average of the initial and confirmation samples.

(D) If a public water system has a distribution system separable from other parts of the distribution system with no interconnections, the commission may allow the system to give public notice to only the area served by that portion of the system which is out of compliance.

(10) Each public water system shall monitor at the time designated by the commission during each compliance period.

§290.109 Organic Chemical (Other Than Trihalomethanes) Monitoring, Analytical Requirements and Treatment Techniques.

(a) Monitoring and analysis of the SOC contaminants listed in §290.103(3)(A) of this title (relating to Standards of Chemical Quality) for the purposes of determining compliance with the maximum contaminant level shall be conducted as follows.

(1) Groundwater systems shall take a minimum of one sample at every entry point to the distribution system which is representative of each well after treatment (hereafter called a sampling point). Each subsequent sample must be taken at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

(2) Surface water systems shall take a minimum of one sample at points in the distribution system that are representative of each source or at each entry point to the distribution system after treatment (hereafter called a sampling point). Each subsequent sample must be taken at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

(3) If the system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions (i.e., when water representative of all sources is being used).

(4) Synthetic Organic Chemical (SOC) Monitoring Frequency

(A) Each community and non-transient non-community water system shall take four consecutive quarterly samples for each contaminant listed in §290.103(4)(A) of this title (relating to Standards of Chemical Quality) during each compliance period beginning with the initial compliance period.

(B) Systems serving more than 3,300 persons which do not detect a contaminant in the initial compliance period, may reduce the sampling frequency to a minimum of two consecutive quarterly samples in one year during each repeat compliance period.

(C) Systems serving less than or equal to 3,300 persons which do not detect a contaminant in the initial compliance period may reduce the sampling frequency to a minimum of one sample during each repeat compliance period.

(5) The commission may grant a waiver from the requirement of paragraph

(a)(4) of this subsection after evaluating the following factors Knowledge of previous use (including transport, storage, or disposal) of the contaminant within the watershed or zone of influence of the water source(s). If a determination by the commission reveals no previous use of the contaminant within the watershed or zone of influence, a waiver may be granted. If previous use of the contaminant is unknown or it has been used previously, then the following factors shall be used to determine whether a waiver is granted

(6) The commission will consider the waiver for each compliance period

(A) previous analytical results,

(B) the proximity of the system to a potential point or non-point source of contamination Point sources include spills and leaks of chemicals at or near a water treatment facility or at manufacturing, distribution, or storage facilities, or from hazardous and municipal waste landfills and other waste handling or treatment facilities Non-point sources include the use of pesticides to control insects, weeds, or pests on agricultural areas, forest lands, home and garden property, or other land application uses,

(C) the environmental persistence and transport of the pesticide herbicide or contaminant,

(D) how well the water source is protected against contamination due to such factors as depth of the well, type of soil and the integrity of well construction Surface water systems must consider watershed vulnerability and protection,

(E) elevated nitrate levels at the water supply source,

(F) use of PCBs in equipment used in the production, storage, or distribution of water (i.e., PCBs used in pumps, transformers, etc.)

(7) If an organic SOC contaminant listed in §290.103(3)(A) of this title (relating to Standards of Chemical Quality) is detected, as defined in 40 Code of Federal Regulation §141.24(h)(18), in any sample, then the following applies

(A) The system must monitor quarterly at each sampling point at which a detection occurs

(B) The commission may decrease the quarterly monitoring requirement specified in subparagraph (A) of this paragraph provided it has determined that the system is reliably and consistently below the MCL. In no case shall the commission make this determination unless a groundwater system takes a minimum of two consecutive quarterly samples and a surface water system takes a minimum of four consecutive quarterly samples.

(C) After the commission determines that a system is reliably and consistently below the MCL, it may allow the system to monitor annually. Systems which monitor annually must monitor during the quarter that previously yielded the highest analytical result

(D) Systems which have three consecutive annual samples with no detection of a contaminant may apply to the commission for a waiver as specified in paragraph (6) of this subsection

(E) If monitoring results in detection of one or more of certain related contaminants (aldicarb, aldicarb sulfone, aldicarb sulfoxide and heptachlor, heptachlor epoxide), then subsequent monitoring shall analyze for all related contaminants

(8) Systems which violate the MCL's of §290.103(3)(A) of this title (relating to Standards of Chemical Quality) as determined by paragraph (11) of this subsection must monitor quarterly After a minimum of four quarterly samples show the system is in compliance and the commission determines the system is reliably and consistently below the MCL, as specified in paragraph (11) of this subsection, the system shall monitor at the frequency specified in paragraph (7)(C) of this subsection

(9) The commission may require a confirmation sample for positive or negative results If a confirmation sample is required by the commission, the result must be averaged with the first sampling result and the average used for the compliance determination as specified by paragraph (15) of this subsection The commission has discretion to delete results of obvious sampling errors from this calculation

(10) The commission may reduce the total number of samples required from a system for analysis by allowing the use of compositing Composite samples from a maximum of five sampling points are allowed Compositing of samples must be done in the laboratory and analyzed within 14 days of sample collection

(A) If, in the composite sample, a detection of one or more SOC con-

taminants listed in §290.103(3)(A) of this title (relating to Standards of Chemical Quality) occurs, then a follow-up sample must be taken from each sampling point included in the composite and analyzed within 14 days of collection.

(B) If duplicates of the original sample taken from each sampling point used in the composite are available, the commission may use these duplicates instead of resampling The duplicate must be analyzed within 14 days of collection and the results reported to the commission.

(C) Compositing may only be permitted at sampling points within a single system

(11) Compliance with the MCL's of §290.103(3)(A) of this title (relating to Standards of Chemical Quality) shall be determined based on the analytical results obtained at each sampling point

(A) For systems which are conducting monitoring at a frequency greater than annual, compliance is determined by a running annual average of all samples taken at each sampling point If the annual average of any sampling point is greater than the MCL, then the system is out of compliance If the initial sample or a subsequent sample would cause the annual average to be exceeded, then the system is out of compliance immediately Any samples below the detection limit shall be calculated as zero for purposes of determining the annual average

(B) If monitoring is conducted annually, or less frequently, the system is out of compliance if the level of a contaminant at any sampling point is greater than the MCL If a confirmation sample is required by the commission, the determination of compliance will be based on the average of the two samples

(C) If a public water system has a distribution system separable from other parts of the distribution system with no interconnections, the commission may allow the system to give public notice to only that portion of the system which is out of compliance

(12) If monitoring data collected after January 1, 1990, are generally consistent with the requirements of this subsection, then the commission may allow systems to use that data to satisfy the monitoring requirement for the initial compliance period

(13) The commission may increase the required monitoring frequency, where necessary, to detect variations within

the system (e.g., fluctuations in concentration due to seasonal use, changes in water source, etc.).

(14) The commission has the authority to determine compliance or initiate enforcement action based upon analytical results and other information compiled by their sanctioned representatives and agencies.

(15) Each public water system shall monitor at the time designated by the commission within each compliance period.

(b) Beginning with the initial compliance period: sampling and analysis of the VOC contaminants listed in §290.103(3)(B) of this title (relating to Standards of Chemical Quality), for the purpose of determining compliance with the MCLs shall be conducted as follows.

(1) Groundwater systems shall take a minimum of one sample at every entry point to the distribution system which is representative of each well after treatment (hereafter called a sampling point). Each subsequent sample must be taken at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

(2) Surface water systems (and combined surface/ground water systems) shall take a minimum of one sample at points in the distribution system that are representative of each source or at each entry point to the distribution system after treatment (hereafter called a sampling point) Each subsequent sample must be taken at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

(3) If the system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions (i.e., when water representative of all sources is being used).

(4) Each community and non-transient non-community water system shall take four consecutive quarterly samples for each contaminant listed in §290.103(3)(B) of this title (relating to Standards of Chemical Quality) during each compliance period, beginning with the initial compliance period.

(5) If the initial monitoring for VOC contaminants listed in §290.103(3)(B) of this title (relating to Standards of Chemical Quality) as allowed in paragraph (16) of this subsection has been completed by December 31, 1992, and the system did not detect any contaminant listed in §290.103(3)(B) of this title (relating to Standards of Chemical Quality) then each ground and surface water system shall take

one sample annually beginning with the initial compliance period.

(6) After a minimum of three years of annual sampling, the commission may allow groundwater systems with no previous detection of any contaminant listed for VOCs in §290.103(3)(B) of this title (relating to Standards of Chemical Quality) to take one sample during each compliance period.

(7) Each community and non-transient groundwater system which does not detect a contaminant listed in §290.103(3)(B) of this title (relating to Standards of Chemical Quality) may be granted a waiver from the requirements of paragraphs (5) and (6) of this subsection after completing the initial monitoring. (For the purposes of this section, detection is defined as ≥ 0.0005 mg/l.) A waiver shall be effective for no more than six years (two compliance periods).

(8) The commission may grant a waiver after evaluating the knowledge of previous use (including transport, storage, or disposal) of the contaminant within the watershed or zone of influence of the system. If a determination by the commission reveals no previous use of the contaminant within the watershed or zone of influence, a waiver may be granted. If previous use of the contaminant is unknown or it has been used previously, then the following factors shall be used to determine whether a waiver is granted:

(A) previous analytical results,

(B) the proximity of the system to a potential point or non-point source of contamination. Point sources include spills and leaks of chemicals at or near a water treatment facility or at manufacturing, distribution, or storage facilities, or from hazardous and municipal waste landfills and other waste handling or treatment facilities.

(C) the environmental persistence and transport of the contaminants;

(D) the number of persons served by the public water system and the proximity of a smaller system to a larger system;

(E) how well the water source is protected against contamination (i.e., is it a surface or groundwater system). Groundwater systems must consider factors such as depth of the well, the type of soil, and well construction. Surface water systems must consider watershed protection.

(9) As a condition of the waiver a groundwater system must take one sample at each sampling point during the time the waiver is effective (i.e., one sample during

two compliance periods or six years) and update its vulnerability assessment considering the factors listed in paragraph (8) of this subsection. Based on this updated vulnerability assessment the commission must reconfirm that the system is not vulnerable. If the commission does not make this reconfirmation within three years of the initial determination, then the waiver is invalid and the system is required to sample annually as specified in paragraph (5) of this subsection.

(10) Each community and non-transient surface water system which does not detect a contaminant listed for VOCs in §290.103(3)(B) of this title (relating to Standards of Chemical Quality) may be considered by the commission for a waiver from the requirements of paragraph (5) of this subsection after completing the initial monitoring. Systems meeting this criteria must be determined by the commission to be non-vulnerable based on a vulnerability assessment during each compliance period. Each system receiving a waiver shall sample at the frequency specified by the commission (if any).

(11) If a VOC contaminant listed in §290.103(3)(B) of this title (relating to Standards of Chemical Quality) is detected at a level exceeding 0.0005 mg/l in any sample, then.

(A) the system must monitor quarterly at each sampling point which resulted in a detection;

(B) the commission may decrease the quarterly monitoring requirement specified in subparagraph (A) of this paragraph provided it has determined that the system is reliably and consistently below the maximum contaminant level. In no case shall the commission make this determination unless a groundwater system takes a minimum of two quarterly samples and a surface water system takes a minimum of four quarterly samples

(C) If the commission determines that the system is reliably and consistently below the MCL, the commission may allow the system to monitor annually. Systems which monitor annually must monitor during the quarter which previously yielded the highest analytical result

(D) Systems which have three consecutive annual samples with no detection of a contaminant may apply to the commission for a waiver as specified in paragraph (7) of this subsection.

(E) Groundwater systems which have detected one or more of the

following two-carbon organic compounds: trichloroethylene, tetrachloroethylene, 1,2-dichloroethane, 1,1, 1-trichloroethane, cis-1,2- dichloroethylene, trans-1,2-dichloroethylene, or 1, 1-dichloroethylene shall monitor quarterly for vinyl chloride. A vinyl chloride sample shall be taken at each sampling point at which one or more of the two-carbon organic compounds was detected. If the result of the first analysis does not detect vinyl chloride, the commission may reduce the quarterly monitoring frequency for vinyl chloride to one sample during each compliance period. Surface water systems are required to monitor for vinyl chloride as specified by the commission.

(12) Systems which violate the VOC MCL's of §290.103(3)(B) of this title (relating to Standards of Chemical Quality), as determined by paragraph (15) of this subsection, must monitor quarterly. After a minimum of four consecutive quarterly samples which show the system is in compliance as specified in paragraph (15) of this subsection the system and the commission determines that the system is reliably and consistently below the maximum contaminant level, the system may monitor at the frequency and time specified in paragraph (11)(C) of this subsection.

(13) The commission may require a confirmation sample for positive or negative results. If a confirmation sample is required by the commission, the result must be averaged with the first sampling result and the average is used for the compliance determination as specified by paragraph (15) of this subsection. States have discretion to delete results of obvious sampling errors from this calculation.

(14) The commission may reduce the total number of samples a system must analyze by allowing the use of compositing. Composite samples from a maximum of five sampling points are allowed. Compositing of samples must be done in the laboratory and analyzed within 14 days of sample collection.

(A) If the VOC concentration in the composite sample is ≥ 0.0005 mg/l for any contaminant listed in §290.103(3)(B) of this title (relating to Standards of Chemical Quality), then a follow-up sample must be taken and analyzed within 14 days from each sampling point included in the composite.

(B) If duplicates of the original sample taken from each sampling point used in the composite are available, the system may use these instead of resampling. The duplicate must be analyzed and the results reported to the commission within 14 days of collection.

(C) Compositing may only be permitted by the commission at sampling points within a single system.

(D) Procedures for compositing VOC samples are as stated in: 40 Code of Federal Regulations §141.24 (f)(14).

(15) Compliance with §290.103(3)(B) of this title (relating to Standards of Chemical Quality) shall be determined based on the analytical results obtained at each sampling point.

(A) For systems which are conducting monitoring at a frequency greater than annual, compliance is determined by a running annual average of all samples taken at each sampling point. If the annual average of any sampling point is greater than the MCL, then the system is out of compliance. If the initial sample or a subsequent sample would cause the annual average to be exceeded, then the system is out of compliance immediately.

(B) If monitoring is conducted annually, or less frequently, the system is out of compliance if the level of a contaminant at any sampling point is greater than the MCL. If a confirmation sample is required by the commission, the determination of compliance will be based on the average of the two samples.

(C) If a public water system has a distribution system separable from other parts of the distribution system with no interconnections, the commission may allow the system to give public notice to only that area served by that portion of the system which is out of compliance.

(16) The commission may allow the use of monitoring data collected after January 1, 1988, for purposes of initial monitoring compliance. If the data are generally consistent with the other requirements in this section, the commission may use these data (i.e., a single sample rather than four quarterly samples) to satisfy the initial monitoring requirement of paragraph (4) of this subsection. Systems which use these samples and do not detect any contaminant listed in §290.103(3)(B) of this title (relating to Standards of Chemical Quality) shall begin monitoring annually in accordance with paragraph (5) of this subsection beginning January 1, 1993.

(17) The commission may increase required monitoring where necessary to detect variations within the system.

(18) Each public water system shall monitor at the time designated by the commission within each compliance period.

(19) Analysis of unregulated contaminants shall be as specified in 40 Code of Federal Regulations (CFR) §141.40. The commission adopts by reference Federal Regulations referred to in this subsection. Copies are available for review in the Water Utilities Division, Texas Natural Resource Conservation Commission, P. O. Box 13087 Austin, Texas 78711.

(c) Acrylamide and Epichlorohydrin Treatment Techniques. Each public water system must certify annually to the commission (using third party or manufacturer's certification) that when acrylamide or epichlorohydrin are used in drinking water systems, the combination (or product) of dose and monomer level does not exceed 0.05% dosed at 1 ppm (or equivalent) for acrylamide and 0.01% dosed at 20 ppm (or equivalent) for epichlorohydrin.

§290.110. Radiological Sampling and Analytical Requirements.

(a) Maximum contaminant levels for radium-226, radium-228, and gross alpha particle radioactivity for community systems:

(1) combined radium-226 and radium-228-5 pCi/l;

(2) gross alpha particle activity (including radium-226 but excluding radon and uranium)-15 pCi/l.

(b) Maximum contaminant levels for beta particle and photon radioactivity from man-made radionuclides in drinking water in community water systems.

(1) The average annual concentration of beta particle and photon radioactivity from man-made radionuclides in drinking water shall not produce an annual dose equivalent to the total body or any internal organ greater than four millirem (mrem)/year.

(2) Except for the radionuclides listed in Table A, the concentration of man-made radionuclides causing four mrem total body or organ dose equivalents shall be calculated on the basis of a two-liter-per-day drinking water intake using the 168 hour data listed in "Maximum Permissible Body Burdens and Maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure," NBS Handbook 69 as amended August, 1963, United States Department of Commerce. If two or more radionuclides are present, the sum of their annual dose equivalent to the total body or to any organ shall not exceed 4 mrem/year. Table A-Average annual concentrations assumed to produce a total body or organ dose of 4 mrem/year.

Radionuclide

**Tritium
Strontium-90**

Critical Organ

**Total Body
Bone Marrow**

**pCi
Per Liter**

**20,000
8**

(c) Monitoring frequency for radioactivity in community water systems.

(1) Monitoring requirements for gross alpha particle activity, radium-226 and radium-228.

(A) Compliance with subsection (a) of this section shall be based on the analysis or analyses of four samples obtained at quarterly intervals.

(i) A gross alpha particle activity measurement may be substituted for the required radium-226 and radium-228 analysis provided that the measured gross alpha particle activity does not exceed five pCi/l at a confidence level of 95% (1.65 σ where σ is the standard deviation of the net counting rate of the sample.)

(ii) When the gross alpha particle activity exceeds five pCi/l, the same or an equivalent sample shall be analyzed for radium-226. If the concentration of radium-226 exceeds three pCi/l the same or an equivalent sample shall be analyzed for radium-228.

(B) Suppliers of water shall monitor at least once every four years following the procedure required by subparagraph (A) of this paragraph. At the discretion of the commission, when an annual record taken in conformance with subparagraph (A) of this paragraph has established that the average annual concentration is less than one-half the maximum contaminant levels established by subsection (a) of this section, analysis of a single sample may be substituted for the quarterly sampling procedure required by subparagraph (A) of this paragraph.

(i) More frequent monitoring shall be conducted when required by the commission in the vicinity of mining or other operations which may contribute alpha particle radioactivity to either surface or groundwater sources of drinking water, or when changes in the distribution system or treatment processing occur which may increase the concentration of radioactivity in the finished water.

(ii) A supplier of water shall monitor in conformance with subparagraph (A) of this paragraph within

one year of the introduction of new water source for a community water system.

(iii) A community water system using two or more sources having different concentrations of radioactivity shall monitor the source of water, in addition to water from a free-flowing tap, when required by the commission.

(iv) Monitoring for compliance with subsection (a) of this section after the initial period need not include radium-228 provided that the average concentration of radium-228 has been assayed at least once using the quarterly sampling procedure required by subparagraph (A) of this paragraph.

(v) Suppliers of water shall conduct annual monitoring of any community water system in which the radium 226 concentration exceeds three pCi/l when required by the commission.

(C) If the average annual maximum contaminant level for gross alpha particle activity or total radium as set forth in subsection (a) of this section is exceeded, the supplier of a community water system shall give notice to the commission and notify the public as required by §290.103(8) of this title (relating to Standards of Chemical Quality). Monitoring at quarterly intervals shall be continued until the annual average concentration no longer exceeds the maximum contaminant level or until a monitoring schedule as a condition to a variance, exemption or enforcement action shall become effective.

(2) Monitoring requirements for man-made radioactivity in community water systems.

(A) Systems using surface water sources and serving more than 100,000 persons and such other community water systems as are designated by the commission shall be monitored for compliance with subsection (b) of this section by analysis of four quarterly samples. Compliance with subsection (b) of this section may be assumed without further analysis if the average annual concentration of gross beta particle activity is less than 50 pCi/l and if the average annual concentrations of tritium and strontium-90 are less than those listed

in Table A of subsection (b)(2) of this section, provided that if both radionuclides are present the sum of their annual dose equivalents to bone marrow shall not exceed 4 millirem/year.

(i) If the gross beta particle activity exceeds 50 pCi/l, an analysis of the sample must be performed to identify the major radioactive constituents present and the appropriate organ and total body doses shall be calculated to determine compliance with subsection (b) of this section.

(ii) Suppliers of water shall conduct additional monitoring, as required by the commission to determine the concentration of man-made radioactivity in principal watersheds designated by the commission.

(iii) At the discretion of the commission, suppliers of water utilizing only groundwaters may be required to monitor for man-made radioactivity.

(B) After the initial analysis required by subparagraph (A) of this paragraph, suppliers of water shall monitor at least every four years following the procedure given in subparagraph (A) of this paragraph.

(C) The supplier of any community water system designated by the commission as utilizing waters contaminated by effluents from nuclear facilities shall initiate quarterly monitoring for gross beta particle and iodine-131 radioactivity and annual monitoring for strontium-90 and tritium.

(i) Quarterly monitoring for gross beta particle activity shall be based on the analysis of monthly samples. If the gross beta particle activity in a sample exceeds 15 pCi/l, the same or an equivalent sample shall be analyzed for strontium-89 and cesium-134. If the gross beta particle activity exceeds 50 pCi/l, an analysis of the sample must be performed to identify the major radioactive constituents present and the appropriate organ and total body doses shall be calculated to determine compliance with subsection (b) of this section.

(ii) For iodine-131, a composite of five consecutive daily samples

shall be analyzed once each quarter. When iodine-131 is identified in the finished water more frequent monitoring shall be conducted as required by the commission.

(iii) Annual monitoring for strontium-90 and tritium shall be conducted by the analysis of four quarterly samples.

(iv) The commission may allow the substitution of environmental surveillance data taken in conjunction with a nuclear facility for direct monitoring of man-made radioactivity by the supplier of water where the commission determines such data is applicable to a particular community water system.

(D) If the average annual maximum contaminant level for man-made radioactivity set forth in subsection (b) of this section is exceeded, the operator of a community water system shall give notice to the commission and to the public as required by §290.103(6) of this title (relating to Standards of Chemical Quality) Monitoring at monthly intervals shall be continued until the concentration no longer

exceeds the maximum contaminant level or until a monitoring schedule as a condition to a variance, exemption or enforcement action shall become effective.

§290.111. *Construction and Siting Requirements.* Construction features and siting of all facilities for new water systems, and for major improvements to existing water systems, must be in conformity with applicable rules and regulations, as promulgated by the Commission.

§290.112. *Recordkeeping and Reporting Required of Water Systems.* Any owner or operator at a public water system subject to the provisions of this chapter shall retain on the water system premises or at a convenient location near the premises the following records.

(1) Records of bacteriological analyses must be retained for no less than five years, and records of chemical analyses must be retained for no less than ten years.

(2) Records of action taken by the system to correct violations of primary drinking water regulations must be retained for at least three years after the last action taken with respect to the particular violation involved

(3) Copies of written reports, summaries or communications relating to sanitary surveys of the system conducted by the system itself, by a private consultant, or by the commission shall be kept for a period not less than ten years after completion of the survey involved.

(4) Records concerning a variance or exemption granted to the system shall be kept for a period ending not less than five years following the expiration of such variance or exemption.

(5) Any owner or operator of a public water system subject to the provisions of this chapter is required to report to the State the results of any test, measurement or analysis required to be made by these standards within ten days following such test, measurement or analysis.

§290.113. *Recommended Secondary Constituent Levels.*

(a) The following secondary constituent levels are limits, applicable to all public water systems. No source of supply which does not meet the Secondary Constituent Levels may be used without written approval from the commission.

<u>Contaminant</u>	<u>Level</u>
Aluminum	0.05 to 0.2 mg/l
Chloride	300 mg/l
Color	15 color units
Copper	1.0 mg/l
Corrosivity	Non-corrosive
Fluoride	2.0 mg/l
Foaming agents	0.5 mg/l
Hydrogen sulfide	0.05 mg/l
Iron	0.3 mg/l
Manganese	0.05 mg/l
Odor	3 Threshold Odor Number
pH	≥7.0
Sulfate	300 mg/l
Total Dissolved Solids	1,000 mg/l
Zinc	5.0 mg/l

[graphic]

(b) For all instances in which drinking water does not meet the recommended

limits and is accepted for use by the commission, such acceptance is valid only until such time as water of acceptable chemical quality can be made available at reasonable cost to the area(s) in question

(c) Community water systems that exceed the secondary maximum constituent level for fluoride but are below the level listed in §290.103 of this title (relating to Standards of Chemical Quality) must notify the public. The notice must be made annually by including it with the water bill or by separate mailing to all customers. The form and content of the notice shall be as prescribed by the commission.

§290.114 Modified Monitoring When a public water system supplies water to one or more other public water systems, the commission may modify the monitoring requirements imposed by this part to the extent that the interconnection of the systems justifies treating them as a single system for monitoring purposes. Any modified monitoring shall be conducted pursuant to a schedule specified by the commission in concurrence with the Administrator of the United States Environmental Protection Agency

§290.115. Exceptions to these Standards These standards shall apply to each public water system, unless the public water system meets all of the following conditions

(1) consists only of distribution and storage facilities (and does not have any production and treatment facilities),

(2) obtains all of its water from, but is not owned or operated by, a public water system to which such standards apply,

(3) does not sell water to any person, and

(4) is not a carrier which conveys passengers in interstate commerce,

(5) is subject to plumbing restrictions and inspections by the public water system which provides the water

§290.116 Control of Trihalomethanes in Drinking Water

(a) For the purpose of this section the following definitions will apply

(1) "Halogen" means one of the chemical elements chlorine, bromine, or iodine

(2) "Trihalomethane" (THM) means one of the family of organic compounds named as derivatives of methane, wherein three of the four hydrogen atoms in methane are each substituted by a halogen atom in the molecular structure

(3) "Total Trihalomethanes" (TTHM) means the sum of the concentration in milligrams per liter of the trihalomethane compounds (trichloromethane, i.e., chloroform, dibromochloromethane; tribromomethane, i.e., bromoform) rounded to two significant figures

(4) "Maximum Total Trihalomethane Potential" (MTP) means the maximum concentration of total trihalomethanes produced in a given water containing a disinfectant residual after seven days at a temperature of 25 degrees Centigrade or above

(5) "Disinfectant" means any oxidant added to water in any part of the treatment or distribution process, that is intended to kill or inactivate pathogenic microorganisms.

(b) The maximum contaminant level (MCL) for total trihalomethanes shall be 0.10 milligrams/liter. The MCL shall apply only to those systems which serve a population of 10,000 or more individuals

(c) Sampling and analytical requirements for total trihalomethanes.

(1) For the purpose of this section, the minimum number of samples required to be taken shall be based on the number of treatment plants used by the system, except that multiple wells drawing raw water from a single aquifer shall be considered as one treatment plant for determining the minimum number of samples. All samples taken within one sampling period shall be collected within a 24-hour period.

(2) For all community water systems utilizing surface water sources in whole or in part, and for all water systems utilizing only groundwater sources that have not been determined to qualify for the reduced monitoring requirements of paragraph (4) of this subsection, analyses for total trihalomethanes shall be performed on at least four samples of water per quarter from each treatment plant used by the system. At least 25% of the samples shall be taken at locations within the distribution system reflecting the maximum residence time of the water in the system. The remaining 75% shall be taken at representative locations in the distribution system, taking into account number of persons served, different sources of water, and different treatment methods employed. The results of all analyses per quarter shall be arithmetically averaged and reported to the commission within 30 days of the system's receipt of such results. All samples collected shall be used in computing the average, unless the analytical results are invalidated for technical reasons.

(3) Upon the written request of a community water system, the monitoring frequency required by paragraph (2) of this subsection may be reduced by the commission to a minimum of one sample analyzed for TTHM's per quarter taken at a point in the distribution system reflecting the maximum residence time of the water in the system, upon a written determination by the commission that the data from at least one year of monitoring in accordance with paragraph (2) of this subsection and local conditions demonstrate that total trihalomethane concentrations will be consistently below the maximum contaminant level

(A) If at any time during which the reduced monitoring frequency prescribed under this subsection applies, the results from any analysis exceed 0.10 milligrams/liter of TTHM's and such results are confirmed by at least one check sample taken promptly after such results are obtained, or if the system makes any significant change to its source of water or treatment program, the system shall immediately begin monitoring in accordance with the requirements of paragraph (2) of this subsection.

(B) If a system is required to begin monitoring in accordance with paragraph (2) of this subsection, such monitoring shall continue for at least one year before a reduction in monitoring frequency may be considered

(4) Upon the written request to the commission, a community water system utilizing only groundwater sources may seek to have the monitoring frequency reduced to a minimum of one sample for maximum TTHM potential per year taken at a point in the distribution system reflecting maximum residence time of the water in the system. The system shall submit to the Commission the results of at least one sample analyzed for maximum TTHM potential taken at a point in the distribution system reflecting the maximum residence time of the water in the system. The system's monitoring frequency may only be reduced upon a written determination by the commission that, based upon the data submitted by the system, the system has a maximum TTHM potential of less than 0.10 milligrams/liter and that, based upon an assessment of the local conditions of the system, the system is not likely to approach or exceed the maximum contaminant level for TTHM's. The results of all analyses shall be reported to the commission within 30 days of the system's receipt of such results. All samples collected shall be used for determining whether the system must comply with the monitoring requirements of paragraph (2) of this subsection, unless the analytical results are invalidated for technical reasons.

(A) If at any time during which the reduced monitoring frequency prescribed under this subsection is in effect, the result from any analysis taken by the system for the maximum TTHM potential is equal to or greater than 0.10 milligrams/liter, and such results are confirmed by at least one check sample taken promptly after such results are received, the system shall begin immediately to monitor in accordance with the requirements of paragraph (2) of this subsection.

(B) If it becomes necessary to begin monitoring in accordance with paragraph (2) of this subsection, such monitoring shall continue for at least one year before the monitoring frequency may be reduced.

(C) In the event of any significant change to the system's raw water or treatment program, the system shall immediately analyze an additional sample for maximum TTHM potential taken at a point in the distribution system reflecting the maximum residence time of the water in the system for the purpose of determining whether the system must comply with the monitoring requirement of paragraph (2) of this subsection.

(5) Compliance with the MCL of 0.10 milligrams/liter for total trihalomethanes shall be determined based on a running annual average of quarterly samples collected by the system as prescribed in paragraph (2) of this subsection. If the average of samples covering any 12-month period exceeds the maximum contaminant level, the supplier of water shall report to the commission within 30 days and notify the public as required under

§290.103(8) of this title (relating to Standards of Chemical Quality). Monitoring after public notification shall be at a frequency designated by the commission and shall continue until a monitoring schedule as a condition of a variance, exemption, or enforcement action shall become effective.

(6) Before a community water system makes any significant modification to its existing treatment process for the purpose of achieving compliance with this subsection, the system must submit and obtain commission approval of a detailed plan setting forth its proposed modifications and those safeguards that it will implement to ensure that the bacteriological quality of the drinking water served by such system will not be adversely affected by such modifications.

(7) All analyses for determining compliance with the provisions of this subsection shall be conducted in accordance with the procedures required by the United States Environmental Protection Agency.

§290.117 Disinfection

(a) A system that uses a surface water source must provide the disinfection treatment specified in subsection (b) of this section beginning July 1, 1993. A system that uses a groundwater source under the influence of surface water and provides filtration treatment must provide disinfection treatment as specified in subsection (b) of this section by July 1, 1993, or beginning when filtration is installed, whichever is later. Failure to meet any requirement of this section after the applicable date specified in this subsection is a treatment technique violation. Violation of any treatment technique of this section must be reported to the commission by the end of the next business day after the measurement was taken.

(b) Each public water system that utilizes surface water or groundwater under the influence of surface water must provide disinfection treatment as follows.

(1) The disinfection treatment must be sufficient to ensure that the total treatment processes of that system achieve at least 99.9% (3-log) inactivation and/or removal of *Giardia lamblia* cysts and at least 99.99% (4-log) inactivation and/or removal of viruses, as determined by the commission.

(A) The disinfectant concentration(s) within the treatment process shall not be allowed to fall below acceptable levels for more than four hours. Violation of this subparagraph must be reported to the commission by the end of the next business day.

(B) Disinfection contact time will be based on tracer study data submitted by the system and approved by the commission. Acceptable tracer study data must be submitted to the commission no later than January 1, 1993.

(2) The residual disinfectant concentration in the water entering the distribution system measured as specified in §290.119 of this title (relating to Turbidity and Disinfection) shall not be less than 0.2 mg/l free chlorine or 0.5 mg/l chloramine for more than four hours.

(3) The residual disinfectant concentration in the distribution system, as specified in §290.119 of this title (relating to Monitoring Requirements for Systems Using Surface Water Treatment) shall not be less than 0.2 mg/l free chlorine or less than 0.5 mg/l chloramine in more than 5.0% of the samples each month, for any two consecutive months that the system serves water to the public.

Where:

the value "V" in the following formula shall not exceed five (5.0) percent per month for any two consecutive months --

$$V = \frac{b}{a} \times 100$$

Where:

a = number of instances where the residual disinfectant concentration is measured;

b = number of instances where the residual disinfectant concentration is measured but is detected at less than 0.2 mg/l free chlorine or less than 0.5 mg/l chloramine.

§290.118. *Filtration* A public water system that uses a surface water source must provide filtration treatment which complies with this section by July 1, 1993. A public water system that uses groundwater under the direct influence of surface water must provide filtration by a date specified by the commission. Such date will not exceed 18 months from the date of notification. Failure to meet any requirement of this section after the applicable date specified in this section is a treatment technique violation. Violation of any treatment technique requirement of this section must be reported to the commission by the end of the next business day after the measurement was taken.

(1) For systems using conventional filtration or groundwater systems under the influence of surface water using direct filtration, the turbidity level of representative samples of a system's filtered water must be less than or equal to 0.5 Nephelometric Turbidity Unit (NTU) in at least 95% of the measurements taken each month, measured as specified in §290.119 of this title (relating to Monitoring Requirements for Systems Using Surface Water Treatment); except that if the commission determines that the system is capable of achieving at least 99.9% removal and/or inactivation of *Giardia lamblia* cysts at

some turbidity level higher than 0.5 NTU in at least 95% of the measurements taken each month, the commission may substitute this higher turbidity limit for that system. However, in no case may the commission approve a turbidity limit that allows more than one (1.0) NTU in more than five (5.0%) of the samples taken each month.

(2) The turbidity level of representative samples of a system's filtered water must at no time exceed five (5.0) NTU.

§290.119. *Monitoring Requirements Relating to Turbidity and Disinfection for Systems Using Surface Water Treatment.* A public water system that uses a surface water source or a ground water source under the influence of surface water must monitor in accordance with this section beginning July 1, 1993.

(1) Turbidity measurements as required by §290.118 of this title (relating to Filtration) must be performed on representative samples of the system's filtered water every four hours (or more frequently) that the system serves water to the public. A public water system may substitute continuous turbidity monitoring for grab sample monitoring if it validates the continuous measurement for accuracy by calibrating on a monthly basis as a minimum frequency. Continuous monitoring results must be reported at equal intervals of four hours or less. For systems serving 500 or fewer per-

sons, the system may reduce the turbidity sampling frequency to once per day.

(2) The residual disinfectant concentration of the water entering the distribution system must be monitored continuously, and the lowest value must be recorded each day. The system must also record the duration of the longest event when the residual leaving the plant fell below 0.2 mg/l free chlorine or 0.5 mg/l chloramine. Continuous disinfectant monitoring equipment must be calibrated at minimum frequency of monthly. If there is a failure in the continuous monitoring equipment, grab sampling every four hours may be conducted in lieu of continuous monitoring, but for no more than five working days following the failure of the equipment. Systems serving 3,300 or fewer persons may take grab samples in lieu of providing continuous monitoring on an ongoing basis at the frequencies each day as prescribed in the following chart. Systems which sell water on a wholesale basis shall monitor the disinfectant residual leaving the plant based on the total number of connections served by the wholesale provider and its wholesale customers. If at any time the residual disinfectant concentration falls below 0.2 mg/l free chlorine or 0.5 mg/l chloramine in a system using grab sampling in lieu of continuous monitoring, the system must take a grab sample every four hours until the residual disinfectant concentration meets the disinfectant requirement.

System Size by Population	Samples/ day ¹
<500.....	1
501 to 1,000.....	2
1,001 to 2,500.....	3
2,501 to 3,300.....	4

¹ The day's samples cannot be taken at the same time. The sampling intervals are subject to commission review and approval.

(3) The residual disinfectant concentration must be measured at least at the same points in the distribution system and at the same time as bacteriological samples are collected, as specified in §290.106 of this title (relating to Bacteriological Monitoring). The disinfectant residual in the distribution system must also be monitored in accordance with the requirements of §290.46(f)(2) of this chapter (relating to Minimum Acceptable Operating Practices for Public Drinking Water Systems). Results of these residual measurements must indicate a minimum residual of 0.5 mg/l chloramine or 0.2 mg/l free chlorine, depending on disinfectant used.

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 January 21, 1994

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Mary Ruth Holder
Director, Legal Division
Texas Natural Resource
Conservation
Commission

Earliest possible date of adoption: February 25, 1994

For further information, please call (512) 463-8069

◆ ◆ ◆
Chapter 334. Underground and Aboveground Storage Tanks

The Texas Natural Resource Conservation Commission (commission or TNRCC) proposes an amendment to §334.2, and new

§§334.530-334.559, concerning overpayment prevention in the petroleum storage tank remediation program.

The amended and new rules are proposed to enhance the implementation of certain provisions of House Bill 1588 passed by the 71st Texas Legislature and Senate Bill 1243 passed by the 73rd Texas Legislature. House Bill 1588 created the petroleum storage tank remediation (PSTR) fund for the purpose of cleaning up contamination resulting from leaking underground and aboveground storage tanks. Senate Bill 1243 requires the Texas Natural Resource Conservation Commission to audit claims from the PSTR fund

House Bill 1588 allows owners of petroleum storage tanks to hire their own contractors for the purpose of cleaning up contamination from leaking tanks. After the contractor, or corrective action specialist, has performed the cleanup work and has been paid, the tank owner may submit to the commission an application for reimbursement of cleanup costs. The commission generally requires an owner or operator to sign a subrogation agreement with the commission prior to remitting reimbursement. The subrogation agreement provides a mechanism for the commission to recover overpayments directly from the contractor, or corrective action specialist, as well as from the owner or operator. Today's proposed sections will enhance procedures for recovery of overpayments. Pre-payment and post-payment audits are authorized by the new rules. If, upon completion of a post-payment audit, the executive director determines that the commission has paid costs that were unnecessary, not reimbursable, or not allowable, then the commission will have the mechanism for recovery of such overpayments

Because reimbursement is only made after an eligible owner or operator has paid the contractor, it may be appropriate for the commission to look directly to the contractor for recovery of overpayments. In other situations, the commission may choose to seek recovery from the owner or operator. In addition to claims for reimbursement from the PSTR Fund, filed by owners and operators, the PSTR Fund is also used to pay for clean-ups in the commission's state lead program. Any corrective action that is funded in whole, or in part by the PSTR Fund is subject to an audit pursuant to the proposed rules.

If the commission notifies a person (either an owner/operator or a contractor) that an overpayment has been made, the recipient of the notice of overpayment must respond to the notice within 30 days. The notice recipient must either submit a check to the agency for the amount of the overpayment, or file a written response to the notice of overpayment and request a hearing. If the recipient of the notice of overpayment neither returns the overpayment, nor files a written response to the notice, the executive director shall file a petition with the commission seeking an order compelling return of the overpayment. If an order is issued pursuant to the executive director's petition, it shall be enforceable by all authorities available in the Texas Water Code, Chapter 26. The commissioners may levy an administrative penalty of up to \$10,000 per day of delinquent payment. The commissioners also may refer the matter to the Office of the Attorney General for collection. The costs of a hearing in this matter may also be charged to a recipient of a notice of overpayment, who has been found to unlawfully withhold an overpayment.

Anyone who wishes to perform corrective action services and be eligible to receive money

from the PSTR fund must be registered with the commission pursuant to commission rules, 30 Texas Administrative Code (TAC) Chapter 334, Subchapter J. For corrective action services commenced after August 6, 1993, the agency may exercise the option to revoke or suspend registration certificates of individuals or companies which fail to comply with commission rules. An individual or company whose registration has been revoked or suspended will not be eligible to receive money from the PSTR fund.

These new sections require owners/operators and contractors to cooperate fully with the executive director whenever an audit or other investigation is conducted. If an individual or company refuses to cooperate with an audit or investigation, the executive director may seek an order from the commission compelling cooperation. Such an order is enforceable by any of the means available under the Texas Water Code, Chapter 26.

Section 334.2 (relating to definitions) has been amended to include definitions for "Reimbursable cost," "Allowable cost," "Necessary cost," "Necessary work," and "Cost effective work." A clear understanding of each of the aforementioned words and phrases is essential for an understanding of and compliance with the provisions of subchapter L.

Section 334.530 (relating to Purpose and Applicability) sets forth the purpose of the new rules and establishes that this subchapter applies to all applications for reimbursement and other costs paid from the PSTR fund.

Section 334.531 (relating to Responsibility of Recipients of Money from the PSTR Fund and Persons Paid by Recipients of Money from the Petroleum Storage Tank Remediation Fund) establishes that each person who is paid or reimbursed with money from the PSTR fund has a duty to cooperate with any audit or investigation conducted by the executive director.

Section 334.532 (relating to Payment) clearly establishes that payment by the executive director does not mean that all costs included in a claim are allowable or reimbursable. This section also provides that all claims for money from the PSTR fund are subject to post-payment audits.

Section 334.534 (relating to Notice of Overpayment) authorizes the executive director to issue a notice of overpayment if he determines as the result of an audit or investigation that an overpayment has been made. The notice of overpayment may be delivered directly to the contractor who performed the corrective action work, or to the eligible owner or operator who received reimbursement from the commission. A recipient of a notice of overpayment must remit a check to the commission in the amount of the overpayment, plus interest, within 30 days. If the recipient of the notice of overpayment does not return the amount of the overpayment, he or she must file a written objection pursuant to §334.535 of this title.

Section 334.535 (relating to Objections to Notice of Overpayment and Formal Petition for Hearing) allows a person to contest or object to a notice of overpayment by requesting a

hearing on the notice accompanied by a written assertion of which funds the recipient is entitled to retain and why. The petition shall be filed within 30 days of receipt of the notice of overpayment. If a person does not object to the notice of overpayment in accordance with this section, then all objections are deemed waived.

Section 334.536 (relating to Hearing by the Commission) authorizes the commission to conduct a hearing on the notice of overpayment upon receipt of a petition filed by the recipient of the notice.

Section 334.537 (relating to Failure to Return Overpayment or Cooperate with Audit or Investigation) provides that the executive director may file a petition for an order compelling return of the overpayment if the recipient neither returns the overpayment nor objects to it within 30 days. Any order issued by the commission shall be enforceable by any of the means described in the Texas Water Code, Chapter 26, including assessment of administrative penalties of up to \$10,000 per day of violation. The commission may also issue an order compelling any person to cooperate with an audit or investigation.

Section 334.538 (relating to Administrative Penalties and Other Actions) authorizes the executive director to seek an order from the commission assessing administrative penalties for violations of this subchapter or for violations of any orders issued pursuant to this subchapter.

Sections 334.539-334.559 are reserved for expansion.

Stephen Minick, budget and planning division, has determined that for the first five years these sections will be in effect, there will be fiscal implications as a result of administration and enforcement of these sections. The approved budget to implement this program in Fiscal Year 1994 is \$384,572. If an increase in the number of audits is desired, a commensurate increase in the budget will be warranted. Additionally, program expansion of up to \$12 million was provided for by Senate Bill 1243. The additional funding is available in the current biennium (Fiscal Year 1994 and 1995). It should be noted that the investment of money in the audit program will, at a minimum, result in equal benefit in the form of recovered overpayment for the State. The number of audits performed pursuant to the funding prescribed by Senate Bill 1243 will decrease, if the funding is not allocated at the expiration of the current biennium.

To the extent that enforcement of these sections will prevent overpayment of claims from the PSTR fund, a cost savings to State government will be realized. The exact amount of the savings cannot be determined at this time. However, all amounts recovered through the enforcement of the proposed rules will be deposited into the PSTR fund (Fund 655). Thus, additional monies will be available to finance corrective actions, thereby enhancing protection for the environment and human health and safety.

Potential costs to recipients of notices of overpayment include expenses related to

document retrieval, personnel time, and other administrative expenses. In addition, persons who receive notices of overpayment may incur additional corrective action related expenses that will not be reimbursed by the State. The extent of these expenses to recipients of notices of overpayment cannot be predicted at this time. There are no direct fiscal implications anticipated for local governments. Costs to small businesses should not be different than those to any other recipient of a notice of overpayment.

Mr. Minick also has determined that for the first five years these sections are in effect, the anticipated public benefit will include improvements in the disbursement and management of State funds, the availability of increased amounts of money for pollution cleanup efforts, and increased enforcement of provisions of the Texas Water Code, and the commission rules relating to reimbursement from the PSTR fund. There are no costs anticipated to persons who are required to comply with these sections, other than the potential expenses described in this preamble.

Comments on this proposal may be submitted to Raymond Winter, Staff Attorney, Legal Division—Park 35, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087. Comments will be accepted until 5:00 p.m., 30 days after the date of this publication.

Subchapter A. General Provisions

• 30 TAC §334.2

The amendment is proposed under House Bill 1588, which requires the commission to establish a Groundwater Protection Program and to implement a reimbursement program for responsible parties who perform corrective action at leaking petroleum storage tank sites.

Senate Bill 1243 which requires the commission to implement an audit program for claims from the PSTR fund, and the Texas Water Code, §5103 and §5105, which provide the commission with the authority to adopt necessary rules to carry out the powers and duties prescribed by the Texas Water Code and other laws of the State of Texas, and to establish and approve general policies for the commission, are affected by this proposed amendment.

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

Allowable cost—As defined by Subchapter H, §334.308 of this title (relating to Interim Reimbursement Program).

Cost effective work—Work of a type which is both effective in achieving the desired remediation result, and which of alternative types of effective work, is the least costly.

Necessary cost—Cost of necessary work.

Necessary work/technically necessary work-Work which is required and approved by the commission to assess or remediate a Leaking Petroleum Storage Tank site.

Reimbursable cost-As defined by Subchapter M, §334.560 of this title (relating to Reimbursable Cost Guidelines for the Petroleum Storage Tank Reimbursement Program).

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 January 19, 1994

TRD-9434889

Mary Ruth Holder
Director, Legal Division
Texas Natural Resource
Conservation
Commission

Earliest possible date of adoption February 25, 1994

For further information, please call (512) 239-6087

Subchapter L. Overpayment Prevention

• 30 TAC §§334.530-334.538

The new sections are proposed under House Bill 1588, which requires the commission to establish a Groundwater Protection Program and to implement a reimbursement program for responsible parties who perform corrective action at leaking petroleum storage tank sites

Senate Bill 1243 which requires the commission to implement an audit program for claims from the PSTR fund, and the Texas Water Code, §5 103 and §5 105, which provide the commission with the authority to adopt necessary rules to carry out the powers and duties prescribed by the Texas Water Code and other laws of the State of Texas, and to establish and approve general policies for the commission, are affected by these proposed new sections

§334.530 Purpose and Applicability of the Subchapter

(a) Purpose The purpose of this subchapter is to establish procedures regarding the audit of money expended from the Petroleum Storage Tank Remediation Fund, to assure the most efficient use of the money available and to provide the most effective protection to the environment, public health and safety

(b) Applicability This subchapter applies to all corrective actions, paid for in whole or in part by the Petroleum Storage Tank Remediation Fund

§334.531 Responsibility of Recipients of Money from the PSTR Fund and Persons Paid by Recipients of Money from the Petroleum Storage Tank Remediation Fund

(a) The recipient of reimbursement shall cooperate fully with any audit or investigation by the executive director regarding the necessity of work performed and/or the costs charged and amounts paid

(b) Each person who performs work at a Leaking Petroleum Storage Tank site, who is paid by a person who anticipates being, or actually is, reimbursed from the Petroleum Storage Tank Remediation Fund, shall cooperate fully with any audit or investigation by the executive director regarding the work performed and/or the costs charged.

(c) No person shall submit false information to the executive director as part of any materials required to be submitted under this subchapter

§334.532 Payments

(a) Payment by the executive director of a claim for money from the PSTR Fund means that the claim is subject to post-payment audit

(b) By making payment of claims to eligible persons (see §334.310 of this title (relating to Requirements for Eligibility-Interim Period)), the executive director makes no statement or admission that the payments are for necessary, reimbursable, or allowable costs, as those terms are defined by this Chapter, nor that the corrective action taken was not in excess of Texas Natural Resource Conservation Commission clean-up standards for effective protection of the environment, public health and safety

§334.533 Audits The executive director's staff shall conduct a sufficient number of audits of claims and payments made to assure achievements of the purposes of this Chapter. Such audits may occur prior to or after claims have been paid. Such audits shall include at a minimum an investigation into whether activities performed and/or the amounts claimed were

- (1) allowable,
- (2) technically necessary,
- (3) cost effective, and
- (4) reimbursable, as those terms are defined by this Chapter

§334.534 Notice of Overpayment

(a) If the executive director conducts an audit or investigation and concludes that reimbursement of a claim was for an amount which exceeded the necessary, allowable or reimbursable cost of corrective action, the executive director shall prepare a notice of overpayment. The notice of overpayment shall briefly summarize the

findings of the executive director and identify the amounts which were overpaid.

(b) The notice of overpayment will be delivered to the person who received money from the PSTR Fund or to persons who were paid by the person who received money from the PSTR fund

(c) Upon receipt of a notice of overpayment, the recipient shall submit a check returning the amount of overpayment plus interest, calculated at New York Prime, plus two points, dating from the date of overpayment by the Texas Natural Resource Conservation Commission (or predecessor agency), to the date of repayment to the Texas Natural Resource Conservation Commission

(d) All checks rendered to return overpayments shall be made out to "The State of Texas-Petroleum Storage Tank Remediation Fund", and mailed to the Director of the Administrative Audits and Financial Assurance Division, Audits and Program Coordination Section, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087 with the notation "LPST # _____, Application # _____, overpayment return"

§334.535 Objections to the Notice of Overpayment and Formal Petition for Hearing

(a) If the party receiving the notice of overpayment disputes any portion of the amount to be repaid to the Commission, he or she must, within 30 days of receipt of the notice of overpayment, file a petition for hearing with the chief clerk in the manner prescribed generally by this title for filing petitions with the commission and shall serve a copy of the petition on the executive director

(b) The petition shall assert which funds the party is entitled to retain, and why such funds represent claims for allowable, necessary, cost effective, and/or reimbursable amounts or activities

(c) If a person does not object to a notice of overpayment, in whole or in part, as prescribed by this section, then all objections to the notice are waived

(d) Any amount not specifically disputed in accordance with this section must be returned within 30 days of receipt of the Notice of Overpayment

§334.536 Hearing by the Commission Following receipt of a petition, the commission shall conduct a hearing on the petition. The proceedings shall be governed by the rules of the commission

§334.537 Failure to Return Overpayment or Cooperate with Audit or Investigation

(a) If the overpayment has not been returned to the commission, or objected to by the recipient, in accordance with the requirements of this subchapter, the executive director shall file a petition seeking an order from the commission to compel payment

(b) If, upon hearing, the commission issues an order compelling return of overpayment in any amount, the person found responsible for returning overpayment may also be required to reimburse the commission for all hearing costs, including the costs of preparation

(c) All commission orders issued pursuant to this subchapter shall be enforceable in the same manner as any order issued pursuant to the Texas Water Code, Chapter 26, including administrative penalties of up to \$10,000 per day of violation

(d) The executive director may seek an order from the commission to compel cooperation with an audit or investigation at any time

§334.538 *Administrative Penalties and Other Actions* Nothing in this subchapter precludes the commission from issuing orders, assessing administrative penalties, or taking any other action permitted by law against any person for violation of the Texas Water Code, commission rules, or orders of the commission

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 January 19, 1994

TRD-9434890 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource
Conservation
Commission

Earliest possible date of adoption February 25, 1994

For further information, please call (512) 239-6087

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**TITLE 37. PUBLIC
SAFETY AND CORREC-
TIONS**

**Part III. Texas Youth
Commission**

**Chapter 85. Admission and
Placement**

Placement Planning

• **37 TAC §85.21, §85.25**

The Texas Youth Commission (TYC) proposes amendments to §85.21 and §85.25, concerning program assignment system and minimum length of stay. The amendments

will increase the minimum length of stay for all TYC youth classified as Type B Violent Offenders to 12 months. The minimum length of stay for youth classified as chronic serious offenders is increased from six months to nine months, and the minimum length of stay for youth classified as Controlled Substance Dealers is increased from six months to nine months

John Franks, director of fiscal affairs, 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. Franks 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 to provide more safety for the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed

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

The amendments are proposed under Human Resources Code, §61.071, which provides the Texas Youth Commission with the authority to examine and make a study of each child and to establish rules governing the study

The proposed rule implements Human Resource Code, §61.034

§85.21 *Program Assignment System*

(a) (No change)

(b) Rules

(1)-(2) (No change)

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

(A)-(C) (No change)

[(D) A type B violent offender classified for conspiracy to commit murder, conspiracy to commit capital murder, solicitation of murder, or solicitation of capital murder, is assigned a minimum length of stay of 12 months and if 13 years or older, with any risk level, is assigned to a program of maximum or high restriction.]

[(E) A type B violent offender classified for conspiracy to commit murder, conspiracy to commit capital murder, solicitation of murder, or solicitation of capital murder, is assigned a minimum

length of stay of 12 months and if younger than 13 years, with any risk level, is assigned to a program of high restriction.]

[(F)] A type B violent offender is assigned a minimum length of stay of **twelve** [nine] months, and if 13 years or older, with any risk level, is assigned to a program of maximum or high restriction.

[(G)] A type B violent offender is assigned a minimum length of stay of **twelve** [nine] months and if younger than 13 years, with any risk level, is assigned to a program of medium restriction

[(H)] A chronic serious offender is assigned a minimum length of stay of **nine** [six] months and if 13 years or older, with any risk level, is assigned to a program of high restriction

[(I)] A chronic serious offender is assigned a minimum length of stay of **nine** [six] months and if younger than 13 years, with any risk level, is assigned to a program of medium restriction

[(J)] A controlled substances dealer is assigned a minimum length of stay of **nine** [six] months and if 13 years or older, with any risk level, is assigned to a program of high restriction

[(K)] A controlled substances dealer is assigned a minimum length of stay of **nine** [six] months and if younger than 13 years, with any risk level, is assigned to a program of medium restriction

[(L)] A firearms offender is assigned a minimum length of stay of six months, and if 13 years or older, with any risk level, is assigned to a program of high restriction

[(M)] A firearms offender is assigned a minimum length of stay of six months, and if younger than 13 years, with any risk level, is assigned to a program of medium restriction

[(N)] A general offender is assigned a minimum length of stay of six months, and if 13 years or older, with a high risk level, is assigned to a program of high restriction

[(O)] A general offender is assigned a minimum length of stay of six months, and if 13 years or older, with a low or medium risk level, is assigned to a program of medium restriction

(N)(P)] A general offender is assigned a minimum length of stay of six months, and if younger than 13 years, with any risk level, is assigned to a program of medium restriction.

(O)(Q)] A violator of CINS probation is not assigned a minimum length of stay, and regardless of age, with high or medium risk level, is assigned to a program of medium restriction.

(P)(R)] A violator of CINS probation is not assigned a minimum length of stay and regardless of age, with low risk level, is assigned to a program of minimum restriction.

(4)-(6) (No change)

§85.25 *Minimum Length of Stay*

(a) (No change)

(b) Rules

(1) Minimum Length of Stay.

(A)-(B) (No change)

(C) Type B violent offenders serve at least 12 months in a [if classified for conspiracy to commit murder or conspiracy to commit capital murder, solicitation of murder, or solicitation of capital murder, and serve at least nine months for any other designated offense Youth are assigned to] medium, high or maximum restriction program, minus any credited time following adjudication for the classifying offense.

(D) Chronic serious offenders serve at least nine [six] months in a medium or high restriction program.

(E) Controlled substances dealers serve at least nine [six] months in a medium or high restriction program.

(F) -(I) (No change)

(2)-(3) (No change)

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

Issued in Austin, Texas, on January 12, 1994

TRD-9434582

Steven Robinson
Executive Director
Texas Youth Commission

Earliest possible date of adoption: January 25, 1994

For further information, please call (512) 483-5244

◆ ◆ ◆
TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 12. Special Nutrition Programs

Child and Adult Care Food Program

• **40 TAC §12.6, §12.23**

The Texas Department of Human Services (DHS) proposes amendments to §12.6 and §12.23, concerning prohibitions against the recruitment of day care home providers participating in the Child and Adult Care Food Program (CACFP), in its Special Nutrition Programs chapter. The purpose of the amendments is to prohibit sponsors from recruiting or contracting with a day home participating in the CACFP prior to June 1 of the year preceding the fiscal year in which the agreement becomes effective. The amendments enhance the ability of day care home providers to exercise their option to transfer to a new sponsor at the beginning of each fiscal year without requesting prior DHS approval, and maximize the use of CACFP funds for program administrative functions other than recruitment of day care home providers from approved sponsors.

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

Mr. Raiford 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 improved program efficiency and increased program integrity. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Keith N. Churchill at (512) 467-5837 in DHS's Special Nutrition Programs. Written comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-352, Texas Department of Human Services W-402, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs. The amendments implement the Human Resources Code, §§22.001-22.024 and §§33.001-33.024.

§12.6. *Agreement.*

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

(f) Sponsoring organizations may not enter into a sponsorship agreement with day care home providers currently participating in the CACFP prior to June 1 of the fiscal year preceding the fiscal year for which the new agreement will be effective. General Exception: With prior DHS approval, day care home providers may enter into an agreement to transfer from one sponsoring organization to another at any time during the fiscal year. [Day home providers may not transfer from one sponsoring organization to another during any fiscal year without prior DHS approval.] DHS grants approval only if a day care home provider submits to DHS a request for transfer explaining a good cause justification. Day home providers may not participate with more than one sponsoring organization in the same month.

(g) (No change)

§12.23. *Overpayment.*

(a)-(b) (No change)

(c) Day care home sponsoring organizations may not use Child Care Food Program funds to recruit day care home providers already participating in the program with an [another] approved sponsoring organization, including their own, prior to June 1 of the fiscal year preceding the fiscal year for which the new agreement will be effective.

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 January 14, 1994

TRD-9434841

Nancy Murphy
Section Manager, Policy
and Document Support
Texas Department of
Human Services

Proposed date of adoption: April 1, 1994

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

1994 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the January-December 1994 issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. No issues will be published on March 11, July 22, November 11, and November 29. An asterisk beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
1 Tuesday, January 4	Wednesday, December 29	Thursday, December 30
2 Friday, January 7	Monday, January 3	Tuesday, January 4
3 Tuesday, January 11	Wednesday, January 5	Thursday, January 6
4 Friday, January 14	Monday, January 10	Tuesday, January 11
5 Tuesday, January 18	Wednesday, January 12	Thursday, January 13
Friday, January 21	1993 ANNUAL INDEX	
6 Tuesday, January 25	Wednesday, January 19	Thursday, January 20
7 Friday, January 28	Monday, January 24	Tuesday, January 25
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9 Friday, February 4	Monday, January 31	Tuesday, February 1
10 Tuesday, February 8	Wednesday, February 2	Thursday, February 3
11 Friday, February 11	Monday, February 7	Tuesday, February 8
12 Tuesday, February 15	Wednesday, February 9	Thursday, February 10
13 Friday, February 18	Monday, February 14	Tuesday, February 15
14 Tuesday, February 22	Wednesday, February 16	Thursday, February 17
15 *Friday, February 25	Friday, February 18	Tuesday, February 22
16 Tuesday, March 1	Wednesday, February 23	Thursday, February 24
17 Friday, March 4	Monday, February 28	Tuesday, March 1
18 Tuesday, March 8	Wednesday, March 2	Thursday, March 3
Friday, March 11	NO ISSUE PUBLISHED	
19 Tuesday, March 15	Wednesday, March 9	Thursday, March 10
20 Friday, March 18	Monday, March 14	Tuesday, March 15
21 Tuesday, March 23	Wednesday, March 16	Thursday, March 17
22 Friday, March 25	Monday, March 21	Tuesday, March 22
23 Tuesday, March 29	Wednesday, March 23	Thursday, March 24
24 Friday, April 1	Monday, March 28	Tuesday, March 29
25 Tuesday, April 5	Wednesday, March 30	Thursday, March 31
26 Friday, April 8	Monday, April 4	Tuesday, April 5
27 Tuesday, April 12	Wednesday, April 6	Thursday, April 7
Friday, April 15	FIRST QUARTERLY INDEX	
28 Tuesday, April 19	Wednesday, April 13	Thursday, April 14

29 Friday, April 22	Monday, April 18	Tuesday, April 19
30 Tuesday, April 26	Wednesday, April 20	Thursday, April 21
31 Friday, April 29	Monday, April 25	Tuesday, April 26
32 Tuesday, May 3	Wednesday, April 27	Thursday, April 28
33 Friday, May 6	Monday, May 2	Tuesday, May 3
34 Tuesday, May 10	Wednesday, May 4	Thursday, May 5
35 Friday, May 13	Monday, May 9	Tuesday, May 10
36 Tuesday, May 18	Wednesday, May 11	Thursday, May 12
37 Friday, May 20	Monday, May 16	Tuesday, May 17
38 Tuesday, May 24	Wednesday, May 18	Thursday, May 29
39 Friday, May 27	Monday, May 23	Tuesday, May 24
40 Tuesday, May 31	Wednesday, May 25	Thursday, May 26
41 *Friday, June 3	Friday, May 27	Tuesday, May 31
42 Tuesday, June 7	Wednesday, June 1	Thursday, June 2
43 Friday, June 10	Monday, June 6	Tuesday, June 7
44 Tuesday, June 14	Wednesday, June 8	Thursday, June 9
45 Friday, June 17	Monday, June 13	Tuesday, June 14
46 Tuesday, June 21	Wednesday, June 15	Thursday, June 16
47 Friday, June 24	Monday, June 20	Tuesday, June 21
48 Tuesday, June 28	Wednesday, June 22	Thursday, June 23
49 Friday, July 1	Monday, June 27	Tuesday, June 28
50 Tuesday, July 6	Wednesday, June 29	Thursday, June 30
51 *Friday, July 8	Friday, July 1	Tuesday, July 5
Tuesday, July 12	SECOND QUARTERLY INDEX	
52 Friday, July 15	Monday, July 11	Tuesday, July 12
53 Tuesday, July 19	Wednesday, July 13	Thursday, July 14
Friday, July 22	NO ISSUE PUBLISHED	
54 Tuesday, July 26	Wednesday, July 20	Thursday, July 21
55 Friday, July 29	Monday, July 25	Tuesday, July 26
56 Tuesday, August 2	Wednesday, July 27	Thursday, July 28
57 Friday, August 5	Monday, August 1	Tuesday, August 2
58 Tuesday, August 9	Wednesday, August 3	Thursday, August 4
59 Friday, August 12	Monday, August 8	Tuesday, August 9
60 Tuesday, August 16	Wednesday, August 10	Thursday, August 11
61 Friday, August 19	Monday, August 15	Tuesday, August 16
62 Tuesday, August 23	Wednesday, August 17	Thursday, August 18
63 Friday, August 26	Monday, August 22	Tuesday, August 23
64 Tuesday, August 30	Wednesday, August 24	Thursday, August 25
65 Friday, September 2	Monday, August 29	Tuesday, August 30
66 Tuesday, September 6	Wednesday, August 31	Thursday, September 1
67 *Friday, September 9	Friday, September 2	Tuesday, September 6

68 Tuesday, September 13	Wednesday, September 7	Thursday, September 8
69 Friday, September 16	Monday, September 12	Tuesday, September 13
70 Tuesday, September 20	Wednesday, September 14	Thursday, September 15
71 Friday, September 23	Monday, September 19	Tuesday, September 20
72 Tuesday, September 27	Wednesday, September 21	Thursday, September 22
73 Friday, September 30	Monday, September 26	Tuesday, September 27
74 Tuesday, October 4	Wednesday, September 28	Thursday, September 29
75 Friday, October 7	Monday, October 3	Tuesday, October 4
Tuesday, October 11	THIRD QUARTERLY INDEX	
76 Friday, October 14	Monday, October 10	Tuesday, October 11
77 Tuesday, October 18	Wednesday, October 12	Thursday, October 13
78 Friday, October 21	Monday, October 17	Tuesday, October 18
79 Tuesday, October 25	Wednesday, October 19	Thursday, October 20
80 Friday, October 28	Monday, October 24	Tuesday, October 25
81 Tuesday, November 1	Wednesday, October 26	Thursday, October 27
82 Friday, November 4	Monday, October 31	Tuesday, November 1
83 Tuesday, November 8	Wednesday, November 2	Thursday, November 3
Friday, November 11	NO ISSUE PUBLISHED	
84 Tuesday, November 15	Wednesday, November 9	Thursday, November 10
85 Friday, November 18	Monday, November 14	Tuesday, November 15
86 Tuesday, November 22	Wednesday, November 16	Thursday, November 17
87 Friday, November 25	Monday, November 21	Tuesday, November 22
Tuesday, November 29	NO ISSUE PUBLISHED	
88 Friday, December 2	Monday, November 28	Tuesday, November 29
89 Tuesday, December 6	Wednesday, November 30	Thursday, December 1
90 Friday, December 9	Monday, December 5	Tuesday, December 6
91 Tuesday, December 13	Wednesday, December 7	Thursday, December 8
92 Friday, December 16	Monday, December 12	Tuesday, December 13
93 Tuesday, December 20	Wednesday, December 14	Thursday, December 15
94 Friday, December 23	Monday, December 19	Tuesday, December 20
95 Tuesday, December 27	Wednesday, December 21	Thursday, December 22
96 Friday, December 30	Friday, December 23	Tuesday, December 27

