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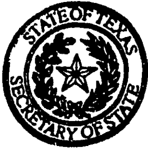

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Governor - Appointments, executive orders, and proclamations.

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 Sections - sections adopted by state agencies on an emergency basis.

Proposed Sections - sections proposed for adoption.

Withdrawn Sections - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Sections - 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 18 (1993) is cited as follows: 18 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 "18 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 18 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
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 I. 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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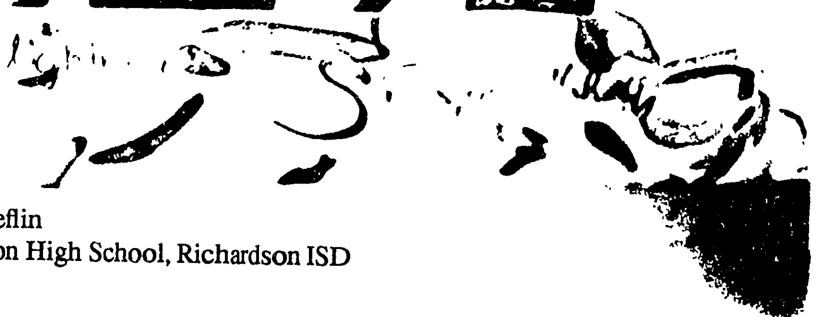

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Proposed Sections

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 any action may be 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 sections, 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 10. COMMUNITY DEVELOPMENT

Part IV. Texas Department of Housing and Community Affairs

Chapter 49. Low Income Housing Tax Credit Rules

• 10 TAC §§49.1-49.14

The Texas Department of Housing and Community Affairs proposes new §§49. 1-49.14, concerning low income rental housing tax credit rules. The new sections are proposed for adoption in final form to provide procedures for the allocation by the Department of certain low-income rental housing tax credits available under federal income tax laws to owners of qualified low-income rental housing projects.

Scott McGuire, Acting Deputy for Housing Finance and Development, 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. McGuire 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 enhancement of the state's ability to provide safe, sanitary housing for Texans through the efficient and coordinated allocation of federal income tax credit authority available to the state for administration by state housing agencies. 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 Anne O. Paddock, Acting General Counsel, P.O. Box 13941, Austin, Texas 78711-3941.

The new sections are proposed under Texas Civil Statutes, Article 4413(501), §3.02(2), which provide the Texas Department of Housing and Community Affairs with the authority to adopt rules governing the administration of the Department and its programs.

§49.1. Scope. The rules in this chapter apply to the allocation by the Texas Department of Housing and Community Affairs of certain low-income housing tax credits authorized by applicable federal income tax laws. The Internal Revenue Code of 1986, §42, as amended, provides for credits against federal income taxes for owners of qualified low-income rental housing projects. That section provides for the allocation of the available tax credit amount by state housing credit agencies. Pursuant to Executive Order AWR-91-4 (June 17, 1991), the Texas Department of Housing and Community Affairs was authorized to make housing credit allocations for the State of Texas. As required by the Code, §42(m)(1), the Department developed a qualified allocation plan which is set forth in §49.6 and §49.7 of this title (relating to Threshold Criteria; Evaluation Factors; Selection Criteria; Final Ranking; Credit Amount; Tax Exempt Bond Financed Projects; and Compliance Monitoring) such qualified allocation plan will be signed by the Governor. Therefore, the purpose of the sections in this chapter is to establish procedures for applying for and obtaining an allocation of the low-income housing tax credit, along with insuring that the proper selection criteria, priorities and preferences are followed in making such allocations. It is a goal of this Department, through these sections, to encourage diversity through broad geographic allocation of tax credits within the state. The sections are intended to promote maximum utilization of the available tax credit amount, consistent with ensuring that the tax credits are allocated to owners of projects that will serve the Department's public policy objectives and federal requirements to provide housing to persons and families of very low and low income.

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

Ad Hoc Tax Credit Committee-That committee comprised of members of the Board of Directors of the Texas Department of Housing and Community Affairs charged with the direct oversight of the low income housing tax credit program.

Agreement and election statement-An agreement between the Department, the project owner and all successors in interest to the project owner as to the aggregate housing credit allocation amount that will be allocated to the building or buildings comprising the project, and an irrevocable election by the project owner to fix the applicable credit percentage(s) for the project in the month in which the commitment is issued.

Applicable fraction-The fraction used to determine the qualified basis of the qualified low-income building, which is the smaller of the unit fraction or the floor space fraction, as defined more fully in the Code, §42(c)(1).

Applicable percentage-The percentage used to determine the amount of the low-income housing tax credit, as defined more fully in the Code, §42(b).

Application-An application in the form prescribed by the Department, including any required exhibits or other supporting materials, filed with the Department by a project owner requesting a low income housing tax credit allocation.

Application submission procedures manual-That certain manual produced by the Department which sets forth procedures, forms, and guidelines for the filing of applications for low income housing tax credits, which said manual may be amended from time to time by the Department.

Board-The board of directors of the Department.

Building in default project-A project where the building(s) is acquired from an insured depository institution in default (as defined in the Federal Deposit Insurance Act, 12 United States Code, §1813(x)) or from a receiver or conservator of such an institution.

Carryover allocation-An allocation of current year tax credit authority by the Department pursuant to the provisions of the Code, §42(h)(1)(E).

Carryover allocation document-A carryover allocation document issued by the Department to a project owner pursuant to §49.4(k) of this title (relating to Applications; Environmental Assessments; Market Study; Reservations; Notification; Commitments; Extensions; Carryover Allocations; Agreements and Elections; Extended Commitments).

Carryover allocation procedures manual-That certain manual produced by the Department which sets forth procedures, forms, and guidelines for the filing of carryover allocations for low income housing tax credits, which said manual may be amended from time to time by the Department.

Code–The Internal Revenue Code of 1986, as the same may be amended from time to time, together with any applicable regulations, rules, rulings, revenue procedures, information statements, or other official pronouncements issued thereunder by the United States Department of the Treasury or the Internal Revenue Service relating to the low-income housing tax credit program authorized by the Code, §42.

Commitment notice–A commitment notice issued by the Department to a project owner pursuant to §49.4(h) of this title.

Compliance period–With respect to a project, the period of 15 taxable years beginning with the first taxable year of the credit period with respect to the project, during which the project owner is required by the Code, §42, to maintain the project as rental property and to satisfy certain low-income occupancy requirements, as more fully defined in the Code, §42(i) (1).

Contractor–One who contracts for the construction, or rehabilitation of an entire building or project, rather than a portion of the work. The contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the said subcontractors.

Cost certification procedures manual–That certain manual produced by the Department which sets forth procedures, forms, and guidelines for the filing of requests for IRS Forms 8609 for projects placed into service under the low income housing tax credit program, which said manual may be amended from time to time by the Department.

Credit period–With respect to a building within a project, the period of 10 taxable years beginning with the taxable year the building is placed in service or, at the election of the project owner, the succeeding taxable year, as more fully defined in the Code, §42(f)(1).

Department–The Texas Department of Housing and Community Affairs, a public and official governmental Department of the State of Texas created and organized under the Texas Department of Housing and Community Affairs Act, Texas Civil Statutes, Article 4413(501).

Development team–Any individual, joint venture, partnership, corporation, cooperative, trust, or other person or entity involved in the development, construction, rehabilitation, management, and/or continuing operation of the subject property, which may include any consultant(s) hired by the applicant for the purpose of the filing of an application for low income housing tax credits with the Department.

Eligible basis–With respect to a building within a project, the building's eligible basis as defined in the Code, §42(d).

Extended low-income housing commitment agreement–An agreement between the Department, the project owner and all successors in interest to the project owner concerning the extended low-income housing use of buildings within the project as provided in the Code, §42(h)(6). This period shall commence on the first day of the compliance period and end on the date which is 30 years after said commencement date. A sample copy of is provided in the reference manual.

Handicapped person–A person having an impairment that is expected to be of long-continued and indefinite duration, is a substantial impediment to his or her ability to live independently, and is of a nature that the ability to live independently could be improved by a stable residential situation, as more fully defined in 24 Code of Federal Regulations, §841.1.

Homeless person–An individual or family that lacks a fixed, regular, and adequate nighttime residence as more fully defined in 24 Code of Federal Regulations, §841.1.

Housing credit allocation–An allocation by the Department to a project owner of a low-income housing tax credit in accordance with §49.8 of this title (relating to Housing Credit Allocations).

Housing credit allocation amount–With respect to a building within a project, the product of the applicable percentage and the qualified basis specified by the Department in making a housing credit allocation to the project owner.

HUD–The United States Department of Housing and Urban Development.

Identity of interest–An identity of interests exists if:

(A) any general or limited partner, shareholder, director, officer, employee or authorized representative of the project owner is also a general or limited partner, shareholder, director, officer, employee or authorized representative of the contractor or vice versa;

(B) the project owner (or any general or limited partner, shareholder, director, officer, employee or authorized representative of the project owner) can directly or through one or more intermediaries control or influence the decisions or policies of the contractor, including apparent control or influence over the decisions or policies, or vice versa "Apparent control or influence" means any relationship that exists between the project owner and contractor (or any general or limited partner, shareholder, director, officer, employee, or authorized representative of the project owner and contractor) by blood or marriage.

Local tax-exempt organization–A project owner which is described in the Code, §501(c)(3) or (4), and which has a scope of business operation limited to the State of Texas or the governmental unit wherein the project will be situated.

Other projects–Any project which would not be considered as either a Rural, REO, or Special Needs Project or could not qualify for an allocation out of the nonprofit set aside.

Project–A low-income rental housing project the owner of which represents to be a qualified low-income housing project within the meaning of the Code, §42(g). With regards to this definition, the project is that property which is the basis for the application for low income housing tax credits. May also be referred to as the "subject property."

Project owner–Any individual, joint venture, partnership, corporation, cooperative, trust, or other person or entity that owns a project or expects to acquire a project pursuant to a purchase contract satisfactory to the Department.

Qualified allocation plan–An allocation plan which sets forth the selection criteria, priorities, and preferences provided in the Code, §42(m)(l).

Qualified basis–With respect to a building within a project, the building's eligible basis multiplied by the applicable fraction, as more fully defined in the Code, §42(c).

Qualified nonprofit organization–An organization that is described in the Code, §501(c)(3) or (4), that is exempt from federal income taxation under the Code, §501(a), and includes as one of its exempt purposes the fostering of low-income housing, as more fully defined in the Code, §42(h)(5)(C), and Temporary Treasury Regulation, §1.42-1T(c)(5)(ii).

Qualified nonprofit project–A project with respect to which a qualified nonprofit organization is to own an interest in the project (directly or through a partnership) and materially participate (within the meaning of the Code, §469(h)) in the development and operation of the project throughout the compliance period.

REO projects–Any property that is owned or that is being sold by an insured depository institution in default, or by a receiver or conservator of such an institution, or is a property held by Fannie Mae, Freddie Mac, federally chartered banks, or by a federally approved mortgage company or savings and loan association.

Reference manual–That certain manual, and any amendments thereto, produced by the Department which sets forth reference material pertaining to the low income housing tax credit program.

Rehabilitation expenditure–Amounts incurred in connection with the rehabilitation of a project the owner of which represents to be "rehabilitation expenditures" within the meaning of the Code, §42(e).

Reservation notice–A reservation notice issued by the Department to a project owner pursuant to §49.4(f) of this title.

Rules–The Department's low income housing tax credit rules, §§49.1-49.14

of this chapter (relating to Low Income Housing Tax Credit Rules).

Rural project-A project located either outside the boundaries of any Metropolitan Statistical Area (MSA) or Primary Metropolitan Statistical Area (PMSA) or within the boundaries of an MSA or a PMSA designated by the Farmers Home Administration (FmHA) as an eligible area for purposes of FmHA housing assistance programs.

Selection criteria-The criteria used to determine housing priorities of the Department which are appropriate to conditions in the state.

Special housing project-Any project developed specifically for special housing need groups that include mental health/mental retardation projects, group homes, housing for the homeless, transitional housing, and congregate care facilities.

State housing credit ceiling-The limitation imposed by the Code, §42(h), on the aggregate amount of housing credit allocations that may be made by the Department during any calendar year, as determined from time to time by the Department in accordance with the Code, §42(h).

Sustaining occupancy-The figure at which occupancy income is equal to all expenses and debt service.

Threshold criteria-Criteria used to determine the application's qualifications which are the minimum level of acceptability for consideration under the low income housing tax credit program.

Total housing development cost-The total of all costs incurred by the project owner in acquiring, constructing, rehabilitating, and financing a project, as determined by the Department based on the information contained in the project owner's application.

Unit-Any self contained component for occupancy within a project which contains, at a minimum, kitchen facilities, bathroom facilities, and utilities.

§49.3. State Housing Credit Ceiling.

(a) The Department shall determine the state housing credit ceiling for each calendar year as provided in the Code, §42(h)(3)(C).

(b) The Department shall publish each such determination in the Texas Register as soon as may be practicable after the making of such determination.

(c) The aggregate amount of housing credit allocations made by the Department during any calendar year shall not exceed the state housing credit ceiling for such year as provided in the Code.

§49.4. Applications; Environmental Assessments; Market Study; Reservations; Notification; Commitments; Extensions; Carryover Allocations; Agreements and Elections; Extended Commitments.

(a) Any project owner requesting a housing credit allocation for a project must submit an application to the Department which application shall be executed by the project owner, and said application is hereby incorporated as part of the rules by reference. This application shall contain full and complete information as to each item specified in the application submission procedures manual, as amended. When any item is marked "not applicable," the project owner shall explain in detail why such item is "not applicable." The Department reserves the right to request the project owner to provide any additional information it deems relevant as an addendum to the application.

(b) As part of the complete application, when the project is either new construction or the rehabilitation of an existing project, the applicant must submit a Phase I Environmental Assessment of the subject property. This environmental assessment should include, but is not limited to, a review of records, interviews with people knowledgeable about the property, an inspection of the property, the building(s), and the fence line, and adjoining properties. If the report establishes that environmental hazards currently exist on the property, then the project owner must provide either a plan for the abatement of the hazard; or an operation and maintenance plan for the control of the hazard. The environmental assessment shall be conducted by an individual who has been properly certified to perform this analysis and be prepared at the expense of the project owner. For projects which have had a Phase II Environmental Assessment performed and hazards have been identified, the project owner is required to maintain a copy of the Phase II Assessment available on site for review by all persons which either occupy the property or are applying for tenancy. Properties financed through FmHA or properties with four units or less will not be required to supply this information; however, the project owners are hereby notified that it is their responsibility to ensure that the property is maintained in compliance with all state and federal environmental hazard requirements.

(c) The market study requirement in the application shall comply with paragraphs (1), (2), (3), and (4) of this subsection as applicable.

(1) A market study prepared by a qualified market appraiser, who is independent of either the development team or project owner, is required as part of the complete application when the project is either new construction or the rehabilitation of an existing project which is, at the time of application, below 70% occupancy. The market study shall be prepared at the expense of the project owner and which shall include, at a minimum, the following information:

(A) an evaluation of the existing occupancy rates in comparable multifamily rental residential developments in the same market area as the proposed project;

(B) project absorption rates for at least one year from the date of the study for units in comparable multifamily rental residential developments in the same market area as the project. Further, provide a projection of the time necessary for the project to achieve sustaining occupancy;

(C) an evaluation of the current physical condition of existing low income rental housing units in the market area;

(D) an evaluation of the need for affordable housing within the project market area;

(E) an evaluation of the appropriateness of the unit size, in terms of number of bedrooms, for the low income housing market area;

(F) an evaluation of the appropriateness of the location and per square foot cost of the project for the low income target population;

(G) a summary of qualifications for the individuals who participated in the development of the market appraisal;

(H) a statement from the market appraiser concerning any identity of interest in the development of the property;

(I) such other matters as the Department, in its sole discretion, may determine to be relevant to the Department's evaluation of the need for the project and the allocation of the requested housing credit allocation amount; and

(2) The Department reserves the right to require that the project owner obtain a market study even if current occupancy is above 70%.

(3) A written certification is required, from the market appraiser who prepared the market study required under the preceding paragraph, stating that:

(A) the projected total housing development costs of the proposed project are/are not reasonable;

(B) the proposed project, in light of vacancy and absorption rates for the applicable market area, is/is not likely to result in a vacancy rate for comparable units within such market area (i.e., standard, well-maintained units within such market area that are reserved for occupancy by low and very low income tenants) that is unreasonable for such market area;

(C) the projected initial rents for the project are/are not reasonably affordable by low and very low income tenants and within the rental range for the comparable projects within the market area; and

(D) project reserves are/are not adequate to cover operating shortfalls until project achieves sustaining occupancy.

(4) If a project owner requests a waiver of the required market study, the project owner shall provide the Department a separate written document, with any support information attached thereto, setting forth the exact reasons why such waiver is requested. The Department, at the pleasure of the board, may, in its discretion, waive any of the provisions of paragraph (1) of this subsection. Those properties which are located within either a qualified census tract or difficult development area as defined by the Secretary of Housing and Urban Development or in one of the twenty poorest counties, as set forth in the Department's reference manual, may submit, in lieu of a market study, letters of support from local community officials which clearly expresses the need for additional affordable rental housing in the project's market area.

(d) A project owner may file an application at any time during the application acceptance cycle(s), as published from time to time by the Department in the *Texas Register*.

(e) The Department reserves the right to reject any application that is incomplete or that is not filed in accordance with the application submission procedures manual as amended.

(f) Within a reasonable amount of time after evaluation, ranking, and underwriting of an application, as provided in §49. 6 of this title (relating to Threshold Criteria; Evaluation Factors; Selection Criteria; Final Ranking; Credit Amount; Tax Exempt Bond Financed Projects) the Department shall respond to the project owner in accordance with paragraph (1) or (2) of this subsection, as applicable.

(1) Unless the entire state housing credit ceiling for the applicable calendar year has been reserved, committed or allocated in accordance with this chapter, applications will be eligible for an evaluation by an Underwriter as provided in §49.6(b) of this title, if the required threshold criteria have been achieved and all necessary application documents have been received in accordance with the application submission procedures manual as amended. Applications which receive the highest number of selection criteria points, in each set-aside category, during any published application cycle, shall be eligible for a reservation notice. The reservation notice:

(A) shall confirm that the Department has received the project owner's application and has found the application to be in satisfactory form and to contain either all required information or shall clearly specify any remaining conditions which are in need of being resolved prior to the presentation of the application to the Ad Hoc Tax Credit Committee; and

(B) shall reserve to the project owner the housing credit allocation amount specified therein, subject to the conditions set forth in §49.8(a) of this title (relating to Housing Credit Allocations) and compliance by the project owner with the remaining requirements of this chapter, and subject further to approval by the board of the project owner's application. The reservation notice shall expire on the date specified therein.

(2) If the entire state housing credit ceiling for the applicable calendar year has then been reserved, committed or allocated in accordance with this chapter, the Department shall place all remaining applications on a waiting list and shall issue to the project owner a written notice of that action. If at any time prior to the last business day of the applicable calendar year, one or more reservation notices, commitment notices or carryover allocation documents expire and a sufficient amount of the state housing credit ceiling becomes available, then the Department shall issue a reservation notice to the project owner in the manner and with the effect described in paragraph (1) of this subsection.

(g) On the date an application is received, the Department shall notify in writing the mayor or other equivalent chief executive officer if the project or a part thereof is located in a municipality, otherwise the Department shall notify the chief executive officer of the county in which the project or a part thereof is located, to advise such individual that the project or a part thereof will be located in his/her jurisdiction and request any comments which such individual may have concerning such project. Such comments shall be part of the documents required to be reviewed by the board under this subsection if received by the Department within 30 days after same is mailed to said individual; otherwise, if comments are received by the Department after 30 days, same may be reviewed at the discretion of the board under this subsection.

(h) As soon as may be practicable following issuance of a reservation notice the Department shall place the application on the agenda for review by the board at the next meeting of the board at which applications will be considered. Within 10 calendar days after the board reviews the application, the Department shall act upon the application in accordance with either paragraph (1) or (2) of this subsection, as applicable.

(1) If the board approves the application, the Department shall issue a commitment notice to the project owner which commitment notice:

(A) shall confirm that the Department has approved the application; and

(B) shall state the Department's commitment to make a housing credit allocation to the project owner in a specified amount, subject to the conditions set forth in §49.8(a) of this title, and compliance by the project owner with the remaining requirements of this chapter. This commitment notice shall expire on the date specified therein;

(C) commitment notice shall specify a 15-day time frame, from the date of the commitment, for any final public comments either in support or opposition to the project. Said notice shall be made in writing to the mayor or other equivalent chief executive officer of the municipality in which the property is located. If such subsequent public comments warrant, the Department may, in its sole discretion, resubmit the application to the board of directors for further consideration or action at its next scheduled meeting.

(2) If the board disapproves or fails to act upon the application, the Department shall issue to the project owner a written notice so stating.

(i) A project owner may request the Department to extend the expiration date of a commitment notice which has not expired, by submitting a written request for such action, accompanied by the extension fee specified in §49.11 of this title (relating to Program Fees). The request shall specify the term of the extension requested and the reason or reasons why the project owner has been unable to satisfy the requirements of this chapter prior to the original expiration date. The Department may consider and grant such extension requests in its sole discretion; provided, however, that in no event shall the expiration date of a commitment notice be extended beyond the last

business day of the applicable calendar year.

(j) A project owner, who has been issued a commitment notice which has not expired, may request the Department to execute an agreement and election statement which has been duly dated and signed by the project owner and received by the Department prior to the end of the month in which said agreement and election statement was so dated and signed by the project owner, provided, however, that the commitment fee specified in §49.11 of this title, has been received by the Department. Upon receipt thereof, the Department shall, if the project owner is in full compliance with the rules in this chapter and the commitment notice, execute such agreement and return a copy to the project owner.

(k) Prior to the expiration of the commitment notice a project owner who has been issued a commitment notice may request the Department to execute a carryover allocation document which has been properly completed, signed, dated, and notarized by the project owner and delivered to the Department along with any and all other documentation prescribed in the carryover allocation procedures manual, as amended. The commitment fee as specified in §49.11 of this title must be received by the Department prior to the processing of any carryover allocation documentation.

(l) Prior to the issuance of a housing credit allocation to a project owner, the project owner shall date, sign and acknowledge before a notary an extended low-income housing commitment agreement prepared by the Department. The property owner shall then record said extended low-income housing commitment agreement in the real property records of the county where the project is located and return the original document, duly certified as to recordation by the appropriate county official, to the Department. Receipt of such certified recorded original by the Department is required prior to issuance of the housing credit allocation.

§49.5. Set-Asides, Reservations, and Preferences.

(a) Ten percent of the state housing credit ceiling for each calendar year shall be set aside exclusively for qualified non-profit projects.

(b) Ninety percent of the state housing credit ceiling for each calendar year shall be available for all projects (including qualified nonprofit projects), subject to the preferences set forth below:

Rural Projects	10%
REO Projects	25%
Special Housing Projects	1%
Other Projects	54%

(c) The Department reserves the right to drop any and all set-aside requirements, as provided for in this section during the final application cycle. The Department will provide information concerning the appropriate set-aside for each application cycle in the *Texas Register*.

(d) No reservation notice or commitment notice shall be issued with respect to any project, of which the total development cost, as determined by the Department, or the acquisition, construction or rehabilitation cost (excluding financing and other soft costs) exceed the square foot limitations established from time to time by the board. The Department reserves the right to reduce the applicant's estimate of developers fees in instances where these fees are considered excessive, as are more specifically provided for within the application submission procedures manual, as amended. In the instance where an identity of interest exists between the project owner and the contractor, and both parties are claiming developers fees and contractors overhead and profit, the Department reserves the right to reduce the total fees estimated to a level that it deems appropriate. Further, the Department reserves the right to deny or reduce the amount of low income housing tax credits on any portion of costs which it deems unsupportable in order to make the project feasible. The Department also reserves the right to require bids in support of the costs proposed by any applicant.

(e) The Department reserves the right to adopt and implement such other set-asides, reservations, and preferences as the Department may deem appropriate in connection with the making of housing credit allocations.

§49.6. Threshold Criteria; Evaluation Factors; Selection Criteria; Final Ranking; Credit Amount; Tax Exempt Bond Financed Projects.

(a) Threshold Criteria. To be considered for a review by an underwriter, a project must first demonstrate that it meets the threshold criteria set forth below and in the application submission procedures manual, as amended.

(1) Certification from the project owner that the application that has been filed with the Department is in conformance with the provisions of both the Code, §42, and the Rules of the Department.

(2) Detailed narrative from the project owner which discusses at a minimum the following topics:

(A) describe in detail the reasons why the applicant's request for low income housing tax credits is necessary to provide the planned affordable housing;

(B) describe in detail the property's special features, programs or services of which the Department should be aware in considering the application against all others received;

(C) describe in detail the construction costs associated with the proposed new construction or rehabilitation, in accordance with the application submission procedures manual.

(3) Readiness to proceed as documented by:

(A) evidence of site control in the form of a deed, contract for sale, or option to purchase agreement;

(B) evidence of current zoning from the appropriate municipal authority. If the property is currently a nonconforming use, as per zoning regulations, then the project owner must provide the following information from said municipal authority:

(i) nature of nonconformance;

(ii) applicable destruction threshold; and

(iii) owners rights to reconstruct in event of damage;

(C) evidence of all necessary utilities extended to the site; and

(D) evidence of project financing.

(4) A statement signed by the project owner stating that they intend to enter into an extended low-income housing commitment (Declaration of Land Use Restrictive Covenants) with the Department as provided in the Code, §42(h)(6) of prior to the allocation of tax credits to the project.

(5) A statement signed by the first lienholder stating that:

(A) lienholder is aware of the Declaration of Land Use Restrictive Covenants and accepts the terms and provisions, contained therein, as a restrictive covenant on the property;

(B) lienholder agrees to enter into a subordination agreement, a sample of which is provided within the reference manual as amended.

(6) Non-profit projects which are requesting tax credits from the nonprofit set aside, must supply the following:

(A) certification from the applicant that they are a qualified non-profit organization pursuant to the Code, §42(h)(5)(C);

(B) a certification that the nonprofit will own an interest in the project (directly or through a partnership) and materially participate (within the meaning of the Code, §469(h)) in the development and operation of the project throughout the compliance period;

(C) IRS determination letter as to non-profit status;

(D) a copy of the charter, articles of incorporation or any other document which established the non-profit organization. A current listing of all directors and officers of the non-profit organization is also required.

(7) Project owner must provide current financial statements of any and all project owners and/or its general partners, in accordance with the application submission procedures manual.

(8) Original copy of the completed and executed Credit Report Authorization Form from any and all project owners and/or its general partners, in accordance with the application submission procedures manual.

(9) A copy of the current project rent roll, prepared in accordance with the application submission procedures manual.

(10) Historical operating statements of the subject property or other such documentation in support for the proforma estimates provided by the applicant.

(11) Market study prepared in accordance with the provisions contained within §49.4(c) of this title (relating to Applications; Environmental Assessments; Market Study; Reservations; Notification; Commitments; Extensions; Carryover Allocations; Agreements and Elections; Extended Commitments).

(12) Environmental assessment prepared in accordance with the provisions contained within §49.4(b) of this title.

(13) Only those applications meeting threshold criteria will be further considered. Project owners whose applications do not meet threshold criteria will be so informed in writing.

(b) Evaluation factors. The Department will consider applications for a housing credit allocation using the following evaluation and point system, which is further described in the application submission procedures manual.

(1) Applications will be evaluated against the threshold criteria as they are received in the Department during any application cycle. Applications not meeting the threshold criteria may be cancelled and returned to the applicant without further review.

(2) The applications will then be ranked according to the selection criteria set forth in the application submission procedures manual.

(3) Applications receiving the highest number of points, in each set-aside category, during any published application acceptance cycle, if a sufficient amount of state housing credit ceiling is available, will be eligible for an evaluation by an Underwriter. If such evaluation warrants, a reservation notice will be issued as provided in §49.4(e) of this title, and the application will be scheduled for review by Ad Hoc Tax Credit Committee and a recommendation by such Committee to the Board concerning the issuance of a commitment notice at the next scheduled Board meeting. The Department reserves the right to have an outside third party perform the underwriting evaluation as it deems necessary in its sole determination. The expense of any third party underwriting evaluation shall be paid by the applicant prior to the commencement of the aforementioned evaluation.

(4) Applications not scoring a sufficient number of points to be considered in a given application cycle, and therefore not receiving a reservation notice, will not be rejected, but, provided that a sufficient amount of state housing credit is available, will be held in reserve until such time as all other applications which scored more points have been considered.

(5) Applications not receiving a reservation notice may be withdrawn, and reapply to the Department if so desired.

(c) Selection criteria. The selection criteria, and subcategories thereof, are as follows and are further described in the application submission procedures manual.

(1) Project location:

(A) project is located in a difficult development area or qualified census tract as defined by the Secretary of HUD and qualifies for the 130% credit allowance, as per the Code, §42(d)(5)(C);

(B) project contributes significantly to the economic development of the community by supporting neighborhood conservation in a targeted Community Development Block Grant area;

(C) project is a rural project as such term is defined in the Rules;

(D) project is located within one of the 20 poorest counties in Texas as listed by the Department in the reference manual as amended;

(E) project provides desegregated housing opportunities for low income occupancy outside of qualified census tracts, difficult development areas, locally targeted areas, etc.;

(F) project is located within a designated state or federal enterprise zone;

(G) project represents new construction in an area in which there is a measurable need.

(2) Housing Needs Characteristics:

(A) project is located in a county in which more than 20% of the rental units are occupied by tenants at or below the poverty level as defined in the Department's County Data Elements Guide located within the reference manual as amended;

(B) project is located in a county in which more than 25% of the rental units have one or more problems as defined in the Department's County Data Elements Guide located within the reference manual as amended;

(C) project is located in counties of the state where more than 30% of the occupied housing units are renter occupied as defined in the Department's County Data Elements Guide located within the reference manual as amended.

(3) Project Characteristics:

(A) project is a federally assisted building in danger of having the mortgage assigned to HUD, Farmers Home Administration, or a federal mortgage insurance fund;

(B) project is a low-income building eligible for prepayment of mortgage as provided in the Code, §42(d)(6)(C);

(C) property is owned by an insured depository institution in default, or by a receiver or conservator of such an institution, or is an REO property held by Fannie Mae, FHLMC, federally chartered banks or by a federally approved mortgage company or savings and loan association;

(D) project is housing that provides supportive services which may include, but are not limited to, meals, elderly or child day care, and transportation services;

(E) project composition offers a unit mix which is conducive to family housing;

(F) project design promotes energy conservation;

(G) project retains federal, state, and/or local subsidies;

(H) project provides scattered site, low density housing (less than 10 units per acre);

(I) evidence of low income housing tax credit syndication on the subject of property.

(4) Sponsor ("Project Owner") Characteristics:

(A) project owner has a track record in successfully developing and operating affordable rental housing under a program designated by HUD, FmHA, RTC's Affordable Housing Disposition Program, the Department's HOME and/or Housing Trust Fund Programs, the Low Income Housing Tax Credit Program, or any other verifiable source;

(B) the management agent designated by the project owner has successful previous experience in continuing management of affordable rental housing;

(C) project owner has entered into a management agreement that specifies how the project will be managed, the term of the agreement, parties to the agreement, compensation for services;

(D) project owner offers a right of first refusal to tenants of the property to purchase the property after the end of the compliance period.

(5) Participation of local tax exempt organizations:

(A) project has a community based board, the majority of whose members live in the projects community, or the project is sponsored and developed by a Community Development Corporation;

(B) the applicant has an agreement between a local tax-exempt organization and private for profit developer for the operation, management, development, and/or special supportive services.

(6) Tenant Populations with Special Housing Needs:

(A) project is located in an area in which more than 14% of the population is over 65 years of age as indicated in the Department's County Data Elements Guide which is provided within the reference manual. The project must be designed and equipped for elderly tenants. This selection criteria only applies to senior rental housing applications;

(B) the project provides units which are accessible to persons with disabilities. The project owner understands that these units must meet American National Standards Institute's building standards and Americans with Disabilities Act;

(C) project is a rural project which is intended to assist in the housing for agricultural workers;

(D) property provides transitional housing for homeless persons, on a non-transient basis, with supportive services designed to assist tenants in locating and retaining permanent housing.

(7) Public Housing Waiting Lists:

(A) the project owner has received a letter from the appropriate authority citing the need for additional affordable housing units within its jurisdiction as evidenced by existing housing waiting lists;

(B) project owner has committed in writing to the local public housing authority of availability of units and agrees it will consider those households on the public housing authority waiting list for the occupancy of such units Project owner has prepared a marketing plan with details and provided a copy to the local public housing authority and the Department.

(d) Final Ranking. The Department will evaluate projects according to the strength of the project to meet the selection criteria. The results of the evaluation will be determined by the Department in its sole discretion and will not be subject to challenge or contest by any applicant. After evaluating and scoring all applications received, the Department will rank such applications according to the number of points received. Among those applications scoring the highest number of points, in each set-aside category, during any published application cycle, the Department will give preference in allocating credit dollar amounts to projects:

(1) which serve the lowest income tenants; and

(2) which obligate the project owner (as evidenced by the Declaration of Land Use Restrictive Covenant Document) to serve qualified tenants for the longest period of time.

(e) In reaching the final ranking of an application, the Department will take into consideration the project owner's history of placing into service projects which have been awarded tax credits. The Department reserves the right to deduct points from the final score pursuant to the application submission procedures manual.

(f) Credit Amount. The Department shall issue tax credits only in the amount needed for the financial feasibility and viability of a project throughout the credit period. The issuance of tax credits or the determination of any allocation amount in no way represents or purports to warrant the feasibility or viability of the project by the Department.

(g) Tax Exempt Bond Financed Projects. Tax exempt bond financed projects which will not receive tax credits through the state allocation authority are

also subject to the requirements for the allocation of a housing credit dollar amount under the Qualified Allocation Plan.

§49.7. Compliance Monitoring.

(a) The Code, §42(m) (1)(B)(iii), requires each State Allocating Agency to include in its "qualified allocation plan" a procedure that the agency (or an agent or other private contractor of such agency) will follow in monitoring for noncompliance with the provisions of the Code, §42, and in notifying the Internal Revenue Service (the Service) of such noncompliance which such agency becomes aware of. This procedure does not address forms and other records that may be required by the Service on examination or audit.

(b) In addition, the Department will monitor additional covenants made by the project owner in the extended low-income housing commitment agreement.

(c) The owner of a low-income housing project must keep records for each qualified low-income building in the project showing:

(1) the total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit);

(2) the percentage of residential rental units in the building that are low income units;

(3) the rent charged on each residential rental unit in the building (including any utility allowances);

(4) the number of occupants in each low-income unit;

(5) the low-income unit vacancies in the building and information that shows when, and to whom, the next available units were rented;

(6) the annual income certification of each low-income tenant per unit, in the form designated by the Department in the Compliance Reference Guide, as may be amended;

(7) documentation to support each low-income tenant's income certification, consistent with the verification procedures of the United States Housing Act of 1937, §8 (§8). In the case of a tenant receiving housing assistance payments under §8, the documentation requirement is satisfied if the public housing authority provides a statement to the project owner declaring that the tenants income does not exceed the applicable income limit under the Code, §42(g), as described in the Compliance Reference Guide;

(8) the eligible basis and qualified basis of the building at the end of the first year of the credit period;

(9) the character and use of the nonresidential portion of the building included in the building's eligible basis under the Code, §42(d), (e.g. tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the project);

(10) additional information as required by the Department.

(d) Record retention provision. The owner of a low-income housing project is required to retain the records described in subsection (c) of this section for at least six years after the due date (with extensions) for filing the federal income tax return for that year; however, the records for the first year of the tax credit period must be retained for at least six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building.

(e) Certification and Review.

(1) Certification. Annually, at the time and in the form designated by the Department, the owner of a low-income housing project must certify that for the preceding 12-month period:

(A) the project met the minimum set aside test which was applicable to the project;

(B) there was no change in the applicable fraction of any building in the project, or that there was a change, and a description of the change;

(C) the owner has received an annual income certification from each low-income tenant and documentation to support that certification;

(D) each low-income unit in the project was rent-restricted under the Code, §42(g)(2);

(E) all units in the project were for use by the general public and used on a non-transient basis (except for transitional housing for the homeless provided under the Code, §42(i)(3)(B) (iii));

(F) each building in the project was suitable for occupancy, taking into account local health, safety, and building codes;

(G) either there was no change in the eligible basis (as defined in the Code, §42(d)) of any building in the project, or that there has been a change, and the nature of the change;

(H) all tenant facilities included in the eligible basis under the Code, §42(d) of any building in the project, such as swimming pools, other recreational facilities, and parking areas, were provided on a comparable basis without charge to all tenants in the building;

(I) if a low-income unit in the project became vacant during the year, reasonable attempts were, or are being, made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were, or will be, rented to tenants not having a qualifying income;

(J) if the income of tenants of a low-income unit in the project increased above the limit allowed in the Code, §42(g)(2)(D)(ii), the next available unit of comparable or smaller size in the project was, or will be, rented to tenants having a qualifying income; and

(K) an extended low-income housing commitment agreement as described in the Code, §42(h)(6), was in effect for buildings subject to the Revenue Reconciliation Act of 1989, §7106(c)(1).

(2) Review.

(A) At least annually, at the time designated by the Department, the owner of a low-income housing project must send to the Department for its review for compliance with the requirements of the Code, §42, the certification described in paragraph (1) of this subsection.

(B) The Department will inspect, at a minimum, 20% of low-income housing projects each year, including inspection of the income certification, the documentation the owner has received to support that certification, the rent record for each low-income tenant and any additional information deemed necessary. The Department shall give reasonable notice to the owner that an inspection will occur; however, the projects and records to be reviewed will be chosen by the Department in its sole discretion.

(C) The Department may, at the time and in the form designated by the Department, require the owners of low-income housing projects to submit for compliance review, information on tenant income and rent for each low-income unit, and may require an owner to submit for compliance review a copy of the income certification, the documentation the owner has received to support that certification and the rent record for any low-income tenant.

(3) Exception. The Department may, at its discretion, enter into a Memorandum of Understanding with the Farmers Home Administration (the FmHA), whereby the FmHA agrees to provide to the Department information concerning the income and rent of the tenants in buildings financed by the FmHA under its §515 program. Owners of such buildings may be excepted from the review procedures of paragraph (2)(B) or (C) of this subsection or both; however, if the information provided by FmHA is not sufficient for the Department to make a determination that the income limitation and rent restrictions of the Code, §42(g)(1) and (2), are met, the owner must provide the Department with additional information.

(f) Inspection provision. The Department retains the right to perform an on site inspection of any low-income housing project through either the end of the compliance period or the period covered by any extended low-income housing commitment agreement, whichever is later. An inspection under this subsection is separate from any review under subsection (e)(2) of this section.

(g) Notification of Noncompliance.

(1) Notice to owner.

(A) The Department will provide prompt written notice to the owner of a low-income housing project if the Department does not receive the certification described in subsection (e)(1) of this section or discovers through audit, inspection, review or any other manner, that the project is not in compliance with the provisions of the Code, §42.

(B) The correction period shall not exceed 90 days from the date of the notice to owner. During the correction period, an owner must supply any missing certifications and bring the project into compliance with the provisions of the Code, §42. The Department may extend the correction period for up to six months if it determines there is good cause for granting an extension.

(2) Notice to the Internal Revenue Service.

(A) The Department is required to file Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance, with the Internal Revenue Service no later than 45 days after the end of the correction period including any extension, and no earlier than the end of the correction period, whether or not the noncompliance or failure to certify is corrected. The Department will explain on Form 8823 the nature of the noncompliance or failure to certify and will indicate whether the owner has corrected the noncompliance or failure to certify.

(B) The Department will retain records of noncompliance or failure to certify for six years beyond the Department's filing of the respective Form 8823. In all other cases, the Department will retain the certification and records described in this section for three years from the end of the calender year the Department receives the certifications and records.

(h) Notices to the Department.

(1) An owner of a low-income housing project must notify the Department in writing prior to any sale, transfer, or exchange of the project or any portion of the project.

(2) An owner of a low-income housing project must notify the Department in writing to designate any further or different address to which subsequent notices or communications shall be sent.

(i) Liability. Compliance with the requirements of the Code, §42, is the sole responsibility of the owner of the building for which the credit is allowable. By monitoring for compliance, the Department in no way assumes any liability whatsoever for any action or failure to act by the owner including the owner's noncompliance with the Code, §42.

(j) These provisions apply to all buildings for which a low-income housing credit is, or has been, allowable at any time. The Department is not required to monitor whether a building or project was in compliance with the requirements of the Code, §42, prior to January 1, 1992. However, if the Department becomes aware of noncompliance that occurred prior to January 1, 1992, the Department is required to notify the Service in a manner consistent with subsection (g) of this section.

(k) The Department reserves the right to amend this section, at any time, provided however that reasonable notice has been given to existing project owners.

§49.8. Housing Credit Allocations.

(a) The housing credit allocation amount shall not exceed the dollar amount the Department determines is necessary for the financial feasibility of the project and its viability as a project throughout the credit period. Such determination shall be made by the Department at the time of issuance of the reservation notice, at the time of review by the board prior to issuance of commitment notice, at the time the Department makes a housing credit allocation and the date the building is placed in service. Any housing credit allocation amount specified in a reservation notice, commitment notice, allocation and/or carryover allocation document is subject to change by the Department dependent upon such determination. Such a determination shall be made solely at the discretion of the Department, considering the items specified in the Code, §42(m)(2)(B), and the Department in no way or manner represents or warrants to any project owner, sponsor, investor, lender, or other entity that the project is, in fact, possible or viable.

(b) The Department shall make a housing credit allocation to any project owner who holds a commitment notice which has not expired, and which all fees as specified in §49.11 of this title (relating to Program Fees), have been received by the Department, upon receipt from the project owner of evidence satisfactory to the Department that one or more buildings within the project are completed and have been placed in service, and compliance with the Department's cost certification procedures manual, as amended. The Department shall make each such housing credit allocation by mailing or delivering IRS Form 8609 (or any successor form adopted by the Internal Revenue Service) to the project owner, with Part I thereof completed in all respects and signed by an authorized official of the Department. The delivery of the IRS Form 8609 will only occur after the project owner has complied with all procedures and requirements listed within the cost certification procedures manual. A separate housing credit allocation shall be made with respect to each building within a project which is eligible for a housing credit.

(c) The Department shall execute, when the project owner is in full compliance with the rules in this chapter, the commitment notice, the carryover allocation procedures manual and all fees as specified within §49.11 of this title have been received by the Department, a carryover allocation document which has been properly completed, executed and notarized by the project owner. The Department shall return one executed copy to the project owner.

(d) In making a housing credit allocation, the Department shall specify a maximum applicable percentage, not to exceed the applicable percentage for the building permitted by the Code, §42(b), and a maximum qualified basis amount. In specifying the maximum applicable percentage and the maximum qualified basis amount, the Department shall disregard the first-year conventions described in the Code, §42(f)(2)(A) and §42(f)(3)(B). The housing credit allocation made by the Department shall not exceed the amount necessary to support the extended low-income housing commitment specified in the Code, §42(h)(6)(C)(i).

(e) Project inspections may be required to show that the project is built

according to required plans and specifications. A copy of all project inspections required and accepted by the lender financing the project shall be acceptable to the Department as a certification that the project is built to plans and specifications if such inspections are required by the lender during the construction of the project. At a minimum, such inspections must include an inspection at the start-up phase, the interim phase, and a final inspection at the time the project is placed in service. If no project inspections are required by the lender financing the project, the Department may require at least three inspections be made of the project; such inspections shall be at the start-up phase, the interim phase and a final inspection at the time the project is placed in service, and shall be performed by an independent, third party inspector hired by the Department. The project owner shall pay all fees to cover the cost of said inspections.

(f) At the time each building in the project is placed in service, the project owner shall be responsible to furnish the Department with documentation which satisfies the requirements as set forth in the cost certification procedures manual. The Department reserves the right to require copies of receipts and statements for materials and labor utilized for the new construction or rehabilitation and, if applicable, a closing statement for the acquisition of the project.

§49.9. Department Records; Certain Required Filings.

(a) At all times during each calendar year the Department shall maintain a record of the following:

(1) the cumulative amount of the state housing credit ceiling that has been reserved pursuant to reservation notices during such calendar year;

(2) the cumulative amount of the state housing credit ceiling that has been committed pursuant to commitment notices during such calendar year;

(3) the cumulative amount of the state housing credit ceiling that has been committed pursuant to carryover allocation documents during such calendar year;

(4) the cumulative amount of housing credit allocations made during such calendar years; and

(5) the remaining unused portion of the state housing credit ceiling for such calendar year.

(b) Not less frequently than quarterly during each calendar year, the Department shall publish in the *Texas Register* each of the items of information referred to in subsection (a) of this section.

(c) The Department shall mail to the Internal Revenue Service, not later than the 28th day of the second calendar month after the close of each calendar year during which the Department makes housing credit allocations, the original of each completed (as to Part I) IRS Form 8609, a copy of which was mailed or delivered by the Department to a project owner during such calendar year, along with a single completed IRS Form 8610, Annual Low-Income Housing Credit Agencies Report. When a carryover allocation is made by the Department, a copy of Form 8609 will be mailed or delivered to the project owner by the Department in the year in which the building(s) is placed in service, and thereafter the original will be mailed to the Internal Revenue Service in the time sequence above mentioned. The original of the carryover allocation document will be filed by the Department with IRS Form 8610 for the year in which the allocation is made. The original of all executed agreement and election statements shall be filed by the Department with the Department's IRS Form 8610 for the year a housing credit allocation is made as provided in this section.

§49.10. Department Responsibilities. In making a housing credit allocation under this chapter, the Department shall rely upon information contained in the project owner's application to determine whether a building is eligible for the credit under the Code, §42. The project owner shall bear full responsibility for claiming the credit and assuring that the project complies with the requirements of the Code, §42. The Department shall have no responsibility for ensuring that a project owner who receives a housing credit allocation from the Department will qualify for the housing credit. The Department reserves the right to reconsider any application in which fraudulent information, knowingly false documentation or misrepresentation has been provided at any stage of the evaluation or approval process.

§49.11. Program Fees.

(a) Each project owner that submits an application shall submit to the Department, along with such application, a nonrefundable application fee, as set forth in the application submission procedures manual.

(b) For each project which is to be evaluated by an independent third party underwriter in accordance with §49. 6(b)(3) of this title (relating to Threshold Criteria; Evaluation Factors; Selection Criteria; Final Ranking; Credit Amount; Tax Exempt Bond Financed Projects), the project owner will be so informed in writing prior to the commencement of any reviews by said underwriter. The cost for the third party underwriting will be set forth in the application submission procedures manual, and must be received by the Department prior to the engagement of the underwriter. The fees paid by the project owner to the Department for the third party underwriting will be credited against the commitment fee established in subsection (c) of this section, in the event that a commitment notice is issued by the Department to the project owner.

(c) Each project owner that receives a commitment notice from the for profit category shall submit to the Department, not later than the expiration date on the commitment billing notice, a nonrefundable commitment fee, as set forth in the application submission procedures manual. Projects located within one of the twenty poorest counties, as indicated in the reference manual, will be exempt from the requirement to pay a commitment fee, should a commitment notice be issued. Each project owner that receives a commitment notice from the nonprofit category shall submit to the Department, not later than the expiration date on the commitment billing notice, a nonrefundable commitment fee, as set forth in the application submission procedures manual. The commitment fee shall be paid by cashiers check.

(d) Each project owner that requests an extension of the expiration date of a commitment notice, reservation notice, or wait list notice shall submit to the Department, along with such request, a nonrefundable extension fee, as set forth in the application submission procedures manual and shall be paid by cashiers check. Such extension shall only be granted at the sole discretion of the Department.

(e) Upon the project being placed in service, the project owner will pay a compliance monitoring fee in the form of a cashiers check, as set forth in the application submission procedures manual The compliance monitoring fee must be received by the Department prior to the release of the IRS Form 8609 on the project.

(f) Public information requests are processed by the Department in accordance with the provisions of Texas Civil Statutes, Article 6252-17a. The General Services Commission determines the cost of copying.

(g) The amounts of the application fee, commitment fee, compliance monitoring fee, and extension fee as specified in the application submission procedures manual may be revised by the Department from time to time as necessary to ensure that such fees cover the Department's administrative expenses.

§49.12. Manner and Place of Filing Applications.

(a) All applications, letters, documents, or other papers filed with the Department will be received only between the

hours of 8 a.m. and 5 p.m. on any day which is not a Saturday, Sunday, or a holiday established by law for state employees.

(b) All items submitted to the Department shall be mailed or delivered to Low Income Housing Tax Credit Program, Texas Department of Housing and Community Affairs, 811 Barton Springs Road, Suite 300, Austin, Texas 78704.

§49.13. Withdrawals, Amendments, Cancellations.

(a) A project owner may withdraw or amend an application prior to receiving a reservation, commitment, carryover allocation document or housing credit allocation, or may cancel a reservation notice or commitment notice by submitting to the Department a notice, as applicable, of withdrawal, amendment, or cancellation.

(b) An amendment of an application that results in an increase in the requested housing credit allocation amount or increase in points shall cause the application to be treated as having been filed on the date of the amendment.

§49.14. Waiver and Amendment of Rules.

(a) The board, in its discretion, may waive any one or more of these rules in cases of natural disasters such as fires, hurricanes, tornadoes, earthquakes, or other acts of nature as declared by Federal or State authorities.

(b) For purposes of §49.8(b) of this title (relating to Housing Credit Allocations), the requirements for making a housing credit allocation, as set forth in the cost certification procedures manual, shall apply to all project owners which received an executed carryover allocation document from the Department on, before or after January 1, 1993.

(c) The Department may amend this chapter at any time in accordance with the provisions of Texas Civil Statutes, Article 6252-13a.

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 March 1, 1993.

TRD-9319685 Henry Flores
Executive Director
Texas Department of Housing and Community Affairs

Earliest possible date of adoption: April 9, 1993

For further information, please call: (512) 475-3800

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TITLE 22. EXAMINING BOARDS

Part XV. Texas State Board of Pharmcy

Chapter 291. Pharmacies

Institutional Pharmacy (Class C)

• 22 TAC §§291.72-291.76

The Texas State Board of Pharmacy proposes amendments to §§291.72-291. 76, concerning Definitions, Personnel, Operational Standards, and Records in a Class C Pharmacy and Class C Pharmacies Located in a Free Standing Ambulatory Surgical Center.

These amendments if adopted will implement the recommendations of the Senate Interim Committee on Health and Human Services and correct certain reference citations within the sections. The Senate Interim Committee on Health and Human Services recommended that the Texas State Board of Pharmacy amend the rules to require: that pharmacists perform a more detailed recording and monitoring of drug distribution in hospitals, including drug use reviews of orders filled during the pharmacist's absence; and that a pharmacist review records in hospitals with 100 beds or less every 72 hours instead of every seven days. The amendments are consistent with the intent of the "1991-1992 Practice Standards of the American Society of Hospital Pharmacists," TSBP rules for Class A Pharmacies Compounding Sterile Pharmaceuticals, and to some extent recently adopted federal requirements.

Fred S. Brinkley, Jr., R.Ph., M.B.A., Executive Director/Secretary 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. The cost of compliance with these sections for businesses is estimated to range between $2,070 and $3,450 per year for hospitals with 100 beds or less. This estimate is based on an increase in pharmacists visits from approximately 52 times a year to approximately 121 times a year with each visit estimated to be two hours and pharmacist salaries ranging from $15-$25 per hour. Other costs could be incurred if the hospital pharmacy purchases computer equipment and software to assist the pharmacists in drug use reviews. The cost for computer equipment and software varries greatly and cannot be estimated.

Mr. Brinkley 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 health of the citizens of the State of Texas by increasing the pharmacist consultant reviews and monitoring drug distribution, thus decreasing the possibility of abuse and over medication of patients in hospitals. 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 Fred S. Brinkley, Jr., R.Ph., M.B.A., Executive Director/Secretary, Texas State Board of Pharmacy, 8505 Cross Park Drive, Suite 110, Austin, Texas 78754-4594.

The amendments are proposed under the Texas Pharmacy Act, Texas Civil Statutes, (Article 4542a-1) §16(a), which provides the Texas State Board of Pharmacy the authority to adopt rules for the proper administration and enforcement of the Act and §17(b), which provides the Board with the authority to specify the minimum standards for drug storage, maintenance of prescription drug records, and procedures for the delivery, dispensing in a suitable container appropriately labeled, or providing of prescription drugs or devices within the practice of pharmacy.

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

Confidential health information-Any health related information maintained by the pharmacy in the patient's records, is privileged and may be released only to:

(A) the patient, or as the patient directs;

(B) those health care professionals where, in the pharmacist's professional judgment, such release is necessary to protect the patient's health and well being; and

(C) other such persons or governmental agencies authorized by law to receive such confidential information.

Drug review-A review of the patient's medication record and medication order. The review may be prior to administration of the first dose (prospective) or after administration (retrospective).

§291.73. Personnel.

(a) (No change.)

(b) Pharmacist-in-charge.

(1) (No change.)

(2) Responsibilities. The pharmacist-in-charge shall have the responsibility for, at a minimum, the following:

(A)-(N) (No change.)

(O) maintenance of records in a data processing system such that the data processing system is in compliance with Class C (Institutional) pharmacy requirements; [and]

(P) **assuring that a reasonable effort is made to obtain, record, and maintain patient medication records; and**

(Q) meeting all inspection and other requirements of the Texas Pharmacy Act and these sections.

(c) (No change.)

(d) Pharmacists.

(1) (No change.)

(2) Duties. Duties of the pharmacist-in-charge and other pharmacists shall include, but need not be limited to the following:

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

(C) interpreting patient **medication records** [profiles] **and performing drug reviews.**

(3) (No change.)

(e)-(f) (No change.)

§291.74. Operational Standards.

(a)-(d) (No change.)

(e) Absence of a pharmacist.

(1) Medication orders.

(A) In facilities with a full-time pharmacist, if a practitioner orders a drug for administration to a bona fide patient of the facility when the pharmacy is closed, the following is applicable.

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

(v) The pharmacist shall verify the withdrawal **and review the patient's medication record as specified in subsection (f)(5)(B) of this section as soon** as practical, but in no event more than 72 hours from the time of such withdrawal.

(B) In facilities with a part-time or consultant pharmacist, if a practitioner orders a drug for administration to a bona fide patient of the facility when the pharmacist is not on duty, or when the pharmacy is closed, the following is applicable.

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

(iv) The pharmacist shall **verify the withdrawal and review the patient's medication record as specified in subsection (f)(5)(B) of this section as soon as practical, but in no event more than 72 hours from the time of such withdrawal.** [each distribution after a reasonable interval, but in no event may such interval exceed seven days.]

(2) (No change.)

(f) Drugs.

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

(5) Distribution.

(A) (No change.)

(B) **Drug Review.**

(i) **For the purpose of promoting therapeutic appropriateness, a pharmacist shall review the patient's medication record with each medication order to assess:**

(I) the therapeutic appropriateness of the patient's drug regimen;

(II) therapeutic duplication in the patient's drug regimen;

(III) the appropriateness of the delivery device, dose, frequency, and route of administration; and

(IV) potential drug, food, or diagnostic test interactions or disease limitations on drug use (or any combination of these).

(ii) **The drug review shall be conducted on a prospective basis when a pharmacist is on duty and on a retrospective basis as specified in subsection (e)(1) of this title when a pharmacist is not on duty.**

(iii) **Any questions regarding the order must be resolved with the prescriber and a written notation of these discussions made in the patient's medication record or chart.**

(C) Procedures.

(i) (No change.)

(ii) The written policies and procedures for the drug distribution system shall include, but not be limited to, procedures regarding the following:

(I)-(XXI) (No change.)

(XXII) use of automated drug dispensing systems; [and]

(XXIII) use of data processing and direct imaging systems ; and

(XXIV) clinical services.

(g) Clinical Services.

(1) A systematic ongoing process of drug use review shall be developed in conjunction with the medical staff to increase the probability of desired patient outcomes and decrease the probability of undesired outcomes from drug therapy.

(2) There must be documentation of ongoing drug therapy monitoring and evaluation, including assessment of:

(A) the therapeutic appropriateness of the patient's drug regimen;

(B) therapeutic duplication in the patient's drug regimen;

(C) the appropriateness of the delivery device, dose, frequency, and route of administration;

(D) potential drug, food, or diagnostic test interactions or disease limitations on drug use (or any combination of these); and

(E) clinical laboratory or clinical monitoring methods to monitor and evaluate drug effectiveness, side effects, toxicity, or adverse effects, and appropriateness to continued use of the drug in its current regimen.

(h) Emergency rooms.

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

(i)[(h)] Radiology departments.

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

§291.75. Records.

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

(c) Inpatient records.

(1) **Original Medication Orders.**

(A) Each original medication order or set of orders issued together shall bear the following information:

(i)[(A)] patient name and room number or **identification number;**

(ii) [(B)] drug name, strength, and dosage form;

(iii)[(C)] directions for use;

(iv)[(D)] date; and

(v) [(E)] signature or **electronic signature** of the practitioner or that of his or her authorized agent.

(B)[(2)] Original medication order shall be maintained with the medication administration record in the medical records of the patient.

(2) Patient Medication Records (PMR). A patient medication record shall be maintained for each inpatient of the facility. The PMR shall contain at a minimum the following information.

(A) patient Information:

***(i)* patient name and room number or identification number;**

***(ii)* gender, and date of birth or age;**

***(iii)* weight and height;**

***(iv)* known drug sensitivities and allergies to drugs and/or food;**

***(v)* primary diagnoses and chronic conditions;**

***(vi)* primary physician; and**

***(vii)* other drugs the patient is receiving;**

(B) medication order information:

***(i)* date of distribution;**

***(ii)* drug name, strength, and dosage form; and**

***(iii)* directions for use.**

(3)-(9) (No change.)

(d) (No change.)

(e) Other Records. Other records to be maintained by a pharmacy:

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

(6) a hard-copy of [controlled substances] inventories required by §291.17 of this title (relating to [the Controlled Substances] Inventory Requirements) except that a perpetual inventory of controlled substances listed in Schedule II may be kept in a data processing system if the data processing system is capable of producing a hard-copy of the perpetual inventory onsite;

(7)-(10) (No change.)

(f) (No change.)

(g) Confidentiality. A pharmacist shall provide adequate security of prescription drug orders, [order records and] medication orders, [order] and **patient medication records** to prevent indiscriminate or unauthorized access to confidential health information.

§291.76. Class C Pharmacies Located in a Free Standing Ambulatory Surgical Center.

(a)-(d) (No change.)

(e) Records.

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

(5) Other records to be maintained by the pharmacy include:

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

(F) a hard-copy of [controlled substances] inventories required by §291.17 of this title (relating to [Controlled Substances] Inventory Requirements) except that a perpetual inventory of controlled substances listed in Schedule II may be kept in a data processing system if the data processing system is capable of producing a hard-copy of the perpetual inventory onsite;

(G)-(J) (No change.)

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

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

Issued in Austin, Texas, on March 2, 1993.

TRD-9319721 Fred S. Brinkley, Jr., R.Ph., M.B.A.
Executive Director/Secretary
Texas State Board of Pharmacy

Earliest possible date of adoption: April 9, 1993

For further information, please call: (512) 832-0661

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part IX. Texas Water Commission

Chapter 330. Municipal Solid Waste

• 31 TAC §§330.1-330.8

The Texas Water Commission (TWC) proposes the repeal of Subchapter A, §§330.1-330.8; Subchapter B, §§330.21-330.25; Subchapter C, §§330.31-330. 34; Subchapter D, §§330.41-330.42; Subchapter E, §§330.51-330.67; Subchapter F, §§330.112-330.114, 330.121-330.124, 330.131-330.155; Subchapter G, §§330.171-330.180; Subchapter I, §330.231; Subchapter J, §§330.241-330.243; Subchapter L, §§330.271-330.282; and Subchapter X, §§330.900-330.918 to be replaced by new Subchapter A, §§330.1-330.14; Subchapter B, §§330.21-330.25; Subchapter C, §§330.31-330.34; Subchapter D, §330.41; Subchapter E, §§330.50-330.65; Subchapter F, §§330.111-330.139; Subchapter G, §§330.150-330.159; Subchapter H, §§330.200-330.206; Subchapter I, §§330.230, 330.231, and 330.233-330.242; Subchapter J, §§330. 250-330.256; Subchapter K, §§330.230-330.286; and Subchapter L, §§330. 300-330.305, all of which pertain to the management of municipal solid waste. The effective date for the new proposed rules shall be October 9, 1993, except for proposed Subchapter K, which is April 9, 1994.

The proposed new sections implement the provisions of Parts 257 and 258 of Subtitle D of the Federal Resource Conservation and Recovery Act, relating to municipal solid waste landfills. On October 9, 1991, the United States Environmental Protection Agency (EPA) issued final rules implementing Subtitle D of the Federal Resource Conservation and Recovery Act (RCRA), relating to Municipal Solid Waste Landfills (MSWLF). A committee within the TWC, in cooperation with the Regulatory Oversight Committee of the Municipal Solid Waste Management and Resource Recovery Advisory Council, developed a concept paper that was published June 1, 1992. The concept paper contained 20 proposed revisions to existing State of Texas Municipal Solid Waste (MSW) rules proposed for early implementation during early summer 1992, along with 17 proposed revisions to MSW rules for implementing Subtitle D later in the summer of 1992. Public meetings to receive comments on the concept paper were held in 11 cities across the state; written comments were received until July 15, 1992.

As a result of the public comment process, 1,341 individual comments on the rules were received, synopsized, and categorized from 180 individuals, organizations, and political subdivisions. After review of these comments, TWC made certain basic decisions regarding the scope and timing of the proposed rules. TWC considered time constraints, the potential difficulties in writing rules with different implementation dates, and the potential for an early rules package interfering with a later Subtitle D package, and decided that only one rules package on issues related to design criteria, ground water, operations, and other issues related to Subtitle D would be considered.

An overwhelming number of commenters perceived that the proposed rules greatly exceeded Subtitle D requirements and were opposed to them. These commenters cited the Subtitle D preamble, which specifically identified cost as a major consideration, and emphasized flexibility to states in meeting performance standards. Many commenters cited older populations, fixed incomes, and economic conditions in small communities as reasons not to exceed Subtitle D requirements. A few commenters supported more stringent rules to address public health and environmental problems in Texas, citing current alleged abuses by landfill operators, un-

known long-term impacts of landfilling practices, and future potential uses for all ground waters.

TWC staff reviewed the EPA Subtitle D preamble, considered the impacts of substantially more stringent rules on local governments, and solicited policy guidance from the Commissioners, who issued a policy statement that the rules should not exceed mandated Subtitle D levels, and would incorporate the flexibility allowed by EPA.

The TWC is committed to obtaining State program approval from EPA, so that Subtitle D flexibility will be available to the regulated community. To achieve this, rules must be in place to demonstrate to EPA that the State has procedures that ensure that the Subtitle D performance standards are implemented and enforced. Texas is also not a typical state, encompassing, as it does, such a large and diverse region, in hydrology, geography, and population. Accordingly, blanket application of only Subtitle D standards could result in lack of protection for some of Texas' unique features, such as the Edwards Aquifer.

After considering all these factors along with the comments received, it was determined that the rules changes should be generally limited to Subtitle D requirements, with the stipulations that: Unique Texas resources must be adequately protected; Rules needed to achieve EPA program approval would be included; and Existing State standards would not be relaxed.

After internal revisions to the proposed rules by TWC staff, the Texas Water Commission appointed a special advisory panel to assist the staff in finalizing the draft rules, in conjunction with the Regulatory Oversight Committee of the Municipal Solid Waste Management and Resource Recovery Advisory Council. Six meetings were held with this advisory group, resulting in the draft rules that are proposed today.

Major issues considered in drafting the rules included both environmental and economic considerations.

After reaching the decision to limit the scope of the rulemaking to the implementation of Subtitle D requirements, it became clear that, due to the structure of the existing rules and the impact that Subtitle D issues had on most of the major subchapters, it would be most efficient to repeal the existing rules and replace them with new subchapters subdivided generally along the lines of the Subtitle D rules. The new rules are subdivided into Subchapters A through L, and provisions of the existing rules have been reorganized into this new subchapter format, along subject matter lines, to produce a more readable and usable document. Otherwise, the TWC has attempted to deal only with those issues that relate to Subtitle D requirements and has generally retained current rules on other issues.

One of the major issues dealt with in the new rules is the exemption for the small municipal solid waste landfills located in arid regions of the state, which are eligible for exemption from some of the Subtitle D requirements. Great concern about cost was expressed on behalf of the operators of these small landfills, who generally have very limited financial resources and who would be impacted most severely by Subtitle D requirements. Accordingly, new Subchapter A, §§330.1-330.14, contains simplified provisions whereby a small municipal solid waste landfill operator can demonstrate compliance with the exemption criteria at minimal expense, while at the same time ensuring that environmental safeguards imposed by Subtitle D are likely to be met. New Subchapter A sets forth specific procedural requirements for obtaining the arid exemption, which will be approved administratively unless there is reason for the Executive Director to believe that such approval would result in ground-water contamination, in which case the exemption request can be denied and subsequently appealed by the applicant to the Texas Water Commission.

New Subchapter B, §§330.21-330.25, and new Subchapter C, §§330.31-330. 34, relating to solid waste storage, collection, and transportation were not substantially changed, beyond reorganization into the newly created subchapter classification.

New Subchapter D, §330.41, relating to classification of municipal solid waste facilities, was substantially altered because the implementation of the Subtitle D rules will result in the elimination of Type II and Type III landfills in the old classification system.

New Subchapter E, §§330.50-330.65, relating to permit procedures, is a new subchapter, which consolidates all of the permitting requirements previously scattered among other subchapters in the old rules into one location. It also alters the submission requirements format from Parts A and B, provided for in the old rules, to Parts I through V, which is intended to simplify the permitting process and provide greater specificity to applicants as to what information is required and when it is to be submitted.

New Subchapter F, §§330.111-330.139, relating to operational standards, was changed substantially to include Subtitle D requirements for operating criteria, gas control and management, cover requirements, and record-keeping procedures. In addition, some upgrading of current rules are included in this new subchapter, including better marking of landfill disposal areas, the proposal for which received nearly unanimous support in the concept paper comments. In addition, the site operating plan is better defined, and some changes were made to permit greater flexibility in the hours of operation and the disposal of large items.

New Subchapter G, §§330.150-330.159, relating to operational standards for solid waste processing and experimental sites, was not substantially changed.

New Subchapter H, §§330.200-330.206, relating to groundwater protection design and operation, was substantially altered to comply with Subtitle D requirements, and numerous portions of the old rules were consolidated into this subchapter in order to provide a coherent document. The design requirements have been written to take maximum advantage of the flexibility provided in the Subtitle D rules for alternative designs, which can be custom tailored to meet site-specific requirements while still achieving the performance standards provided for in Subtitle D.

One particularly troublesome issue that is not resolved by these proposed rules relates to the extension of landfill excavations below the water table. Current rules allow this to occur but provide that clean soil material must be added on top of the liner, as ballast, to prevent hydrostatic uplift of the liner. Subtitle D rules introduce several new design considerations, including the potential for flexible membrane liners and leachate collection systems. These new factors complicate design considerations, when the bottom of the excavation is below the water table. Considerable discussion on this issue occurred in the meetings with the special advisory group appointed by the TWC. After consideration of a number of options, it was decided that the most practicable alternative, given the time available, was to maintain the current rules governing the construction of landfill excavations below the water table and create a special panel of technical experts to evaluate the design of landfills under these circumstances, research the rules in other states to determine how they are dealing with this issue, and develop a specific recommendation for rule changes, if needed, to be put forth at a later date after approval of the Subtitle D rules. TWC is in the process of appointing such a panel, which will have representation from the regulated community, academic circles, the environmental community, consultants, and TWC staff.

New Subchapter I, §§330.230-330.242, relating to ground-water monitoring and corrective action, is substantially altered and consists chiefly of new requirements mandated by Subtitle D. Portions of the old rules relating to ground-water monitoring have been relocated to this subchapter.

New Subchapter J, §§330.250-330.256, relating to closure and post-closure, are also dominated by changes related to Subtitle D.

New Subchapter K, §§330.280-330.286, relating to financial assurance, is composed almost entirely of Subtitle D requirements.

New Subchapter L, §§330.300-330.305, is a new subchapter relating to location restrictions and is dominated by Subtitle D requirements. Location restrictions in the current rules have been relocated to this new subchapter.

In summary, the Municipal Solid Waste Rules for the State of Texas have been rewritten following a policy mandated by the Texas Water Commissioners that Subtitle D requirements would be included but not exceeded in the revised rules. Although the organization of the rules has been changed substantially to accommodate new Subtitle D requirements and to provide a more readable and usable format, substantial changes to current regulations not mandated by Subtitle D have generally not been made. These rules are a product of extensive public input and intensive review and negotiations with representatives from a wide variety of interest groups represented by the advisory group appointed by the Texas Water Commission-

ers. Some issues still need resolution, but we believe that these proposed rules represent rules which will improve environmental protection in Texas, while minimizing the cost impact on landfill owners and operators.

Stephen Minick, Division of Budget and Planning, has determined that for the first five-year period the sections are in effect there will be fiscal implications as a result of enforcement and administration of the sections. These rules represent the policy of the Commission to adopt requirements for implementation of Subtitle D which are consistent with and do not exceed federal requirements. These fiscal implications can be said to be equivalent to those generated by the federal regulations. These effects will generally apply whether or not these rules are adopted and are presented in order to characterize the effects of the federal regulations in this state. In addition, this proposal incorporates existing rules regarding municipal solid waste management which are intended to be repealed and readopted without changes under a reorganized Chapter 330. No fiscal implications are anticipated as a result of the repeal and readoption of regulations currently in effect. The effects anticipated on state government for the first five-year period the sections are in effect are increased costs as follows: $980,000 for fiscal year (fy) 1993; $1,200,000 for fy 1994; $1,200,000 for fiscal year 1995; $1, 175,000 for fy 1996; and $1,275,000 for fy 1997.

It should be noted that essentially all of these costs are presently being paid from existing resources and will not require additional state revenues or increases in fee assessments for solid waste disposal. Generally, the fiscal implications of these rules will relate to owner/operators of landfills and users of solid waste management services at landfill facilities.

The anticipated effects on local governments are increases in costs of landfill operation and solid waste management, based on compliance with the requirements contained in these rules. These costs will vary considerably depending on many factors, most significantly the date of last receipt of waste by a landfill. The implications of the Subtitle D requirements proposed for adoption are as follows: facilities which did not receive waste after October 9, 1991, are not subject to these rules proposed to be adopted to comply with federal Subtitle D requirements; facilities which last received wastes prior to October 9, 1993, must comply only with Subtitle D final cover requirements; and facilities receiving wastes after October 9, 1993, will be fully affected by these rules. The actual effect of these rules on a local government operating a facility will depend on a variety of other site-specific factors, as well. It has been estimated that the cost of compliance with these regulations for a representative facility of 80 acres in size could be in excess of $17 million over the anticipated 20-year operational life of the facility and 30-year post-closure care period. This amount would include groundwater characterization, monitor well installation, sampling and analysis, liner installation, leachate disposal, closure, and post-closure care costs over these periods. In comparison, this estimate is almost double the costs for the life of this hypothetical facility under current regulations. Statewide costs to meet Subtitle D groundwater protection requirements are anticipated to reach a total of approximately $70.8 million (in 1992 dollars) per year by the year 1997 when all groundwater monitoring wells are required to be in operation. It is estimated that two-thirds (67%) of the affected landfill facilities are operated by local governments, the remainder being private ventures. By 1997, overall operating costs of landfills are anticipated to increase an average of 12-35%. This represents an increase in the average cost of disposal of a cubic yard of solid waste, amortized over the life of the average landfill, from $10 under current regulations to between $11 and $14 under these proposed regulations.

These costs so far described do not include the costs of financial assurance or corrective action. Proposed requirements for demonstration of financial assurance will have additional fiscal implications. Local governments which cannot satisfy proposed requirements through a financial test may be expected to incur costs imposed through other alternatives, such as a letter of credit, which may approach 15% of the principal amount of closure and corrective action costs to be guaranteed. Actual costs to be guaranteed will depend on a variety of case-specific and site-specific circumstances and cannot be estimated at this time. The costs cited for compliance with these rules are representative, however, of the potential costs associated with remedial activities.

Landfill facilities which are not in compliance with existing regulations, or which have not yet begun implementation of the federal requirements, will be faced with the most significant increases in costs. Landfills in compliance with existing regulations and those which have made progress toward compliance with federal regulations will realize less significant impacts of these rules. The effects on facilities exempted from groundwater protection requirements will be significantly reduced, as these requirements are, by far, the most costly of those imposed under these regulations.

Businesses in general will be affected under these regulations. Operators of private or commercial landfills will realize cost effects similar to those of a local government operator. Operators exempt from groundwater protection provisions under the Small Landfill Exemption will avoid the large part of the costs identified here. Costs of solid waste disposal may be expected to increase as both municipal and commercial operators attempt to recover higher operating costs from customers. These costs are not anticipated to affect small businesses disproportionately, but should vary with the quantities of waste disposed of by individual firms.

Mr. Minick also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be enhanced protection of groundwater and surface water resources from potential contamination, improved detection of the earliest evidence of releases of contamination from landfill facilities, improved detection of methane gas production and prevention of risks to public health and safety from explosive gases, increased incentives for the reduction in quantities of waste landfilled and promotion of waste minimization and recycling efforts, and determination of the financial resources required to ensure the capacity of landfill operators to fund necessary cleanup and corrective action costs. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. Persons utilizing services of solid waste management facilities may indirectly realize the increased costs of service required to recover the costs of compliance with Subtitle D requirements.

Comments on the proposal may be submitted to Nancy Frank Overesch, Manager, Ground-Water Protection Section, Municipal Solid Waste Division, P.O. Box 13087, Austin, Texas 78711-3087. Comments will be accepted for a period of 30 days following the date of this publication.

Public hearings for comments on these sections will be scheduled and published at a later date.

Subchapter A. General Information

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

The repealed sections are proposed under the Texas Health and Safety Code, Chapter 361, which gives the commission all powers necessary and convenient under that chapter to carry out its responsibilities concerning the regulation and management of municipal solid waste.

§330.1. Basis for Regulatory Controls.

§330.2. Authority For Regulations.

§330.3. Applicability.

§330.4. Municipal Solid Waste Management Guidelines.

§330.5. Definitions.

§330.6. Relationships with Other Governmental Entities.

§330.7. Relationship with County Licensing System.

§330.8. Severability.

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 March 2, 1993.

TRD-9319694 Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: April 9, 1993

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

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• 31 TAC §§330.1-330.14

The new sections are proposed under the Texas Health and Safety Code, Chapter 361, which gives the commission all powers necessary and convenient under that chapter to carry out its responsibilities concerning the regulation and management of municipal solid waste.

§330.1. Declaration and Intent.

(a) The regulations promulgated in this chapter cover all aspects of municipal solid waste management under the authority of the Texas Water Commission and are based primarily on the stated purpose of Texas Civil Statutes, Health and Safety Code, Chapter 361, as amended, hereafter referred to as the Texas Solid Waste Disposal Act. The owner or operator of a municipal solid waste landfill (MSWLF) unit shall comply with any other applicable Federal rules, laws, regulations, or other requirements.

(b) All permits, including any special provisions therein, issued by the Texas Water Commission or the Texas Department of Health shall remain in force after October 9, 1993, the effective date of this chapter. To the extent that a standard has been changed by this chapter, the permittee may continue to operate under standards contained in previously issued permits, except for those requirements mandated by EPA 40 Code of Federal Regulations, Parts 257 and 258, as amended, which implement certain requirements of Subtitle D of the Resource Conservation and Recovery Act (RCRA). For those federally mandated requirements, the permittee is under an obligation to apply for a change to his permit in accordance with §305.62 of this title (relating to Amendment) or §305.70 of this title (relating to Municipal Solid Waste Permit Modification), as applicable, to incorporate the required standard. The application shall be submitted no later than April 9, 1994. Timely submission of a request for a permit change qualifies the owners or operators of existing MSWLF units for interim status. MSWLF facility owners or operators with interim status are treated as having been issued a permit modification or amendment until the executive director makes a final determination on the permit modification request or the commission makes a final determination on the permit amendment request. Facility owners or operators with interim status must comply with the requirements of this chapter upon the effective date of this chapter.

(c) A permit or license shall be required for each MSWLF unit, and the executive director, at his/her discretion, may include one or more different types of units in a single permit if the units are located at the same facility.

(d) Materials extraction or gas-recovery operations shall not be conducted unless a permit for such purpose has been obtained from the commission in accordance with §330.4 of this title (relating to Permit Required).

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

100-Year flood–A flood that has a 1.0% or greater chance of recurring in any given year or a flood of a magnitude equalled or exceeded once in 100 years on the average over a significantly long period.

Acid–A substance containing hydrogen that will release hydrogen (hydronium) ions when dissolved in water. Acids will have a pH of less than 7.0 and usually have a sour taste and will cause blue litmus dye to turn red.

Active life–The period of operation beginning with the initial receipt of solid waste and ending at certification/completion of closure activities in accordance with §§330.250-330.256 of this title (relating to Closure and Post-Closure).

Active portion–That part of a facility or unit that has received or is receiving wastes and that has not been closed in accordance with §§330.250-330.256 of this title (relating to Closure and Post-Closure).

Airport–A public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

Aquifer–A geological formation, group of formations, or portion of a formation capable of yielding significant quantities of ground water to wells or springs.

Areas susceptible to mass movements–Areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the MSWLF unit, because of natural or man-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, soil fluction, block sliding, and rock fall.

Asbestos-containing materials–Include the following:

(A) Category I nonfriable asbestos-containing material (ACM) means asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than 1.0% asbestos as determined using the method specified in Appendix A, Subpart F, 40 CFR, Part 763, §1, Polarized Light Microscopy.

(B) Category II nonfriable ACM means any material, excluding Category I nonfriable ACM, containing more than 1.0% asbestos as determined using the methods specified in Appendix A, Subpart F, 40 CFR, Part 763, §1, Polarized Light Microscopy, that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

(C) Friable ACM means any material containing more than 1.0% asbestos that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.

(D) Nonfriable ACM means any material containing more than 1.0% asbestos that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

ASTM–The American Society of Testing and Materials.

Battery–An electrochemical device that generates electric current by converting chemical energy. Its essential components are positive and negative electrodes made of more or less electrically conductive materials, a separate medium, and an electrolyte. There are four major types:

(A) primary batteries (dry cells);

(B) storage or secondary batteries;

(C) nuclear and solar cells or energy converters; and

(D) fuel cells.

Battery acid (also known as electrolyte acid)–A solution of not more than 47% sulfuric acid in water suitable for use in storage batteries, which is water white, odorless, and practically free from iron.

Battery retailer–A person or business location that sells lead-acid batteries to the general public, without restrictions to limit purchases to institutional or industrial clients only.

Battery wholesaler–A person or business location that sells lead-acid batteries directly to battery retailers, to government entities by contract sale, or to large-volume users, either directly or by contract sale.

Bird hazard–An increase in the likelihood of bird/aircraft collisions that may cause damage to an aircraft or injury to its occupants.

Brush–Cuttings or trimmings from trees, shrubs, or lawns and similar materials.

Buffer zone–A zone free of municipal solid waste management activities.

CFR–Code of Federal Regulations.

Citizens' collection station–A facility established for the convenience and exclusive use of residents (not commercial or industrial users or collection vehicles). The facility may consist of one or more storage containers, bins, or trailers.

Class I industrial solid waste–See Industrial Solid Waste.

Collection–The act of removing solid waste (or materials that have been separated for the purpose of recycling) for transport elsewhere.

Collection system–The total process of collecting and transporting solid waste. It includes storage containers; collection crews, vehicles, equipment and management; and operating procedures. Systems are classified as municipal, contractor, or private.

Commercial solid waste–All types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding residential and industrial wastes.

Commission–The Texas Water Commission and its successors.

Compacted waste–Waste that has been reduced in volume by a collection vehicle or other means including, but not limited to, dewatering, composting, incineration, and similar processes, with the exception of waste that has been reduced in volume by a small, in-house compactor device owned and/or operated by the generator of the waste.

Composite liner–A liner system consisting of two components: the upper component must consist of a minimum 30-mil flexible membrane liner (FML) or minimum 60-mil high-density polyethylene (HDPE), and the lower component must consist of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} *cm/sec*.

Compost–The stabilized product of the decomposition process that is used or sold for use as a soil amendment, artificial top soil, growing medium amendment, or other similar uses.

Composting–The controlled biological decomposition of organic materials through microbial activity.

Conditionally exempt small-quantity generator–A person who generates no more than 220 pounds of hazardous waste in a calendar month.

Construction-demolition waste–Waste resulting from construction or demolition projects; includes all materials that are directly or indirectly the by-products of construction work or that result from demolition of buildings and other structures, including, but not limited to, paper, cartons, gypsum board, wood, excelsior, rubber, and plastics.

Contaminate–The man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of ground or surface water.

Controlled burning–The combustion of solid waste with control of combustion air to maintain adequate temperature for efficient combustion; containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and control of the emission of the combustion products, i.e., incineration in an incinerator.

Discard–To abandon a material and not use, re-use, reclaim, or recycle it. A material is abandoned by being disposed of; burned or incinerated (except where the material is being burned as a fuel for the purpose of recovering usable energy); or physically, chemically, or biologically treated (other than burned or incinerated) in lieu of or prior to being disposed.

Discharge–Includes deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release, or to allow, permit, or suffer any of these acts or omissions.

Discharge of dredged material–Any addition of dredged material into the waters of the United States. The term includes, without limitation, the addition of dredged material to a specified disposal site located in waters of the United States and the runoff or overflow from a contained land or water disposal area.

Discharge of fill material–The addition of fill material into waters of the United States. The term generally includes placement of fill necessary to the construction of any structure in waters of the United States: the building of any structure or improvement requiring rock, sand, dirt, or other inert material for its construction; the building of dams, dikes, levees, and riprap.

Discharge of pollutant–Any addition of any pollutant to navigable waters from any point source or any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source.

Displacement–The measured or estimated distance between two formerly adjacent points situated on opposite walls of a fault (synonymous with net slip).

Disposal–The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste (whether containerized or uncontainerized) into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground water.

Dredged material–Material that is excavated or dredged from waters of the United States.

Drinking-water intake–The point at which water is withdrawn from any water well, spring, or surface water body for use as drinking water for humans, including standby public water supplies.

Elements of nature–Rainfall, snow, sleet, hail, wind, sunlight, or other natural phenomenon.

Endangered or threatened species–Any species listed as such pursuant to the Federal Endangered Species Act, §4, 16 United States Code (USC) 1536, as amended or pursuant to the Texas Endangered Species Act.

EPA–United States Environmental Protection Agency.

Essentially insoluble–Any material that, if representatively sampled and placed in static or dynamic contact with deionized water at ambient temperature for seven days, will not leach any quantity of any constituent of the material into the water in excess of the maximum contaminant levels in 40 CFR 141, Subparts B and G, and 40 CFR 143 for total dissolved solids.

Executive director–The executive director of the Texas Water Commission and successors, or a person authorized to act on his or her behalf.

Existing MSWLF unit–Any municipal solid waste landfill unit that received solid waste as of October 9, 1993. Waste placement in existing units must be consistent with past operating practices or modified practices to ensure good management.

Experimental project–Any new proposed method of managing municipal solid waste, including resource and energy recovery projects, that appears to have sufficient merit to warrant commission approval.

Facility–All contiguous land and structures, other appurtenances, and improvements on the land used for the storage, processing, or disposal of solid waste.

Fault–A fracture or a zone of fractures in any material along which strata, rocks, or soils on one side have been displaced with respect to those on the other side.

Fill material–Any material used for the primary purpose of filling an excavation.

Floodplain–The lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, that are inundated by the 100-year flood.

Garbage-Solid waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, handling, and sale of produce and other food products.

Gas condensate-The liquid generated as a result of any gas recovery process at a municipal solid waste facility.

Generator-Any person, by site or location, whose act or process produces a solid waste or first causes it to become regulated.

Ground water-Water below the land surface in a zone of saturation.

Hazardous waste-Any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency (EPA) pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 USC, §§6901 et seq, as amended.

Holocene-The most recent epoch of the Quaternary Period, extending from the end of the Pleistocene Epoch to the present.

Household waste-Any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including single and multiple residences, hotels, and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas); does not include yard waste or brush that is completely free of any household wastes.

Industrial hazardous waste-Hazardous waste determined to be of industrial origin.

Industrial solid waste-Solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operations, classified as follows.

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

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

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

Inert material-A naturally occurring non-putrescible material that is essentially insoluble such as soil, dirt, clay, sand, gravel, and rock.

In situ-In natural or original position.

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

Lateral expansion-A horizontal expansion of the waste boundaries of an existing MSWLF unit.

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

Leachate-A liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste.

Lead-The metal element, atomic number 82, atomic weight 207.2, with the chemical symbol Pb.

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

License-A document issued by an approved county authorizing and governing the operation and maintenance of a municipal solid waste facility used to process, treat, store, or dispose of municipal solid waste, other than hazardous waste, in an area not in the territorial limits or extraterritorial jurisdiction of a municipality.

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

Litter-Rubbish; putrescible waste.

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

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

Medical waste-Waste generated by health-care-related facilities and associated with health-care activities, not including garbage or rubbish generated from offices, kitchens, or other non-health-care activities.

Monofill-A landfill or landfill trench into which only one type of waste is placed.

MSWLF-Municipal Solid Waste Landfill Facility.

Municipal hazardous waste-Any municipal solid waste or mixture of municipal solid wastes that has been identified or listed as a hazardous waste by the administrator, United States Environmental Protection Agency.

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

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

Municipal solid waste landfill unit (MSWLF unit)-A discrete area of land or an excavation that receives household waste and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under §257.2 of 40 CFR, Part 257. A MSWLF unit also may receive other types of RCRA Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, conditionally exempt small-quantity generator waste, and industrial solid waste. Such a landfill may be publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit, or a lateral expansion.

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

Navigable waters-The waters of the United States, including the territorial seas.

New MSWLF unit-Any municipal solid waste landfill unit that has not received waste prior to October 9, 1993.

Nonpoint source-Any origin from which pollutants emanate in an unconfined and aunchannelled manner, including, but not limited to, surface runoff and leachate seeps.

Non-RACM-Non-regulated asbestos-containing material as defined in

40 CFR 61. This is asbestos material in a form such that potential health risks resulting from exposure to it are minimal.

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

Open burning-The combustion of solid waste without:

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

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

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

Operate-To conduct, work, run, manage, or control.

Operating record-All plans, submittals, and correspondence for a MSWLF facility required under this chapter; required to be maintained at the facility or at a nearby site acceptable to the executive director.

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

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

Opposed case-A case when one or more parties appear, or make their appearance, in opposition to an application and are designated as Opponent Parties by the hearing examiner either at or before the public hearing on the application.

Other regulated medical waste-Medical waste that is not included within special waste from health-care-related facilities but that is subject to special handling requirements within the generating facility by other state or federal agencies, excluding medical waste subject to Chapter 289 of Title 25 (relating to Occupational Safety and Radiation Control).

Owner-The person who owns a facility or part of a facility.

PCB-Polychlorinated biphenyl molecule.

PCB Waste(s)-Those PCBs and PCB Items that are subject to the disposal requirements of 40 CFR 761. Substances that are regulated by 40 CFR 761 include, but are not limited to: PCB Articles, PCB Article Containers, PCB Containers, PCB-Contaminated Electrical Equipment, PCB Equipment, PCB Transformers, Recycled PCBs, Capacitors, Microwave ovens, electronic equipment, and fluorescent light ballasts and fixtures.

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

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

Point of compliance-A vertical surface located no more than 500 feet from the hydraulically downgradient limit of the waste management unit boundary, extending down through the uppermost aquifer underlying the regulated units, and located within the permitted facility boundary.

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

Pollutant-Contaminated dredged spoil, solid waste, contaminated incinerator residue, sewage, sewage sludge, munitions, chemical wastes, or biological materials discharged into water.

Pollution-The man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of an aquatic ecosystem.

Poor foundation conditions-Areas where features exist which indicate that a natural or man-induced event may result in inadequate foundation support for the structural components of an MSWLF unit.

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

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

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

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

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

Post-consumer waste-A material or product that has served its intended use and has been discarded after passing through the hands of a final user. For the purposes of this subchapter, the term does not include industrial or hazardous waste.

Premises-A tract of land with the buildings thereon, or a building or part of a building with its grounds or other appurtenances.

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

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

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

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

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

Radioactive waste-Waste that requires specific licensing under 25 TAC Chapter 401 (relating to Radioactive Materials and Other Sources of Radiation), Health and Safety Code, and the rules adopted by the commission under that law.

RCRA-Resource Conservation and Recovery Act.

Recyclable material-A material that has been recovered or diverted from the nonhazardous waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products that may otherwise be produced using raw or virgin materials. Recyclable material is not solid waste. However, recyclable material may become solid waste at such time, if any, as it is abandoned or disposed of rather than recycled, whereupon it will be solid waste with respect only to the party actually abandoning or disposing of the material.

Recycling-A process by which materials that have served their intended use or are scrapped, discarded, used, surplus, or obsolete are collected, separated, or processed and returned to use in the form of raw materials in the production of new products. Except for mixed municipal solid waste composting, that is, composting of the typical mixed solid waste stream generated by residential, commercial, and/or institutional sources, recycling includes the composting process if the compost material is put to beneficial use.

Refuse-Same as Rubbish.

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

Regulated hazardous waste-A solid waste that is a hazardous waste as defined in 40 CFR, Part 261.3 and that is not excluded from regulation as a hazardous waste under 40 CFR, Part 261.4(b), or that was not generated by a conditionally exempt small-quantity generator.

Relevant point of compliance-See Point of compliance.

Resource recovery-The recovery of material or energy from solid waste.

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

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

Run-off-Any rainwater, leachate, or other liquid that drains over land from any part of a facility.

Run-on-Any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

Salvaging-The controlled removal of waste materials for utilization, recycling, or sale.

Saturated zone-That part of the earth's crust in which all voids are filled with water.

Scavenging-The uncontrolled and unauthorized removal of materials at any point in the solid waste management system.

Scrap tire-Any tire that can no longer be used for its original intended purpose.

Septage-The liquid and solid material pumped from a septic tank, cesspool, or similar sewage treatment system.

Shall-The stated action is mandatory.

Should-The stated action is recommended as a guide in completing the overall requirement.

Site-Same as facility.

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

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

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

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

Small MSWLF-A municipal solid waste landfill at which 20 tons or less of municipal solid waste is disposed of daily based on an annual average.

Solid waste-garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include:

(A) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under the Water Code, Chapter 26;

(B) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or

(C) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under the Natural Resources Code, §91.101, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as defined by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by Resource Conservation and Recovery Act, as amended (42 USC, §§6901 et seq).

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

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

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

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

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

(E) septic tank pumpings;

(F) grease and grit trap wastes;

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

(H) slaughterhouse wastes;

(I) dead animals;

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

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

(L) discarded materials containing asbestos;

(M) incinerator ash;

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

(O) used oil;

(P) light ballasts and/or small capacitors containing polychlorinated biphenyl (PCB) compounds;

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

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

(i) any industrial waste;

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

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

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

(T) lead acid storage batteries; and

(U) used-oil filters from internal combustion engines.

Special waste from health-care-related facilities–Includes animal waste, bulk human blood and blood products, microbiological waste, pathological waste, and sharps.

Stabilized sludges–Those sludges processed to significantly reduce pathogens, by processes specified in 40 CFR, Part 257, Appendix II.

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

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

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

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

Store–To keep, hold, accumulate, or aggregate.

Structural components–Liners, leachate collection systems, final covers, run-on/run-off systems, and any other component used in the construction and operation of the MSWLF that is necessary for protection of human health and the environment.

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

Surface water–Surface water as included in water in the state.

SWDA–Texas Solid Waste Disposal Act.

TACB–Texas Air Control Board and its successors.

Texas Civil Statutes–Vernon's Texas Revised Civil Statutes Annotated.

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

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

Transporter–A person who collects and transports solid waste; does not include a person transporting his or her household waste.

Trash–Same as rubbish.

Treatment–Same as processing.

Triple rinse–To rinse a container three times using a volume of solvent equal to 10% of the volume of the container or liner for each rinse.

TWC–Texas Water Commission.

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

Unified soil classification system–The standardized system devised by the United States Army Corps of Engineers for classifying soil types.

Unconfined water–Water that is not controlled or impeded in its direction or velocity.

Unit–Municipal solid waste landfill unit.

Unstable area–A location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable areas can include poor foundation conditions, areas

susceptible to mass movements, and karst terranes.

Uppermost aquifer–Means the geologic formation nearest the natural ground surface that is an aquifer; includes lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

Vector–An agent, such as an insect, snake, rodent, bird, or animal capable of mechanically or biologically transferring a pathogen from one organism to another.

Washout–The carrying away of solid waste by waters of the base flood.

Waste management unit boundary–A vertical surface located at the hydraulically downgradient limit of the unit. This vertical surface extends down into the uppermost aquifer.

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

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

Water in the state–Ground water, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

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

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

Yard waste–Leaves, grass clippings, yard and garden debris, and brush, including clean woody vegetative material not greater than six inches in diameter, that results from landscaping maintenance and land-clearing operations. The term does not include stumps, roots, or shrubs with intact root balls.

§330.3. Applicability.

(a) The provisions of this chapter apply to any person as defined in §330.2 of this title (relating to Definitions) involved in any aspect of the management and control of municipal solid waste including, but not limited to, storage, collection, handling, transportation, processing, and disposal. Furthermore, these regulations apply to any person who by contract, agreement, or otherwise, arranged to process, store, or dispose of, or arranged with a transporter for transport to process, store, or dispose of, solid waste owned or possessed by the person, or by any other person or entity.

(b) For Municipal Solid Waste Landfills that stopped receiving waste before October 9, 1991, only the provisions of §330.251 of this title (relating to Closure Requirements for MSWLF Units or Facilities That Stop Receiving Waste prior to October 9, 1991) apply. Owners or operators shall submit a closure report that documents that municipal solid waste landfill facility (MSWLF) units, or portions thereof, have received final cover.

(c) MSWLF units that receive waste after October 9, 1991, but stop receiving waste before October 9, 1993, are exempt from the requirements of this chapter except for the final cover requirements specified in §330.252 of this title (relating to Closure Requirements for MSWLF Units or Facilities That Receive Waste on or after October 9, 1991, but Stop Receiving Waste prior to October 9, 1993). The final cover must be installed and certified in accordance with the requirements contained in §§330.250-330.256 of this title (relating to Closure and Post-Closure). Owners or operators of MSWLF units described in this subsection that fail to complete cover installation and certification within the time limits specified in §§330.250-330.256 of this title (relating to Closure and Post-Closure) will be subject to all the requirements of these regulations.

(d) All MSWLF units that receive waste on or after October 9, 1993, must comply with all requirements of these regulations, unless otherwise specified.

(e) Owners or operators of new, existing, and lateral expansions of small MSWLF units that dispose of less than 20 tons of municipal solid waste daily in the small MSWLF unit based on an annual average are exempt from §§330.220-330.206 and §§330.230-330.243 of this title (relating to Ground-Water Protection Design and Operation and Ground-Water Monitoring and Corrective Action respectively), so long as there is no evidence of existing ground-water contamination from the small MSWLF facility and the small MSWLF unit, the facility and unit serve a community that has no practicable waste management alternative, and the facility and unit are located in an area that receives less than or equal to 25 inches of annual average precipitation. Requests for exemptions under subsection (f) of this section may be approved administratively by the executive director, upon demonstration of compliance with these criteria. An exemption request may be denied by the executive director if he determines that granting the exemption could result in a substantial threat of ground-water contamination, based upon information made available to him from the applicant or agency files. Owners or operators may appeal such denials to the commission for decision.

(f) Owners or operators of new, existing, and lateral expansions of small MSWLF units that meet the criteria in subsection (e) of this section must submit a certification of eligibility to the executive director and place a copy of the certification in the operating record. The certification must be signed by a principal executive officer, a ranking elected official, or an independent professional engineer registered to practice in the State of Texas, except that the ground-water certification shall be submitted in accordance with §330.14 of this title (relating to Arid Exemption Flowchart) and signed by a qualified ground-water scientist, as defined in this chapter. The certification shall contain the following information:

(1) a certification that the MSWLF unit meets all requirements contained in subsection (e) of this section for exemptions from §§330. 200-330.206 and §§330.230-330.242 of this title (relating to Ground-Water Protection Design and Operation and Ground-Water Monitoring and Corrective Action respectively);

(2) a report, prepared by a qualified ground-water scientist in accordance with §330.14 of this title (relating to Arid

Exemption Flowchart) documenting that there is no evidence of ground-water contamination;

(3) documentation that the small MSWLF unit receives for disposal an annual average of less than 20 tons per day based upon the most recent four reporting quarters; or a certification that programs have been put in place, or will be implemented within one year, to reduce the waste stream to less than 20 tons per day;

(4) documentation that there are no practicable waste management alternatives available. The documentation shall demonstrate one of the following:

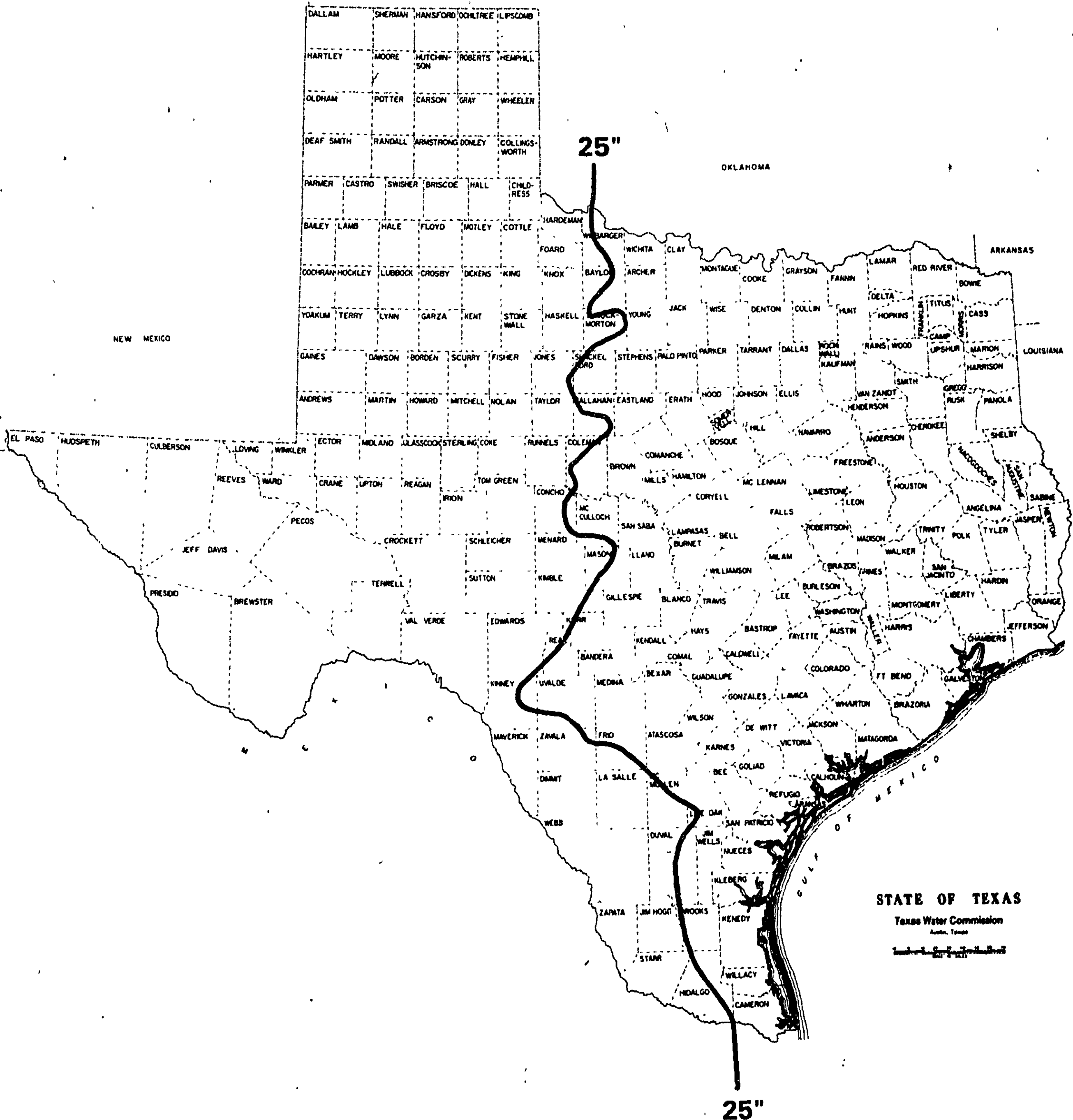
(A) additional costs of available alternatives are estimated to exceed 1.0% of the community's budget for all public services; or

(B) haul distances to alternative sites are unreasonably long; or

(C) all other alternatives are not feasible to implement, given the community location and economic condition;

(5) documentation that the small MSWLF unit receives less than or equal to 25 inches of average annual precipitation, as determined from the following map (Map 1) based average annual precipitation for the years 1951-1980, or from precipitation data for the nearest official precipitation recording station for the most recent 30-year reporting period.

Map 1
Average Annual Precipitation 1951-1980
(inches)



(g) If the owner or operator of a new, existing, or lateral expansion of a small MSWLF unit who has previously asserted eligibility in subsections (e) and (f) of this section has knowledge or becomes aware of ground-water contamination from the small MSWLF unit within a one-mile radius of the small MSWLF unit, or the unit no longer meets the definition of a small MSWLF, or the waste reduction program is ineffective (based upon an evaluation of trends established after a minimum period of a year), or a practicable alternative becomes available, the owner or operator shall notify in writing the executive director of such condition(s) and thereafter comply with §§330.200-330.206 and §§330.230-330.242 of this title (relating to Ground-Water Protection Design and Operation and Ground-Water Monitoring and Corrective Action, respectively) on a schedule specified by the executive director. The executive director may consider the economic investment made by the owner or operator in establishing the schedule for compliance. The minimum time allowed for compliance necessitated by loss of small MSWLF status or availability of a practicable alternative shall be 18 months.

(h) Financial assurance requirements contained in §§330.280-330.286 of this title (relating to Financial Assurance) shall become effective April 9, 1994. Until that date, owners or operators of municipal solid waste facilities are required to comply with the financial assurance requirements of §330.9 of this title (relating to Financial Assurance Required).

(i) A small MSWLF facility that meets the requirements of subsections (e) and (f) of this section shall maintain the integrity of any existing on-site ground-water monitor wells and make them available to the executive director for the collection of ground-water samples.

§330.4. Permit Required.

(a) No person may cause, suffer, allow, or permit any activity of storage, processing, removal, or disposal of any municipal solid waste unless such activity is authorized by a permit or other authorization from the Texas Water Commission, except as provided for in subsections (c) through (h) of this section. Permits issued by the Texas Department of Health prior to the effective date of this chapter satisfy the requirements of this subsection. No person may commence physical construction of a new municipal solid waste management facility or a lateral expansion without first having submitted a permit application in accordance with §§330.50-330.65 of this title (relating to Permit Procedures) and received a permit from the commission.

(b) In accordance with the requirements of subsection (a) of this section, no generator, transporter, owner or operator of a facility, or any other person may cause, suffer, allow, or permit wastes to be stored, processed, or disposed of at an unauthorized facility or in violation of a permit. In the event this requirement is violated, the executive director may seek recourse against not only the person who stored, processed, or disposed of the waste but also against the transporter, owner or operator, or other person who caused, suffered, allowed, or permitted its waste to be stored, processed, or disposed.

(c) A separate permit is not required for the storage or processing of municipal solid waste that is grease trap wastes, grit trap wastes, or septage that contains free liquids if the waste is treated/processed at a permitted MSWLF. Any person who intends to conduct such activity under this subsection shall comply with the notification requirements of §330.8 of this title (relating to Notification Requirements).

(d) A permit is not required for a municipal solid waste transfer station facility that provides service for an area of less than 50,000 persons or population equivalent as determined by the most recent federal decennial census, or which processes 125 tons per day or less of municipal solid waste. Facilities exempted from a permit under this subsection shall be registered with the executive director in accordance with §330.65 of this title (relating to Requirements of an Application for Registration of Solid Waste Facilities (Type V)). Failure to operate such registered facilities in accordance with the requirements established in §§330.150-330.159 of this title (relating to Operational Standards for Solid Waste Processing and Experimental Sites) may be grounds for revocation of the registration.

(e) A request for registration for sites or facilities exempted from permits under subsections (c) and (d) of this section shall be submitted in a format provided by the executive director and shall include all information requested thereon and any additional information considered necessary by the applicant or that may be requested by the executive director.

(f) A permit or registration under this chapter is not required for a facility or site that is used as: a citizens' collection station; as a collection and processing point for nonputrescible recyclable wastes or for composting of leaves, grass clippings, or wood chips; a collection point for parking-lot or street sweepings or wastes collected and received in sealed plastic bags from such activities as periodic citywide cleanup campaigns and cleanup of rights-of-way or roadside parks; or for the disposal of soil, dirt, rock, sand, or other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements.

(g) A permit amendment is not required to establish a waste-separation/recycling facility established in conjunction with a permitted municipal solid waste site, or composting facility at an existing permitted municipal solid waste site if owned by the permittee of the existing site. Facilities exempted from a permit amendment under this subsection shall be registered with the executive director in accordance with §330.65 of this title (relating to Requirements of an Application for Registration of Solid Waste Facilities (Type V)). Failure to operate such registered facilities in accordance with the requirements established in §§330.150-330.159 of this title (relating to Operational Standards for Solid Waste Processing and Experimental Sites) may be grounds for the revocation of the registration.

(h) A permit is not required for a site or facility where the only operation is the storage and/or processing of used and scrap tires as provided for in §§330.801-330.889 of this title (relating to Management of Whole Used or Scrap Tires). Facilities exempted from a permit under this subsection shall be registered with the executive director in accordance with §330.53 of this title (relating to Technical Requirements of Part II of the Application). Failure to operate such registered facilities in accordance with the requirements established in §§330.801-330.889 of this title (relating to Management of Whole Used or Scrap Tires) may be grounds for the revocation of the registration.

(i) A permit or registration is not required for the operation of an on-site treatment process unit used only for the treatment of medical waste generated on-site, provided the treatment process or processes used in the facility do not cause a release to the atmosphere that would be subject to regulation by the Texas Air Control Board (TACB).

(j) A separate permit is not required for a facility to treat petroleum-contaminated soil if the contaminated soil is treated/processed at a permitted solid waste landfill facility. The treated soil shall be disposed of at the facility or may be used as daily cover on the facility. Any person who intends to conduct such activity under this subsection shall comply with the notification requirements of §330.8 of this title (relating to Notification Requirements).

(k) A licensed hospital may function as a medical waste collection and transfer facility for generators that generate less than 50 pounds of untreated medical waste

per month and that transports its own waste if:

(1) the hospital is located in an incorporated area with a population of less than 25,000 and in a county with a population of less than one million or;

(2) the hospital is located in an unincorporated area that is not within the extraterritorial jurisdiction of a city with a population more than 25,000 or within a county with a population of more than one million. The hospital shall submit a request to the executive director for registration as a medical waste collection station.

(l) A permit is not required for an on-site medical waste incinerator used by a licensed hospital for incineration of only on-site generated medical wastes provided the hospital submits a request in writing to the executive director and receives a registration from the executive director. The executive director may issue the registration only after consultation with the TACB and may prescribe in the notice for registration any special provisions as deemed necessary by the executive director or as required by the rules of the TACB. The application for registration must be prepared in accordance with §§330.52, 330.57, and 330.58 of this title (relating to Technical Requirements of Part I, Part II, and Part III of the Application). Applicants should consult with the executive director to confirm applicability of specific requirements. The submission of land ownership maps and land owners list may be waived in certain instances by the executive director. Requests to waive these requirements should include a discussion with justification for the waiver and be submitted with the application.

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

(n) Exploratory and test operations for feasibility purposes may be conducted if a registration is obtained from the executive director. The application for registration must be prepared in accordance with §§330.52, 330.57, and 330.58 of this title (relating to Technical Requirements of Part I, Part II, and Part II of the Application). Applicants should consult with the executive director to confirm applicability of specific requirements. The submission of land ownership maps and land owners list may be waived in certain instances by the executive director. Requests to waive these requirements should include a discussion with justification for the waiver and be submitted with the application.

(o) Submission of a Soil Liner Evaluation Report (SLER) and/or a Flexible Membrane Liner Evaluation Report (FMLER) required by §330.206 of this title (relating to Soil and Liner Evaluation Report and Flexible Membrane Liner Evaluation Report) for a liner design which meets all design and operational requirements of §§330.50-330.65 of this title (relating to Permit Procedures) and §§330.200-300.206 of this title (relating to Ground-Water Protection Design and Operation) shall not require a permit amendment or modification.

§330.5. General Prohibitions.

(a) In addition to the requirements of §330.4 of this title (relating to Permit Required), a person may not cause, suffer, allow, or permit the collection, storage, transportation, processing, or disposal of municipal solid waste, or the use or operation of a solid waste facility to store, process, or dispose of solid waste, or to extract materials under the Texas Solid Waste Disposal Act, §361.092, in violation of the Texas Solid Waste Disposal Act, or any regulations, rules, permit, license, order of the commission or in such a manner so as to cause:

(1) the discharge or imminent threat of discharge of municipal solid waste into or adjacent to the waters in the state without obtaining specific authorization for such discharge from the commission;

(2) the creation and maintenance of a nuisance; or

(3) the endangerment of the human health and welfare or the environment.

(b) Municipal solid waste landfill facilities (MSWLFs) failing to satisfy this chapter, unless exempted by this chapter, are considered open dumps for purposes of State solid waste management planning under the Resource Conservation and Recovery Act (RCRA) and are prohibited under RCRA, §4005(a).

(c) A person may not cause, suffer, allow, or permit the dumping of municipal solid waste without the written authorization of the commission.

(d) The open burning of solid waste, except for the infrequent burning of waste generated by land-clearing operations, agricultural waste, silvicultural waste, diseased trees, or emergency clean up operations as authorized by the commission or executive director as appropriate, is prohibited at any municipal solid waste landfill. The operation of any type of air-curtain destructor (trench burner), other than for the exceptions noted in the previous sentence, is prohibited.

(e) The following waste are prohibited from disposal in any municipal solid waste facility.

(1) A lead acid storage battery shall not be intentionally or knowingly offered by a generator or transporter for disposal at a municipal solid waste landfill or incinerator, and/or shall not be intentionally or knowingly accepted for disposal at any municipal solid waste landfill or incinerator permitted under this chapter.

(A) Each battery improperly disposed of constitutes a separate violation and offense.

(B) A person who violates the provisions of this paragraph is subject to the criminal and/or civil penalties found in the Texas Solid Waste Disposal Act, as amended.

(2) Do-it-Yourself (DIY) used motor vehicle oil shall not be intentionally or knowingly offered by a generator or transporter for disposal at a municipal solid waste landfill or municipal incinerator, either by itself or mixed with other solid waste, and/or shall not be intentionally or knowingly be accepted for disposal at a municipal solid waste landfill or municipal incinerator permitted under this chapter.

(A) It is an exception to this subsection if the mixing or commingling of used-oil with solid waste that is to be disposed of in a landfill is incidental to, and the unavoidable result of, the mechanical shredding of motor vehicles, appliances, or other items of scrap, used, or obsolete metals.

(B) A person who violates the provisions of this paragraph is subject to the criminal and/or civil penalties found in the Texas Solid Waste Disposal Act, as amended.

(3) Used-oil filters from internal combustion engines shall not be intentionally or knowingly accepted for disposal at landfills permitted under this chapter except as provided in §330.136 of this title (relating to Disposal of Special Wastes).

(4) Whole used or scrap tires shall not be accepted for disposal or disposed of in any municipal solid waste landfill.

(5) Refrigerators, freezers, air conditioners, and any other items containing chlorinated fluorocarbon (CFC) shall not be knowingly accepted for disposal or disposed of in any municipal solid waste landfill unless all the CFC contained in that item is

captured and sent to an approved CFC disposal site or recycling facility. If the CFC is not removed from the item, then the whole item must be sent to an approved CFC disposal site. Such items that enter the facility with ruptured lines or holes in the CFC unit shall not be accepted unless the generator or transporter provides written certification that the CFC has been evacuated from the unit and that it was not knowingly allowed to escape into the atmosphere.

(6) Liquids Restrictions. The following wastes are prohibited from disposal in any MSWLF unit.

(A) Bulk or noncontainerized liquid waste shall not be accepted for disposal or disposed of in a municipal solid waste landfill unless:

(i) the waste is household waste other than septic waste; or

(ii) the waste is leachate or gas condensate derived from a landfill and the landfill unit is designed and constructed with a composite liner and a leachate collection system. The owner or operator shall make the procedure for disposal of the leachate or gas condensate a part of the site operating plan.

(B) Containers holding liquid waste shall not be accepted for disposal or disposed of in a municipal solid waste landfill unless:

(i) the container is a small container similar in size to that normally found in household waste;

(ii) the container is designated to hold liquids for use other than storage; or

(iii) the waste is household waste.

(7) Regulated hazardous waste as defined in §330.2 of this title (relating to Definitions) shall not be accepted at a municipal solid waste facility.

(8) Polychlorinated biphenyls (PCB) wastes, as defined under 40 Code of Federal Regulations, Part 761, shall not be accepted for disposal or disposed of in a municipal solid waste facility.

(f) MSWLFs receiving sewage sludge and failing to satisfy the criteria of this chapter violate the Federal Clean Water Act, §309 and §405(e).

(g) Contact between solid waste and unconfined waters, which are subject to free exchange with ground water or surface water, is prohibited.

(h) The drilling of any test borings, for any reason, through previously deposited waste or cover material without prior written authorization from the executive director is prohibited.

§330.6. Technical Guidelines. In order to promote the proper collection, handling, storage, processing, and disposal of municipal solid waste in a manner consistent with the purpose of the Texas Solid Waste Disposal Act and 40 Code of Federal Regulations, Parts 257 and 258 as amended, the executive director will publish technical guidelines outlining recommended methods designed to aid in compliance with this chapter. The purpose of the guidelines is to provide information that may be of use to site operators in the selection, design, development, and operation of solid waste sites. The procedures outlined in the guidelines are not mandatory except for testing and sampling requirements; however, they are recommended and, in certain cases, may be specifically required by this chapter and/or permit special provisions. The publication of technical guidelines shall not be used to extend the scope or increase the stringency of this chapter. Technical guidelines shall not be applied retroactively.

§330.7. Deed Recordation.

(a) Recording Required. A person may not cause, suffer, allow, or permit the disposal of municipal solid waste prior to recording in the county deed records of the county or counties in which the disposal takes place a metes and bounds description of the portion or portions of the tract of land on which disposal of solid waste will take place.

(b) Proof of Recordation. A certified copy of the recorded document shall be provided to the executive director prior to instituting disposal operations.

(c) Final Recording. Upon completion of the disposal operation and final closure of the facility, the operator/owner shall file an "Affidavit to the Public" in a form provided by the executive director that includes an updated metes and bounds description of the extent of the disposal areas and the restrictions to future use of the land in accordance with §330.253(e)(8) of this title (relating to Closure Requirements for MSWLF Units or Facilities That Receive Waste on or after October 9, 1993).

§330.8. Notification Requirements.

(a) A person who intends to store, process, or dispose of municipal solid waste without a permit, as authorized by §330.4 of this title (relating to Permit Required), shall notify the executive director in writing that storage, processing, or disposal activities are planned, at least 90 days prior to engaging in such activities, except for recycling and other activities as may be specifically exempted. Such person shall submit to the executive director upon request such information as may reasonably be required to enable the executive director to determine whether such storage, processing, or disposal is in compliance with the terms of this chapter. Such information may include, but is not limited to, type of waste, waste management methods, facility engineering plans and specifications, and the geology and hydrogeology at the facility. Any information provided under this subsection shall be submitted to the executive director in duplicate form.

(b) Any person who stores, processes, or disposes of municipal solid waste shall have the continuing obligation to provide prompt written notice to the executive director of any changes or additional information concerning waste type, waste management methods, facility engineering plans and specifications, and geology and hydrogeology at the facility additional to that reported in subsection (a) of this section, authorized in any permit, or stated in any application filed with the commission. Any information provided under this subsection shall be submitted to the executive director in duplicate form.

(c) A person who stores, processes, or disposes of municipal solid waste shall notify the executive director in writing of any closure activity or activity of facility expansion not authorized by permit, at least 90 days prior to conducting such activity. Such person shall submit to the executive director upon request such information as may reasonably be required to enable the executive director to determine whether such activity is in compliance with this chapter. Any information provided under this subsection shall be submitted to the executive director in duplicate form.

§330.9. Financial Assurance Required. The commission may require evidence of financial responsibility as it deems appropriate to assure the commission that the responsible owner or operator has sufficient assets to properly operate the site and to provide proper closure. A firm commitment to provide backup equipment by lease, purchase, or diversion from other activities is part of this responsibility. This assurance for the proper operation of the site may be in the form of performance bonds, letters of credit from recognized financial institutions, trust funds, or insurance (in the case of privately owned facilities). A Commissioners Court or city council resolution, in the case of publicly owned facilities, may be substituted for the required financial assurance, if approved by the commission.

§330.10. Closure.

(a) Any person who stores, processes, or disposes of municipal solid waste at a facility permitted under §330.4 of this

title (relating to Permit Required), shall, unless specifically modified by other order of the commission, close the facility in accordance with the closure provisions of the permit.

(b) Any person who stores, processes, or disposes of municipal solid waste is subject to the applicable provisions in §§330.701-330.731 of this title (relating to Closure and Post-Closure).

§330.11. Relationships with Other Governmental Entities.

(a) Texas Air Control Board (TACB). All municipal solid waste facility units are subject to the jurisdiction and regulation of TACB with respect to air contaminant emissions. TACB is responsible for the administration and enforcement of its jurisdiction and rules. Applicants for permits for municipal solid waste landfill facility MSWLF units that burn or incinerate solid waste must comply with the applicable requirements of Subchapter Q of this chapter (relating to Memoranda of Agreement and Joint Rules with Other Agencies).

(b) Texas Department of Transportation (TxDOT). In view of the responsibilities of TxDOT regarding the junkyard control provisions of the Texas Litter Abatement Act, the commission shall coordinate with TxDOT on the review of all permit applications for municipal solid waste land disposal facilities existing or proposed within 1,000 feet of an interstate or primary highway to determine the need for screening or special operating requirements. When primary access to a municipal solid waste disposal facility is provided by state-maintained streets or highways, the commission shall solicit recommendations from TxDOT regarding the adequacy and design capacity of such roadways to safely accommodate the additional volumes and weights of traffic generated or expected to be generated by the facility operation.

(c) United States Army Corps of Engineers. In view of the requirements under the Federal Clean Water Act for any person to obtain a permit from the Corps of Engineers prior to discharging any fill materials into navigable waters or contiguous or adjacent wetlands thereof and the requirement under the River and Harbor Act of 1899 for any person to obtain a permit from the Corps of Engineers for any work and/or structures in or affecting the course, capacity, or condition of any navigable water of the United States, the commission shall coordinate the review of all permit applications for municipal solid waste disposal facilities with the appropriate district engineer to determine the need for such permits.

(d) Federal Aviation Administration (FAA). In view of the potential attraction that solid waste land disposal facilities have to birds and the hazard that birds present to low flying aircraft, the commission shall coordinate the review of permit applications for all municipal solid waste land disposal facilities existing or proposed in the vicinity of airports with the appropriate airport's district office of the FAA (FAA Agency Order 5200.5, "FAA Guidance Concerning Sanitary Landfills on or Near Airport's").

(e) Special district. The Texas Solid Waste Disposal Act applies to political subdivisions of the state to which the legislature has given waste handling authority for two or more counties. The relationship between the commission and any such waste handling authority will be similar to that between the commission and a county.

(f) Regional planning agencies. The commission will provide educational, technical, and advisory assistance to the various councils of governments and regional planning commissions throughout the state.

(g) Municipal governments. Municipalities may enforce the provisions of this chapter as provided for in the Solid Waste Disposal Act. The commission is committed to assist municipal governments in an educational and advisory capacity. The commission is a necessary party to any suit filed by a local government under the Texas Solid Waste Disposal Act.

(h) County governments. County governments may exercise the authority provided in Texas Civil Statutes, Health and Safety Code, Chapters 361 and 364, regarding the management of solid waste including the enforcement of the requirements of the Texas Solid Waste Disposal Act and this chapter. The provisions of Texas Civil Statutes, Health and Safety Code, Chapters 361 and 364, allow county governments to require and issue licenses authorizing and governing the operation and maintenance of sites used for the disposal of solid waste not in the territorial or extraterritorial jurisdiction of a municipality. Texas Civil Statutes, Health and Safety Code, Chapters 361 and 364, provide that no license for disposal of solid waste may be issued, renewed, or extended without the prior approval of the commission. Under Texas Civil Statutes, Health and Safety Code, Chapters 361 and 364, the commission is a necessary and indispensable party to any suit filed by a local government for the violation of any provision of the Act. If a permit is issued, renewed, or extended by the commission, the owner or operator of the site does not need to obtain a separate license for the same site from a county or from a political subdivision as defined in Texas Civil Statutes, Health and Safety Code, Chapters 361 and 364.

(i) Texas Parks and Wildlife Department (TPWD). TPWD has jurisdiction over certain environmental issues that may be involved in municipal solid waste facility permitting, including, but not limited to, endangered species and wetlands. The commission will solicit comments from, and consider information provided by, TPWD.

§330.12. Relationship with County Licensing System.

(a) General Procedures. Under the Texas Solid Waste Disposal Act, Chapters 361 and 364, counties are empowered to require and issue licenses authorizing and governing the operation and maintenance of solid waste disposal sites not within the territorial limits or extraterritorial jurisdiction of incorporated cities and towns. The county shall mail a copy of the license application to the commission to receive comments and recommendations on the license application before the county acts on the application. No license for the use of a site for the disposal of solid waste may be issued, renewed, or extended without prior approval of the commission. The County Solid Waste Control Act excludes both the territorial limits and the extraterritorial jurisdiction of incorporated cities and towns from county authority to make regulations for the governing and controlling of solid waste collection, handling, storage, and disposal.

(b) Licensing Procedures. The following pertain only to those counties that may choose to exercise licensing authority in accordance with the Texas Solid Waste Disposal Act, and the County Solid Waste Control Act.

(1) Licensing Authority.

(A) Before exercising licensing authority for municipal solid waste sites, a county government shall promulgate regulations that are consistent with those established by the commission and that have been approved by the commission. A county exercising authority shall use the same evaluation processes as prescribed for use by the commission to include providing appropriate agencies, in accordance with §330.11 of this title (relating to Relationships with Other Governmental Entities) and §§330.50-330.65 of this title (relating to Permit Procedures), an opportunity to review and comment on those applications for which they may have a jurisdictional interest. In view of the technical evaluations and site investigations that must be made by some review agencies, ample time shall be allowed to receive and review agency comments prior to a public hearing. To ensure that review agencies are provided sufficient information on which to base a determination, counties will include in their permit application forms the data requirements as specified in permit applications used by the commission, supplemented by any other re-

quirements deemed necessary by the individual counties.

(B) A county may not make regulations for municipal solid waste management within the extraterritorial or territorial jurisdiction of incorporated cities or towns.

(C) The commission will issue permits for municipal solid waste sites located within the extraterritorial or territorial jurisdiction of incorporated cities or towns within the county.

(D) A county license for a municipal solid waste site may not be issued, extended, or renewed without prior approval of the commission.

(E) Once a license is issued by a county and remains valid, a permit from the commission is not required.

(2) Public Meeting. A county shall hold a public meeting and offer an opportunity for a public hearing, and issue appropriate notifications, in accordance with the procedures established in §§330.50-330.65 of this title (relating to Permit Procedures) prior to issuance, amendment, extension, revocation, or renewal of a license.

(c) Duration of a License. The duration of a county license should normally be for the life of the site.

(d) Licensee's Responsibilities. Solid waste sites licensed by a county shall be operated in compliance with regulations of the commission and the county.

§330.13. Severability. If any section or provision of this chapter or the application of that section or provision to any person, situation, or circumstance is adjudged invalid for any reason, the adjudication does not affect any other section or provision of this chapter or the application of the adjudicated section or provision to any other person, situation, or circumstance. The commission declares that it would have adopted the valid portions and applications of this chapter without the invalid part, and to this end the provisions of this chapter are declared to be severable.

§330.14. Arid Exemption Flowchart. The following flowchart shall be used for meeting the provisions for ground-water certification of the arid exemption, as described in §330.3(f) of this title (relating to Applicability).

(a) Locate and plot the site accurately on a topographic map (7 1/2-foot or 15-foot United States Geological Survey quadrangle). Draw a line to enclose all of the area within one mile of the site boundary (site area).

(b) Visit the site and locate by physical inspection water wells and springs in the site area. Determine the locations and plot them on the topographic map.

(1) If no wells or springs exist within the site area, refer to subsection (g) of this section. Otherwise, refer to subsection (b)(2) of this section.

(2) Determine from appropriate records (water-well drillers, pump installers, City records, underground water conservation district, Texas Water Development Board, Texas Water Commission, United States Geological Survey, etc.) which of the wells are completed in the shallowest aquifer. If no wells are completed in the shallowest aquifer or if the shallowest aquifer is more than 150 feet below the land surface at the site, refer to subsection (g) of this section. Otherwise, refer to subsection (c) of this section.

(c) Determine the ground-water gradient of the shallowest aquifer in the vicinity of the site. This can be done by measuring stabilized water levels in wells completed in the shallowest aquifer in the site area (from subsection (b) of this section) or from previous hydrogeologic studies using contemporaneous stabilized water-level measurements. Care should be taken to measure water levels when nearby high-volume wells, such as irrigation wells, have not been pumped for a considerable period. Where no data exist or cannot be determined, the regional gradient can be used.

(d) From springs and from the wells completed in the shallowest aquifer, select the two wells/springs downgradient of and nearest to the site based on the findings from subsection (c) of this section. Select a well/spring upgradient or lateral to the site, where ground-water quality is not likely to have been affected by landfill activities and preferably not by other human activities such as oil and gas operations, feedlots, sewage treatment plants, septic systems, etc.

(e) Sample the three selected wells/springs determined by subsections (c) and (d) of this section in accordance with accepted practices, such as described in technical guidance from the executive director. Have the samples analyzed by a qualified laboratory for the following parameters:

(1) Chloride;

(2) Nitrate (as N);

(3) Sulfate;

(4) total dissolved solids;

(5) specific conductance;

(6) pH;

(7) Chromium;

(8) non-purgeable organic carbon;

(9) volatile organic compounds listed in §330.241 of this title (relating to Constituents for Detection Monitoring).

(A) If permission cannot be obtained to sample one or more of the three selected wells/springs, select one or more alternate wells/springs. If fewer than three wells/springs are available, sample those that are available.

(B) If permission cannot be obtained to sample any appropriately located wells/springs, submit written documentation of the facts to the executive director. If the executive director confirms that permission cannot be obtained for sampling, the well(s) may be eliminated from consideration.

(f) Compile the data from subsections (a) through (e) of this section in a report comprising:

(1) map showing all known wells, springs, site boundaries, sampling points, etc.;

(2) map showing the ground-water gradient and data points;

(3) chemical analyses, showing analytical methods used;

(4) logs and construction information for the sampled wells and description and flow rate for sampled springs;

(5) text describing methods of investigation, such as sampling and water-level measurements; and

(6) conclusions with respect to presence or lack of evidence of ground-water contamination by the site.

(g) Where no wells or springs are present in the site area or the shallowest aquifer is more than 150 feet below land surface at the site, submit a brief report describing the site (with a map of the area) and the method(s) of determining the lack of appropriate sampling points or depth to the shallowest aquifer. Confirmed absence of sampling points will be deemed to be "no evidence of ground-water contamination."

(h) The report shall be signed and, where appropriate, sealed by the qualified ground-water professional who reviewed the data and reached the conclusions.

(i) If there is no evidence of ground-water contamination by the landfill, the qualified ground-water professional who reviewed the data and reached the conclusions shall sign and, where appropriate, seal

a statement in the following format: I (we) have reviewed the ground-water data described in a report submitted with this certification and have found no evidence that the ____________Municipal Solid Waste Landfill (MSWLF) unit located at ____________ has contaminated ground water in the uppermost aquifer.

(j) The executive director may accept information and data, other than that described, as showing that there is no evidence of ground-water contamination by the landfill, if the information and data are deemed to be adequate for such a determination.

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 March 2, 1993.

TRD-9319705 Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: April 9, 1993

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

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Subchapter B. Municipal Solid Waste Storage

• 31 TAC §§330.21-330.25

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

The repeals are proposed under the Texas Health and Safety Code, Chapter 361, which gives the commission all powers necessary and convenient under that chapter to carry out its responsibilities concerning the regulation and management of municipal solid waste.

§330.21. Applicability.

§330.22. Storage Requirements.

§330.23. Approved Containers.

§330.24. Citizens' Collection Stations.

§330.25. Requirements for Stationary Compactors.

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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Director, Legal Division
Texas Water Commission

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

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The new sections are proposed under the Texas Health and Safety Code, Chapter 361, which gives the commission all powers necessary and convenient under that chapter to carry out its responsibilities concerning the regulation and management of municipal solid waste.

§330.21. Applicability. This subchapter shall be applicable to all public and private storage systems.

§330.22. Storage requirements. All solid waste shall be stored in such a manner that it does not constitute a fire, safety, or health hazard or provide food or harborage for animals and vectors, and shall be contained or bundled so as not to result in litter. It shall be the responsibility of the occupant of a residence or the owner or manager of an establishment to utilize storage containers of an adequate size and strength, and in sufficient numbers, to contain all solid waste that the residence or establishment generates in the period of time between collections.

§330.23. Approved Containers. All solid waste containing food wastes shall be stored in covered or closed containers which are leakproof, durable, and designed for safe handling and easy cleaning.

(1) Nonreusable containers. Nonreusable containers shall be of suitable strength to minimize animal scavenging or rupture during collection operations.

(2) Reusable containers. Reusable containers shall be maintained in a clean condition so that they do not constitute a nuisance and to retard the harborage, feeding, and propagation of vectors.

(A) All containers to be emptied manually shall be capable of being serviced without the collector coming into physical contact with the solid waste.

(B) Containers to be mechanically handled shall be designed to prevent spillage or leakage during storage, handling, or transport.

§330.24. Citizen's Collection Stations. Citizen's collection stations shall be provided with the type and quantity of containers compatible with the areas to be served. Rules shall be posted governing the use of the facility to include who may use it, what may or may not be deposited, etc. The responsible private contractor or any other party which owns or operates the collection center shall provide for the collection of deposited waste on a scheduled basis and supervise the facility in order to maintain it in a sanitary condition.

§330.25. Requirements for Stationary Compactors.

(a) Special permit for a stationary compactor, the waste from which is to be disposed of at a Type IV landfill, must be obtained through the procedures detailed in this section.

(b) Permit requirements for stationary compactors are as follows.

(1) Application shall be made to the commission on a form provided by the commission and shall include all information requested thereon and any additional information considered necessary by the applicant or as may be requested by the executive director.

(2) The application shall include the following information:

(A) applicant contact person, company name, mailing address, street address, city, state, ZIP code, and telephone number;

(B) establishment contact person, company name, mailing address, street address, city, state, ZIP code, and telephone number;

(C) contract renewal date;

(D) compaction capability;

(E) container size;

(F) complete description of waste stream to enter compactor;

(G) disposal facility information including permit number, facility name, mailing address, street address, city, state, ZIP code, telephone number, and contact person;

(H) disposal information including frequency of disposal and the estimated day of week and time span of day in which disposal is expected to occur;

(I) an alternate disposal contingency plan to include alternate trucks to be used for transport or alternate disposal facilities; and

(J) a certificate from the establishment which must accompany the application that states: I

[name]_____________, [title]

________________________ of

[Company name]

________________________,

located at [street address]

________________________ in

[city]

________________________,

certify that the contents of the compactor located at the location stated herein are free of and shall be maintained free of putrescible, hazardous, Class I nonhazardous, infectious, or any other waste not allowable in a Type IV landfill.

(3) The application at the time of submittal must be accompanied by the required $75 application fee.

(c) Operational standards for permitted stationary compactors are as follows.

(1) Stationary compactors shall be operated and maintained in such a way as not to create a public nuisance through material loss or spillage, odor, vector breeding or harborage, or other condition.

(2) The certificate within the application and the provisions of the permit must be adhered to at all times.

(3) Upon delivery to a Type IV landfill, a trip ticket in the form provided by the commission must be provided to the landfill operator by the transporter prior to discharging his waste load at the landfill.

(d) A stationary compactor permit shall be issued for one year and must be renewed annually prior to the date of expiration by submitting the renewal fee in the amount of $75. Failure to timely renew a permit eliminates the option of disposal of these wastes at a Type IV landfill until a new or renewed permit is issued.

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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Texas Water Commission

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Subchapter C. Municipal Solid Waste Collection and Transportation

• 31 TAC §§330.31-330.34

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

The repeals are proposed under the Texas Health and Safety Code, Chapter 361, which gives the commission all powers necessary and convenient under that chapter to carry out its responsibilities concerning the regulation and management of municipal solid waste.

§330.31. Applicability.

§330.32. Collection and Transportation.

§330.33. Collection Vehicles and Equipment.

§330.34. Collection Spillage.

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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The new sections are proposed under the Texas Health and Safety Code, Chapter 361, which gives the commission all powers necessary and convenient under that chapter to carry out its responsibilities concerning the regulation and management of municipal solid waste.

§330.31. Applicability. This subchapter shall be applicable to all public and private collection and transportation systems.

§330.32. Collection and Transportation Requirements.

(a) Municipal solid waste containing putrescibles shall be collected a minimum of once weekly to prevent propagation and attraction of vectors and the creation of public health nuisances. Collection should be made more frequently in circumstances where vector breeding or harborage potential is significant.

(b) Transporters of municipal solid waste shall be responsible for ensuring all solid waste they collect is unloaded only at facilities authorized to accept the type of waste being transported. Off-loading at an unauthorized location or at a facility not authorized to accept such waste is a violation of this subchapter. Allowable wastes at a particular solid waste management facility may be determined by reviewing the following regulations as applicable:

(1) §330.41 of this title (relating to Types of Municipal Solid Waste Facilities);

(2) §330.111-330.134 of this title (relating to Operational Standards for Solid Waste Land Disposal Sites);

(3) §330.150-330.159 of this title (relating to Operational Standards for Solid Waste Processing and Experimental Sites);

(4) §312.1-312.101 of this title (relating to Sewage Sludge Use and Disposal) ; and

(5) §330.5(e) of this title (relating to General Prohibitions) .

(c) All transporters of solid waste shall maintain records for at least three years to document that waste was taken to an authorized municipal solid waste facility. Upon request of the executive director or of a local government with jurisdiction, a transporter is responsible for providing adequate documentation regarding the destination of all collected waste including billing documents to prove that the proper disposal procedure is being followed.

(d) Each transporter delivering waste to a solid waste management facility shall provide documentation to the operator that he has so arranged his routes to eliminate nonallowable wastes from the loads he transports to that facility. This documentation shall also state that the transporter will remove any nonallowable wastes disposed of by him immediately after their discharge or that, at the option of the disposal facility operator, he will pay any applicable surcharges to have the disposal facility operator accomplish the required immediate removal for him.

(e) At any time that nonallowable wastes are discovered in a load of waste being discharged at a municipal solid waste facility, the transporter shall immediately take all necessary steps to determine the origin and alter his routes to assure that in the future such wastes are either not collected by him or are taken to a facility approved to accept such wastes.

(f) Each transporter of waste in enclosed containers or enclosed vehicles to a Type IV municipal solid waste landfill facility (MSWLF) facility shall obtain a route

special permit for each such route he proposes to take to a Type IV landfill. For the purposes of this subsection, route refers to those business establishments from which the transporter has contracted to collect waste. The application for a transporter route special permit shall be submitted to the executive director on a form provided by the commission and shall include all information requested thereon and any additional information considered necessary by the applicant or additional information as may be requested by the commission.

(1) The application for a transporter route special permit shall include the following information:

(A) the applicant name, company name, mailing address, street address, city, state, ZIP code, name and title of the contact person, and telephone number for the transporter;

(B) the name, permit number, mailing address, street address, city, state, ZIP code, name and title of a contact person, and telephone number for the receiving MSWLF facility;

(C) information on the hauling vehicle, which shall include as a minimum the license number, vehicle identification number, year model, make, capacity of vehicle in cubic yards, and rated compaction capability in pounds per cubic yard;

(D) route information, which shall include as a minimum the collection frequency, the day of the week the route is to be collected, and the day and time span within which the route is to arrive at the landfill;

(E) business establishment information, which shall be provided for each establishment on a separate form provided by the executive director, or a computer facsimile thereof, and shall include as a minimum: route order, transporter name, collection frequency, the expected day and time of collection, establishment contact person, establishment name, establishment mailing address, establishment street address, city, state, ZIP code, telephone number, a description of activities associated with the establishment with particular emphasis on food handling and products sold or handled that could end up in the waste stream; and

(F) an alternate contingency disposal plan to include alternate trucks to be used or alternate disposal facilities.

(2) The application at the time of submittal must be accompanied by the required $100 application fee.

(3) A maintenance fee of $100 for each transporter route special permit will be due every three months following the date of issuance. Failure to submit timely payment of the maintenance fee eliminates the option of disposal of these wastes at a Type IV landfill until the fee is paid.

(4) This subsection does not apply if the waste load is from a single collection point that is a stationary compactor permitted in accordance with §330.25 of this title (relating to Requirements for Stationary Compactors) or municipal vehicles permitted under subsection (g) of this section.

(5) Each transporter delivering waste to a Type IV landfill in accordance with this subsection shall provide to the onsite commission inspector a trip ticket in the typical form provided by the commission prior to discharging his load.

(g) Special residential and municipal collection routes where enclosed containers or enclosed vehicles are used to collect and transport brush or construction-demolition wastes and rubbish to Type IV landfills shall obtain a special permit for each municipal route he proposes to take to the Type IV landfill. For the purposes of this subsection, route refers to those residences from which the transporter has contracted to collect brush or construction-demolition waste and rubbish. The application for a municipal route special permit shall be submitted to the executive director on a form provided by the commission for each truck or container to be used and shall include all information requested thereon and any additional information considered necessary by the applicant or additional information as may be requested by the executive director.

(1) The application for a municipal route special permit shall include the following information:

(A) the applicant name, title, mailing address, street address, city, state, ZIP code, name and title of a contact person, and telephone number for the transporter;

(B) the name, permit number, mailing address, street address, city, state, ZIP code, name and title of a contact person, and telephone number for the receiving MSWLF facility;

(C) information on the hauling vehicle, which shall include as a minimum the license number, vehicle identification number, year model, make, capacity of vehicle in cubic yards, and rated compaction capability in pounds per cubic yard;

(D) route information, which shall include as a minimum the collection frequency, the day of the week the route is to be collected, and the day and time span within which the route is to arrive at the landfill;

(E) a description of the wastes to be transported;

(F) a signed and notarized certificate from the city that states: I [name] _______,[title] _______, of the City of _______ in ______ County, certify that the contents of the vehicle described above will not enter a Type IV landfill unless it is free of putrescible, hazardous, Class I industrial nonhazardous, infectious, or any other waste not allowable in a Type IV landfill.

(2) The application at the time of submittal must be accompanied by the required $50 application fee.

(3) Each municipal route must be documented by a trip ticket in the typical form provided by the executive director that is provided to the landfill operator prior to discharging the load at the landfill.

(4) A municipal route special permit shall be issued for one year and must be renewed annually prior to the date of expiration by submitting a renewal fee in the amount of $50. Failure to submit timely payment of the renewal fee eliminates the option of disposal of these wastes at a Type IV landfill until a new or renewed special permit is issued.

(h) Change requirements for transporter route or special municipal route special permits are as follows.

(1) A change of a transporter route special permit or municipal route special permit must be submitted any time any information within the original application is to be changed, including the list of establishments for a transporter route.

(2) An application to change an existing transporter route special permit or municipal route special permit must include all of the same documentation required of an original application.

§330.33. Collection Vehicles and Equipment.

(a) Sanitation standards. All vehicles and equipment used for the collection and transportation of municipal solid waste shall be constructed, operated, and maintained to prevent loss of liquid or solid waste material and to minimize health and safety hazards to solid waste management personnel, the public, and the environment. Collection vehicles and equipment shall be

maintained in a sanitary condition to preclude odors and fly breeding.

(b) Operating condition of vehicles. Collection vehicles should be maintained and serviced periodically and should receive periodic safety checks. Safety defects in a vehicle should be repaired before the vehicle is used.

§330.34. Collection Spillage.

(a) Cleanup at collection point. The person operating the collection system shall provide for prompt cleanup of all spillages caused by the collection operation.

(b) Cleanup along route. Persons transporting solid waste shall not discharge or allow the discharge of solid waste from the vehicle on the way to the municipal solid waste facility. If a discharge of waste occurs during transportation, the transporter shall take immediate action to contain the waste and to clean up and remove the discharged waste to an approved solid waste management facility.

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 March 2, 1993.

TRD-9319707 Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: April 9, 1993

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

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Subchapter D. Classification of Municipal Solid Waste

• 31 TAC §§330.41-330.42

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

The repeals are proposed under the Texas Health and Safety Code, Chapter 361, which gives the commission all powers necessary and convenient under that chapter to carry out its responsibilities concerning the regulation and management of municipal solid waste.

§330.41. Basis for Classification.

§330.42. Types of Municipal Solid Waste Sites.

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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Subchapter D. Classification of Municipal Solid Waste Facilities

• 31 TAC §330.41

The new section is proposed under the Texas Health and Safety Code, Chapter 361, which gives the commission all powers necessary and convenient under that chapter to carry out its responsibilities concerning the regulation and management of municipal solid waste.

§330.41. Types of Municipal Solid Waste Facilities.

(a) Classification of Municipal Solid Waste Facilities. The commission has classified all municipal solid waste facilities according to the method of processing or disposal of municipal solid waste. Subject to the limitations in §330.136 of this title (relating to Disposal of Special Wastes) and §330. 137 of this title (relating to Disposal of Industrial Wastes), and with the written approval of the executive director, a MSWLF facility may also receive special wastes, including Class I industrial nonhazardous solid waste and hazardous waste from conditionally exempt small quantity generators, if properly handled and safeguarded in the landfill facility.

(b) Municipal solid waste facility-Type I. A Type I facility shall be considered to be the standard landfill for the disposal of municipal solid waste. All solid waste deposited in a Type I facility shall be compacted and covered at least daily. The commission may authorize the designation of special-use areas for processing, storage, and disposal or any other functions involving solid waste. The operational and design standards prescribed in §§330.50-330.65 of this title (relating to Permit Procedures), §§330. 111-330.139 of this title (relating to Operational Standards for Solid Waste Land Disposal Sites), §§330.150-330.159 of this title (relating to Operational Standards for Solid Waste Processing and Experimental Sites), §§330.200-330.206 of this title (relating to Ground-Water Protection Design and Operation), §§330.230-330.242 of this title (relating to Ground-Water Monitoring and Corrective Action), §§330.250-330.256 of this title (relating to Closure and Post-Closure), §§330.280-330.286 of this title (relating to Financial Assurance), and §§330.300-330.305 of this title (relating to Location Restrictions), unless otherwise specified in §330.3(e) of this title (relating to Applicability), shall be followed. Those facilities meeting the requirements of §330.3(e) of this title (relating to Applicability) shall be referred to as Type I-AE facilities and are exempt from §§330.200-330.206 and §§330.230-330.330 of this title (relating to Ground-Water Protection Design and Operation and Ground-Water Monitoring and Corrective Action, respectively). Type I Facilities that are authorized to operate a Type IV cell or trench shall operate the cell or trench in accordance with §330.41(e) of this title (relating to Types of Municipal Solid Waste Facilities).

(c) Municipal solid waste facility-Type II. Upon the effective date of this title, all Type II facilities, as defined in this subsection, shall meet and comply with the Type I standards contained in subsection (b) of this section, except as otherwise specified in §330.3(e) of this title (relating to Applicability). For the purpose of this section, a Type II facility is defined as: a facility or operation serving less than 5,000 persons or the population equivalent; receiving less than 12-1/2 tons of solid waste per day; compacted and covered on a frequency that will not result in any significant health problems; and operation not conducted within 300 yards of a public road.

(d) Municipal solid waste facility-Type III. Upon the effective date of this title, all Type III facilities, as defined in this subsection, shall meet and comply with the Type I standards contained in subsection (b) of this section, except as otherwise specified in §330.3(e) of this title (relating to Applicability). For the purpose of this section, a Type III facility is defined as: a facility or operation serving less than 1,500 persons or the population equivalent; receiving less than 3-3/4 tons of waste per day; and operation not conducted within 300 yards of a public road.

(e) Municipal solid waste facility-Type IV. A Type IV facility or operation may be authorized by the commission for the disposal of brush, construction-demolition waste, and/or rubbish that are free of putrescible and household wastes. A Type IV operation shall not be operated within 300 yards of a public road unless the commission, after a site evaluation, determines that the proposed operation in the proposed location is acceptable. The minimum operational standards are prescribed in the applicable requests §§330.50-330.65 of this title (relating to Permit Procedures) §§330. 111-330.135 of this title (relating to Operational Standards for Solid Waste Land Disposal Sites), §§330.138-330.139 of this title (relating to Operational Standards for Solid Waste Land Disposal Sites), §§330.204-330. 206 of this title (relating to

Ground-Water Protection Design and Operation), §330.239 of this title (relating to Ground-Water Monitoring at Type IV Landfills), §§330.250-330.256 of this title (relating to Closure and Post-Closure), unless otherwise specified in §330.3(e) of this title (relating to Applicability). Waste shall be compacted and covered weekly unless another schedule is approved or required by the commission. Those facilities meeting the requirements of §330.3(e) of this title (relating to Applicability) shall be referred to as Type IV-AE facilities.

(f) Municipal solid waste facility-Type V. Separate solid waste processing facilities are classified as Type V. These facilities shall encompass processing plants that transfer, incinerate, shred, grind, bale, compost, salvage, separate, dewater, reclaim, and/or provide other processing of solid waste. Operational standards are prescribed in §§330.150-330.159 of this title (relating to Operational Standards for Solid Waste Processing and Experimental Sites).

(g) Municipal solid waste facility-Type VI. A Type VI facility or operation may be authorized by the commission for a facility involving a new or unproven method of managing or utilizing municipal solid waste, including resource and energy recovery projects. The commission may limit the size of these facilities until the method is proven. The minimum operational standards are prescribed in §§330.150-330.159 of this title (relating to Operational Standards for Solid Waste Processing and Experimental Sites).

(h) Municipal solid waste facility-Type VII. A Type VII facility or operation may be authorized by the commission for the land management of sludges and/or similar wastes. Operational standards, depending on the particular waste, facility purpose, and method of operation (land application for beneficial use, land disposal to include landfilling and land treatment, etc.) are contained in §§312.1-312.101 of this title (relating to Sewage Sludge Use and Disposal).

(i) Municipal solid waste facility-Type VIII. Facilities for the management of used or scrap tires are classified as Type VIII. Standards are prescribed in §§330.801-330.889 of this title (relating to Management of Whole, Used, or Scrap Tires).

(j) Municipal solid waste facility-Type IX. A closed disposal facility or an inactive portion of a disposal facility used for extracting materials for energy and material recovery or for gas recovery is classified as Type IX. Permit and/or registration requirements are contained in §330.4 of this title (relating to Permit Required).

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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Subchapter E. Permit Procedures

• 31 TAC §§330.50-330.65

The new sections are proposed under the Texas Health and Safety Code, Chapter 361, which gives the commission all powers necessary and convenient under that chapter to carry out its responsibilities concerning the regulation and management of municipal solid waste.

§330.50. Pre-application Review.

(a) Applicability. This section applies to potential permit applicants who desire to enter into agreements with affected persons and/or identify issues of local concern prior to submission of an application. A pre-application review process may be useful in situations where opposition to an application is likely to exist.

(b) Purpose. A pre-application review should serve to identify issues of concern, facilitate communication between a potential applicant and persons who would be affected by an application, and resolve as many points of conflict as possible prior to the submission of an application. A local review committee shall:

(1) interact with the applicant in a structured manner during the pre-application review stage of the permitting process and, if necessary, during the technical review stage of the permitting process, raise and attempt to resolve both technical and nontechnical issues of concern; and

(2) produce a fact-finding report documenting resolved and unresolved issues and unanswered questions. The applicant shall submit this report to the executive director with the applicant's permit application.

(c) Procedure.

(1) If an applicant decides to participate in a local review committee process, the applicant shall file three copies of a notice of intent to file an application with the executive director. The filing of this notice initiates the pre-application review process. The date of filing shall be the date the notice is stamped as received by the executive director.

(2) Upon receipt of the notice of intent to file, the executive director shall forward a copy of the notice and an explanation of the local review committee process by certified mail to:

(A) the appropriate mayor and county judge if the proposed facility is to be located within the corporate limits or extraterritorial jurisdiction of a city; or

(B) the appropriate county judge if the proposed facility is to be located within an unincorporated area of the county; and

(C) the appropriate regional solid waste planning agency/council of government.

(3) Local review committees shall be composed of representatives of both local and regional interests and shall consist optimally of 12 individuals. However, an applicant may request a larger committee to better represent all interest groups present in a community or a smaller committee for economic reasons; however, committees shall maintain a 2:1 ratio of regional appointments to local appointments. Appointments to the local review committee shall be made according to the following guidelines.

(A) If a proposed facility is to be located within a particular city's limits, the mayor of the city shall be asked to make all local appointments.

(B) If a proposed facility is to be located in an unincorporated area, but within five miles of a city or cities, the mayor of each affected city shall be asked to appoint one member. The appropriate county judge shall be asked to appoint at least one member who lives within five miles of the proposed site, if available and qualified. The county judge shall also be asked to appoint any remaining individuals necessary to complete local appointments to the committee.

(C) If a proposed facility would not be within five miles of a city, the appropriate county judge shall appoint at least one member, if available and qualified, who lives within five miles of the proposed site and as many other individuals from the county as are necessary to complete the local appointments.

(D) Regional appointments shall be made by the appropriate regional solid waste planning agency/council of government (COG) or another regional entity such as a special district or river authority designated by the COG. An attempt shall be made to make regional appointments from

as many of the following interest groups as possible:

(i) organized environmental groups;

(ii) citizen organizations active in environmental issues;

(iii) industry, preferably, but not necessarily, individuals with expertise in waste management;

(iv) academic community, preferably, but not necessarily, individuals trained in a technical discipline related to waste management and/or public involvement;

(v) community or land-use planning;

(vi) organized public-interest advocates; and

(vii) public health professionals.

(E) If any local official or regional entity has failed to make the necessary appointments within 15 days after the notice of intent to file has been submitted, the applicant may abandon the local review process at this point if so desired.

(F) Every effort should be made to appoint individuals who are willing to participate in good faith, able to devote adequate time to participation, and respected in the community or region. An elected official shall not be appointed to the committee if the official is elected by a constituency wholly or partly within the localities surrounding the site, and appointees shall not be employees or agents of the applicant.

(G) An individual shall not serve on more than one local review committee at any one time.

(4) The local review committee shall meet within 21 days after the notice of intent is filed. The executive director will provide manuals to committee members that will orient them as to what the committee's activities should be, i.e., the production of a report detailing issues resolved, issues unresolved, and questions not able to be answered.

(5) The pre-application review process shall continue for a maximum of 90 days unless it is shortened or lengthened by mutual agreement between the applicant and the local review committee.

(6) Individuals who serve on local review committees shall serve without compensation. The potential applicant shall provide resource support that may include clerical and technical assistance, a facilitator, meeting space, and/or other items that may be necessary to aid the committee in its work.

(d) Committee report.

(1) Any report produced by a local review committee set up under this section shall be submitted to the executive director with the applicant's permit application. The executive director may consider the report as an additional source of information concerning the application and at the public hearing, if one is held, the hearing examiner shall give the report all the legal consideration merited.

(2) The report shall not recommend approval or disapproval of the proposed facility. Rather, it shall describe the committee's work and summarize the committee's findings. The findings shall include issues resolved, issues unresolved, and questions not able to be answered.

§330.51. Permit Application for Municipal Solid Waste Facilities.

(a) Permit application. The application for a municipal solid waste facility is divided into Parts I-V. All parts of the application shall be required before the application is declared "Administratively Complete" in accordance with Chapter 281 of this title (relating to Applications Processing) . A complete application, containing all parts, shall be submitted before a hearing can be conducted on the technical design merits of the application. If the executive director determines that a "Land-Use Only Public Hearing" as described in §330.61 of this title (relating to Land-Use Public Hearing) is appropriate, the owner or operator shall submit a partial application consisting of Parts I and II of the application. A complete application, consisting of all parts of the application, shall be submitted based upon the results of the "Land-Use Only Public Hearing." The owner or operator shall be required to comply with the design, construction, and operating procedures proposed in his application. It is intended that this subchapter completely define the information needed for permit review, but the executive director may request additional data if such is reasonably required to allow a decision to be made. Applicants for Type I-AE MSWLFs are required to submit all Parts of the application except for those items pertaining to §§330.200-330.206 of this title (relating to Ground-Water Protection Design and Operation) and §§330.230-330.242 of this title (relating to Ground-Water Monitoring and Corrective Action).

(1) Part I of the application shall consist of the information required in §305.52 of this title (relating to Contents of Application for Permit) and §330.52 of this title (relating to Technical Requirements of Part I of the Application).

(2) Part II of the application shall describe the existing conditions and character of the site and surrounding area. Part II of the application shall consist of the information contained in §330.53 of this title (relating to Technical Requirements of Part II of the Application). An applicant must submit Parts I and II of his application before a Land-Use Public Hearing is conducted in accordance with §330.61 of this title (relating to Land-Use Public Hearing).

(3) Part III of the application shall contain most of the necessary engineering information, detailed investigative reports, the schematic designs of the facility, and the required plans. Part III shall consist of the documents required in §§330.54-330.56 of this title (relating to Permit Procedures).

(4) Part IV of the application shall contain the site operating plan that shall discuss how the applicant plans to conduct his daily operations at the site. Part IV shall consist of the documents required in §330.57 of this title (relating to Technical Requirements of Part IV of the Application).

(5) Part V of the application is reserved for construction documents. Construction plans and specifications shall be handled as required by §330.58 of this title (relating to Technical Requirements of Part V of the Application).

(b) Required information. The information required by this title defines the basic elements for an application.

(1) All aspects of the application and design requirements must be addressed by the applicant, even if only to show why they are not applicable for that particular site.

(2) It is the responsibility of the applicant to provide the executive director data of sufficient completeness, accuracy, and clarity to provide assurance that operation of the site will pose no reasonable probability of adverse effects on the health, welfare, environment, or physical property of nearby residents or property owners. Failure to provide complete information as required by this chapter may be cause for the executive director to return the application without further action. Submission of false information shall constitute grounds for denial of the permit.

(3) The applicant is responsible for determining and reporting to the executive director any site-specific conditions that require special design considerations.

(4) For construction in a floodplain, the following shall be submitted, where applicable:

(A) approval from the governmental entity with jurisdiction under the Texas Water Code, §16.236, as implemented by §301 of this title (relating to Levee Improvement Districts, District Plans of Reclamation, and Levees and Other Improvements);

(B) a floodplain development permit from the city, county, or other agency with jurisdiction over the proposed improvements;

(C) a Conditional Letter of Map Amendment (CLOMA) from The Federal Emergency Management Agency (FEMA); and

(D) a Corps of Engineers Section 404 Specification of Disposal Sites for Dredged or Fill Material for construction of all necessary improvements.

(5) The applicant shall submit demonstration of compliance with National Pollution Discharge Elimination System (NPDES) under the Clean Water Act, §402, as amended.

(6) The applicant shall submit documentation of coordination with the following agencies, where applicable:

(A) Texas Water Commission for compliance with the Clean Water Act, §208;

(B) Federal Aviation Administration, for compliance with airport location restrictions; and

(C) Texas Department of Transportation for traffic and location restrictions.

(7) The applicant shall submit wetlands determination under applicable federal, state, and local laws.

(8) The applicant shall submit Endangered Species Act compliance demonstrations under state and federal laws.

(9) The applicant shall submit a review letter from Texas Antiquities Committee.

(10) The applicant shall submit demonstration of compliance with regional solid waste plan.

(c) Number of copies. Applications shall be initially submitted in four copies. The applicant shall furnish up to 18 additional copies of the application for use by required reviewing agencies, upon request of the executive director.

(d) Preparation. Preparation of the application shall conform with the Texas Civil Statutes, Engineering Practice Act, Article 3271a.

(1) The responsible engineer shall affix her seal, sign her name, place the date of execution and state intended purpose on each sheet of engineering plans, drawings, and on the title or contents page of the application as required by the Texas Engineering Practice Act, §15c, and in accordance with 22 TAC §131.138 (relating to Engineer's Seal).

(2) Applications that have not been sealed shall be considered incomplete for the intended purpose and shall be returned to the applicant.

(e) Application format.

(1) Applications shall be submitted in three-ring loose-leaf binders.

(2) The narrative of the report shall be printed on 8 1/2 by 11 inches white paper. Drawings or other sheets shall be no larger than 11 by 17 inches so that they can be reproduced by standard office copy machines.

(3) All pages shall contain a page number and date.

(4) Revisions shall have the revision date and note that the sheet is revised in the header or footer of each revised sheet. The revised text shall be marked to highlight the revision.

(5) Dividers and tabs are encouraged.

(f) Application drawings.

(1) All information contained on a drawing shall be legible, even if it has been reduced. The drawings shall be 8 1/2 by 11 inches or 11 by 17 inches. Standard sized drawings (24 by 36 inches) folded to 8 1/2 by 11 inches may be submitted or required if reduction would render them illegible or difficult to interpret.

(2) If color coding is used, it should be legible and the code distinct when reproduced on black and white photocopy machines.

(3) drawings shall be submitted at a standard engineering scale.

(4) each drawing shall have a:

(A) dated title block;

(B) bar scale at least one inch long;

(C) revision block;

(D) responsible engineer's seal, if required; and

(E) drawing number and a page number.

(5) Each map or plan drawing shall also have:

(A) a north arrow. Preferred orientation is to have the north arrow pointing toward the top of the page;

(B) a reference to the base map source and date if the map is based upon another map. The latest published edition of the base map should be used;

(C) a legend; and

(D) two longitudes and latitudes shall be shown on all general location maps.

(6) Match lines and section lines shall reference the drawing where the match or section is shown. Section drawings should note from where the section was taken.

§330.52. Technical Requirements of Part I of the Application.

(a) General.

(1) The first part of the application, Part I, is designed to provide information that is required regardless of the type of site involved. All items required by this section and §305.45 of this title (relating to Contents of Application for Permit) must be submitted.

(2) Persons who wish to have a "Pre-Application Meeting" under the provisions of Health and Safety Code, §361.63(5), and §330.50 of this title (relating to Pre-Application Review) should include a Draft Part I with their request.

(3) Submittal of a Part I by itself will not necessarily require publication of a "Notice of Intent to Obtain a Municipal Solid Waste Permit" under the provisions of Health and Safety Code, §361.66.5, or a "Notice Concerning Receipt of a Permit Application" under the provisions of Health and Safety Code, §361.079.

(4) Submittal of a Part I only will not allow an application to be declared "Administratively Complete" under the provisions of Health and Safety Code, §361.068; §281.3 of this title (relating to Initial Review); and §281.18 of this title (relating to Applications Returned).

(b) Additional Requirements of Part I.

(1) Title Page. The title page shall show the name of the project, the MSW permit application number if known, the name of the applicant, the location by

city and county, the date the part was prepared and, if appropriate, the number and date of the revision. It shall be sealed as required by the Texas Engineering Practice Act.

(2) Table of contents. The table of contents shall list and give the page numbers for the main sections of the application. It shall be sealed as required by the Texas Engineering Practice Act.

(3) Supplementary technical report. The applicant shall describe the purpose of the facility or the application and any other information believed to be needed to understand the application in a supplementary technical report.

(4) Maps.

(A) General. The maps submitted as a group shall show the elements contained in §305.45 of this title (relating to Contents of Application for Permit) and the following:

(i) the prevailing wind direction with a wind rose;

(ii) all known water wells within 500 feet of the proposed permit boundary shall be shown. The state well numbering system designation for Water Development Board "Located Wells" shall be shown;

(iii) all structures and inhabitable buildings within 500 feet of the proposed site;

(iv) schools, licensed day care facilities, churches, hospitals, cemeteries, ponds, lakes, and residential, commercial, and recreational areas within one mile of the site;

(v) the location and surface type of all roads within one mile of the site that will normally be used by the applicant for entering or leaving the site;

(vi) latitudes and longitudes;

(vii) area streams;

(viii) airports within five miles of the site;

(ix) the property boundary of the site;

(x) drainage, pipeline, and utility easements within or adjacent to the site; and

(xi) archaeological sites, historical sites, and sites with exceptional aesthetic qualities adjacent to the site.

(B) General location maps. These maps shall be all or a portion of county maps prepared by Texas Department of Transportation (TxDot). At least one general location map shall be at a scale of one-half inch equals one mile. If the TxDot publishes more detailed maps of the proposed site area, the more detailed maps shall also be included in Part I. The latest revision of all maps shall be used.

(C) General topographic maps. These maps shall be United States Geological Survey 7 1/2-minute quadrangle sheets or equivalent. At least one general topographic map shall be at a scale of one inch equals 2,000 feet.

(D) Land ownership maps. These maps shall comply with the requirements §281.5 of this title (relating to Application for Wastewater Discharge, Underground Injection, Municipal Solid Waste, Hazardous Waste, and Industrial Solid Waste Management Permits) by locating the property owned by adjacent and potentially affected landowners. The maps should show all property ownership within 500 feet of the site.

(5) Landowners list. The Adjacent and Potentially Affected Landowners List shall be keyed to the Land Ownership Maps and shall give each property owner's name and mailing address. The list shall comply with the requirements of §281.5 of this title (relating to Application for Wastewater Discharge, Underground Injection, Municipal Solid Waste, Hazardous Waste, and Industrial Solid Waste Management Permits). The list shall include all property owners within 500 feet of the site.

(6) Legal description.

(A) Provide the legal description of the property and the county, book, and page number of the current ownership record.

(B) For property that is platted, the county, book, and page number of the final plat record of only that acreage encompassed in the application and a copy of the final plat shall be provided in addition to a written legal description.

(C) Provide a boundary metes and bounds description of the site signed and sealed by a registered professional land surveyor.

(D) Provide drawings of the boundary metes and bounds description.

(7) Property owner affidavit. A property owner affidavit shall be submitted and shall include the following:

(A) the legal description of the site;

(B) acknowledgement that the State of Texas may hold the property owner of record either jointly or severally responsible for the operation, maintenance, and closure and post-closure care of the site;

(C) acknowledgement that the owner has a responsibility to file with the county deed records an affidavit to the public advising that the land has been used for a solid waste facility, at such time as the site actually begins operating as a MSWLF facility; and

(D) acknowledgement that the site owner or operator and the State of Texas shall have access to the property during the active life and for a period of not less than 30 years after closure for the purpose of inspection and maintenance.

(8) Legal authority. The applicant shall provide verification of his legal status as required by §281.5 of this title (relating to Application for Wastewater Discharge, Underground Injection, Municipal Solid Waste, Hazardous Waste, and Industrial Solid Waste Management Permits). Normally, this shall be a one page certificate of incorporation issued by the Secretary of State. The applicant shall list all persons having over a 20% ownership in the proposed facility.

(9) Evidence of competency.

(A) The applicant shall submit a list of all Texas solid waste sites that the applicant has owned or operated within the last 10 years. The site name, site type, permit or registration number, county, and dates of operation shall also be submitted.

(B) The applicant shall submit a list of all solid waste sites in all states, territories, or countries in which the applicant has a direct financial interest. The type of site shall be identified by location, operating dates, name, and address of the regulatory agency, and the name under which the site was operated.

(C) If the applicant does not have a prior site operating record, he must possess a commission letter of competency for the type of facility involved, evidence of equivalent qualification, or evidence that the proposed site supervisor has such qualification. The executive director shall require that an appropriately qualified site supervisor be employed before commencing site operation.

(D) The names of the principals and supervisors of the applicant's organization shall be provided, together with

previous affiliations with other organization engaged in solid waste activities.

(E) Evidence of competency to operate the site shall also include landfilling and earthmoving experience, other pertinent experience, or commission letters of competency possessed by key personnel and the number and size of each type of equipment to be dedicated to site operation.

(10) Appointments.

(A) Provide documentation that the person signing the application meets the requirements of §305.44 of this title (relating to Signatories to Applications). If the authority has been delegated, provide a copy of the document issued by the governing body of the applicant authorizing the person who signed the application to act as agent for the applicant.

(B) A "Notice of Appointment" identifying the applicant's engineer shall be provided.

(11) Evidence of financial assurance. The applicant shall submit a copy of the documentation required to demonstrate financial assurance under §330.9 of this title (relating to Financial Assurance Required) or §§330.280-330.286 of this title (relating to Financial Assurance), as applicable. For a new facility, a copy of the required documentation may be submitted 60 days prior to the initial receipt of waste.

§330.53. Technical Requirements of Part II of the Application.

(a) General.

(1) Part II of the application shall describe the existing conditions and character of the site and surrounding area. Parts I and II of the application shall provide information relating to land-use compatibility under the provisions of the Health and Safety Code, §361.069.

(2) Part II may be combined with Part I of the application or may be issued as a separate document. If it is combined, it is not necessary to provide a separate Part II title page, table of contents, supplementary technical report, or location maps. All other items required by subsection (b) of this section shall be submitted.

(b) Requirements of Part II.

(1) Title page. The Title Page shall show the name of the project, the MSW permit application number if known, the name of the applicant, the location by city and county, the date the part was prepared, and, if appropriate, the number and date of the revision. It shall be sealed as required by the Texas Engineering Practice Act.

(2) Table of contents. The Table of Contents shall list and give the page numbers for the main sections of the application. It shall be sealed as required by the Texas Engineering Practice Act.

(3) Supplementary technical report. The applicant shall describe the purpose of the facility or the application in a supplementary technical report and provide any information necessary to understand the application.

(4) Existing conditions summary. The applicant may discuss any land use, environmental, or special issues he desires in an existing conditions summary.

(5) General location maps. The applicant shall provide maps in addition to those required by §330.52(b) (4) of this title (relating to Technical Requirements of Part I of the Application) as necessary to accurately show proximity to surrounding features.

(6) Aerial photograph.

(A) This should be an aerial photograph approximately nine inches by nine inches with a scale within a range of one inch equals 1,667 feet to one inch equals 3,334 feet and showing the area within at least a one-mile radius of the site boundaries. The site boundaries and actual fill areas shall be marked.

(B) A series of aerial photographs can be used to show growth trends.

(C) Photocopies of photographs are not acceptable substitutes for photographs.

(7) Land-use map. This is a constructed map of the site showing the boundary of the property and any existing zoning on or surrounding the property and actual uses (e.g., agricultural, industrial, residential, etc.) both within the site and within one mile of the site. The applicant shall make every effort to show the location of residences, commercial establishments, schools, child care facilities, churches, cemeteries, ponds or lakes, and recreational areas within one mile of the site boundary. Drainage, pipeline, and utility easements within the site shall be shown. Access roads serving the site shall also be shown.

(8) Land use. A primary concern is that the use of any land for a municipal solid waste site not adversely impact human health or the environment. The impact of the site upon a city, community, group of property owners, or individuals shall be considered in terms of compatibility of land use, zoning in the vicinity, community growth patterns, and other factors associated with the public interest. To assist the executive director in evaluating the impact of the site on the surrounding area, the applicant shall provide the following:

(A) zoning at the site and in the vicinity. If the site requires approval as a nonconforming use or a special permit from the local government having jurisdiction, a copy of such approval shall be submitted;

(B) character of surrounding land uses within one mile of the proposed facility;

(C) growth trends of the nearest community with directions of major development;

(D) proximity to residences and other uses (e.g., schools, churches, cemeteries, historic structures and sites, archaeologically significant sites, sites having exceptional aesthetic quality, etc.). Give the approximate number of residences and business establishments within one mile of the proposed facility including the distances and directions to the nearest residences and businesses; and

(E) description and discussion of all known wells within 500 feet of the proposed site.

(9) Transportation.

(A) Provide data on the availability and adequacy of roads that the applicant will use to access the site.

(B) Provide data on the volume of vehicular traffic on access roads within one mile of the proposed facility, both existing and expected, during the expected life of the proposed facility.

(C) Project the volume of traffic expected to be generated by the facility on the access roads within one mile of the proposed facility.

(D) Analyze the impact of the facility upon airports in accordance with §330.300 of this title (relating to Airport Safety).

(10) General geology and soils statement.

(A) Discuss in general terms the geology and soils of the proposed site.

(B) Identify and provide data on fault areas located within the proposed site in accordance with §330. 303 of this title (relating to Fault Areas).

(C) Identify and provide data on seismic impact zones in accordance with §330.304 of this title (relating to Seismic Impact Zones).

(D) Identify and provide data on unstable areas in accordance with §330.305 of this title (relating to Unstable Areas).

(11) Ground- and surface-water statement.

(A) Provide data as to the site-specific ground-water conditions at and near the site.

(B) Provide data on surface water at and near the site.

(12) Floodplains and wetlands statement.

(A) Provide data on floodplains in accordance with §§301.31-301.46 of this title (relating to Approval of Levees and Other Improvements).

(B) Discuss wetlands in accordance with §330.302 of this title (relating to Wetlands). For the purpose of this rule, demonstrate that the facility has a Corps of Engineers permit for the use of any wetlands area.

(13) Protection of endangered species.

(A) The following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

(i) Endangered or threatened species as defined in §330.2 of this title (relating to Definitions).

(ii) Taking-Harassing, harming, pursuing, hunting, wounding, trapping, capturing, or collecting an endangered or threatened species or attempting to engage in such conduct.

(iii) Harassing-An intentional or negligent act or omission that creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns that include, but are not limited to, breeding, feeding, or sheltering.

(iv) Harming-An act of omission that actually injures or kills wildlife, including acts that annoy it to such an extent as to significantly disrupt essential behavioral patterns, that include, but are not limited to, breeding, feeding, or sheltering; significant environmental modification or degradation that has such effects is included within the meaning of harming.

(B) The impact of a solid waste disposal facility upon endangered or threatened species shall be considered. The facility and the operation of the facility shall not result in the destruction or adverse modification of the critical habitat of endangered or threatened species, or cause or contribute to the taking of any endangered or threatened species.

(C) The permit applicant should consult with the executive director to determine the need for specific information relating to protection of endangered species. If the facility is located in the range of an endangered or threatened species, a biological assessment may be required to be prepared by a qualified biologists in accordance with standard procedures of the United States Fish and Wildlife Service and the Texas Parks and Wildlife Department to determine the effect of the facility on the endangered or threatened species. Where a previous biological assessment has been made for another project in the general vicinity, a copy of that assessment may be submitted for evaluation. The United States Fish and Wildlife Service and the Texas Parks and Wildlife Department should be contacted for locations and specific data relating to endangered and threatened species in Texas.

§330.54. Technical Requirements of Part III of the Application. For all facilities, the technical information submitted in support of Parts I and II shall be prepared in the form of an engineering site development plan as described in §330.55 of this title (relating to Site Development Plan). Four draft copies of the Site Development Plan and other related plans shall be submitted to the executive director for review. The Site Development Plan shall be prepared in the format and content described as follows.

(1) The title page shall show the name of the project, the MSW permit application number if known, the name of the applicant, the location by city and county, the date the part was prepared, and, if appropriate, the number and date of the revision. It shall be sealed as required by the Texas Engineering Practice Act.

(2) The table of contents shall list and give the page numbers for the main sections of the application.

(3) Solid waste data shall include identification of the nature, type, and quality of waste proposed for processing and/or disposal in the site to include a brief description of the general sources and generation areas contributing wastes to the site. This shall include an estimate of the population or population equivalent served by the site.

(4) Design data shall be reflected to the maximum extent possible in the narrative of the Site Development Plan as required by §330.55 of this title (relating to Site Development Plan) and other plans and on the drawings described in §330.56 of this title (relating to Attachments to the Site Development Plan). Applicants shall consider criteria that in the selection of a site and design of a facility will provide for the safeguarding of the health, welfare, and physical property of the people and the environment through consideration of geology, soil conditions, drainage, land use, zoning, adequacy of access roads and highways, and other considerations as the specific site dictates. Applicants shall include in the support data for their permit applications information as specified in the design criteria indicated in this paragraph. It is recommended that the applicant review the operational standards for the specific type of site before completing the application.

§330.55. Site Development Plan.

(a) The Site Development Plan of the application shall contain the following elements:

(1) the landfill method proposed, e.g., trench, area fill, or combination;

(2) provisions for all-weather operation, e.g., all-weather road, wet-weather pit, alternate disposal site, etc.; provisions for all-weather access from publicly owned routes to the disposal site and from the entrance of the site to unloading areas used during wet weather. Interior access road locations and the type of surfacing shall be indicated on a site plan. The roads within the site shall be designed so as to minimize the tracking of mud onto the public access road;

(3) type and location of fences or other suitable means of access control to prevent the entry of livestock, to protect the public from exposure to potential health and safety hazards, and to discourage unauthorized entry or uncontrolled disposal of hazardous materials;

(4) calculation of estimated rate of solid waste deposition and operating life of the site. (As a general rule, 10,000 people with a per capita collection rate of five pounds per day, dispose of 10 to 15 acre-feet of solid waste in one year); and

(5) Provide required information on drinking water protection in accordance with §§330.200-330.206 of this title (relating to Ground-Water Protection Design and Operation).

(b) The Site Development Plan of the Application shall contain sufficient information to document compliance with the following.

(1) A facility shall be designed to prevent:

(A) a discharge of solid wastes or pollutants adjacent to or into the water in the state, including wetlands, that is in violation of the requirements of the Texas Water Code, §26.121;

(B) a discharge of pollutants into waters of the United States, including wetlands, that violates any requirements of the Clean Water Act, including, but not limited to, the National Pollutant Discharge Elimination System (NPDES) requirements, pursuant to §402 as amended;

(C) a discharge of dredged or fill material to waters of the United States, including wetlands, that is in violation of the requirements under the Federal Clean Water Act, §404, as amended; and

(D) a discharge of a nonpoint source pollution of waters of the United States, including wetlands, that violates any requirement of an areawide or statewide water quality management plan that has been approved under the Federal Clean Water Act, §208 or §319, as amended.

(2) The owner or operator shall design, construct, and maintain a run-on control system capable of preventing flow onto the active portion of the landfill during the peak discharge from at least a 25-year storm.

(3) The owner or operator shall design, construct, and maintain a run-off management system from the active portion of the landfill to collect and control at least the water volume resulting from a 24-hour, 25-year storm. The run-off from the active portion shall be discharged in compliance with paragraph (1) of this subsection or disposed of in an authorized manner.

(4) Dikes, embankments, drainage structures, or diversion channels sized and graded to handle the design run-off shall be provided. The slopes of the sides and toe shall be graded in such a manner so as to minimize the possibility of erosion.

(5) Drainage calculations are as follows.

(A) Calculations for areas of 200 acres or less shall follow the rational method and shall utilize appropriate surface run-off coefficients, as specified in the Texas Department of Transportation Bridge Division Hydraulic Manual. Time of run-off concentration as defined within the said manual generally shall not be less than 10 minutes for rainfall intensity determination purposes.

(B) Calculations for discharges from areas greater than 200 acres shall be computed by using USGS/DHT hydraulic equations compiled by the United States Geological Survey and the Texas Department of Transportation and Public Transportation (TxDOT Administrative Circular 80-76), the HEC-1 and HEC-2 computer programs developed through the Hydrologic Engineering Center of the United States Army Corps of Engineers, or an equivalent or better method approved by the executive director.

(C) Designs of all drainage facilities within the site area shall include such features as typical cross-sectional areas, ditch grades, flow rates, water surface elevation, velocities, and flowline elevations along the entire length of the ditch.

(D) Sample calculations shall be provided to verify that natural drainage patterns will not be significantly altered.

(E) The proposed surface water protection and erosion control practices must maintain low non-erodible velocities, minimize soil erosion losses below permissible levels, and provide long-term, low maintenance geotechnical stability to the final cover.

(6) The owner or operator shall handle, store, treat, and dispose of surface or ground water that has become contaminated by contact with the working face of the landfill or with leachate in accordance with §330.139 of this title (relating to Contaminated Water Discharge). Storage areas for this contaminated water shall be designed with regard to size (verifying calculations included), treatment (supporting documentation and calculations included), locations, and methods and shall have an approved liner covering the bottom and side slopes. Other surface run-off water shall be handled in accordance with paragraph (3) of this subsection.

(7) The site shall be protected from flooding by suitable levees constructed to provide protection from a 100-year frequency flood and in accordance with the rules and regulations of the TWC and successors relating to levee improvement districts and approval of plans for reclamation projects or the rules of the county or city having jurisdiction under the Texas Water Code, §16.236, as implemented by §§301.31-301.46 of this title (relating to Levee Improvement Districts, District Plans of Reclamation, and Levees and Other Improvements).

(A) Flood protection levees shall be designed and constructed to prevent the washout of solid waste from the site.

(B) A freeboard of at least three feet shall be provided except in those cases where a greater freeboard is required by the agency having jurisdiction under the Texas Water Code, §16.236.

(C) Such levees shall not significantly restrict the flow of a 100-year frequency flood nor significantly reduce the temporary water storage capacity of the 100-year floodplain.

(8) The final cover design shall provide effective long-term erosional stability to the top dome surfaces and embankment side slopes in accordance with the following.

(A) Estimated peak velocities for top surfaces and embankment slopes should be less than the permissible non-erodible velocities under similar conditions.

(B) Soil erosion loss (Tons/Acre) for the top surfaces and embankment slopes shall be calculated using the Soil Conservation Service of US Department of Agriculture's Universal Soil Loss Equation. The potential soil loss should not exceed the permissible soil loss for comparable soil-slope lengths and soil cover conditions.

(C) Details for final cover shall be depicted on fill cross-sections and provided along with other information in accordance with §330.56(b) of this title (relating to Attachments to the Site Development Plan).

(D) The final cover design shall be in accordance with the final closure plan.

(9) The site shall be designed to protect endangered species.

(10) Landfill markers shall be installed to clearly mark significant features.

(A) All markers shall be posts, steel, or wooden and shall extend at least six feet above ground level. Markers shall not be obscured by vegetation. Sufficient intermediate markers shall be installed to show the required boundary. Markers shall be installed at:

(i) site boundary;

(ii) 50-foot buffer zone;

(iii) easements and rights-of-way;

(iv) landfill grid system;

(v) SLER or FMLER area; and

(vi) 100-year flood limits.

(B) All markers shall be color coded as follows:

(i) black-boundary markers;

(ii) yellow-buffer zone markers;

(iii) green-easement and rights-of-way markers;

(vi) white-grid markers;

(v) red-SLER or FMLER markers; and

(vi) blue-flood protection markers.

(C) Site boundary markers shall be placed at each corner of the site and along each boundary line at intervals no greater than 300 feet. Fencing may be placed within these markers as required.

(D) Markers identifying the 50-foot buffer zone shall be placed along each buffer zone boundary at all corners and between corners at intervals of 300 feet. Placement of the landfill grid markers may be made along a buffer zone boundary.

(E) Easement and right-of-way markers shall be place along the centerline of an easement and along the boundary of a right-of-way at each corner within the site and at the intersection of the site boundary.

(F) A landfill grid system shall be installed at all solid waste facilities unless written approval from the executive director has been received. The grid system shall encompass at least the area expected to be filled within the next three-year period. Although grid markers shall be maintained during the active life of the site, post-closure maintenance of the grid system is recommended but not required. The grid system, similar to a typical city map grid, shall consist of lettered markers along two opposite sides, and numbered markers along the other two sides. Markers shall be spaced no greater than 100 feet apart measured along perpendicular lines. Where markers cannot be seen from opposite boundaries, intermediate markers shall be installed.

(G) SLER or FMLER area markers shall be placed so that all areas for which a SLER or FMLER has been submitted and approved by the department are readily determinable. Such markers are to provide site workers immediate knowledge of the extent of approved disposal areas. These markers shall be located so that they are not destroyed during operations until operations extend into the next SLER or FMLER. The location of these markers shall be tied into the landfill grid system and shall be reported on each SLER or FMLER submitted. SLER and FMLER markers shall not be placed inside the evaluated areas.

(H) Flood protection markers shall be installed for any area within a solid waste disposal facility that is subject to flooding prior to the construction of flood protection levee. The area subject to flooding shall be clearly marked by means of permanent posts not more than 300 feet apart or closer if necessary to retain visual continuity.

(I) Specific trenches dedicated to the burial of Class I nonhazardous industrial solid waste shall be designated and operated in accordance with §330.137 of this title (relating to Disposal of Industrial Wastes). The approved composite liner area shall be marked at all corners. Such markers are to provide site workers immediate knowledge of the extent of approved disposal areas. These markers shall be located so that they are not destroyed during operations.

(J) A permanent benchmark shall be established at the site in an area of the site that is readily accessible and will not be used for disposal. This benchmark shall be a bronze survey marker set in concrete and shall have the benchmark elevation and survey date stamped on it. The benchmark elevation shall be surveyed from a known United States Coast and Geodetic Survey benchmark or other reliable benchmark. The location and elevation of the reference benchmark and the permanent benchmark shall be identified on a map and shall be included in the Site Development Plan.

§330.56. Attachments to the Site Development Plan.

(a) Attachment 1-Site layout plan.

(1) This is the basic element of the Site Development Plan consisting of a site layout plan on a constructed map showing the outline of the units and fill sectors with appropriate notations thereon to communicate the types of wastes to be disposed of in individual sectors, the general sequence of filling operations, locations of all interior site roadways to provide access to all fill areas, locations of monitor wells, dimensions of trenches, locations of buildings, and any other graphic representations or marginal explanatory notes necessary to communicate the proposed step-by-step construction of the site. The layout should include: fencing; sequence of excavations, filling, maximum waste elevations and final cover; provisions for the maintenance of natural windbreaks, such as greenbelts, where they will improve the appearance and operation of the site; and, where appropriate, plans for screening the site from public view.

(2) A generalized design of all site entrance roads from public access roads shall be included. All designs of proposed public roadway improvements such as turning lanes, storage lanes, etc., associated with site entrances should be coordinated with the agency exercising maintenance responsibility of the public roadway involved.

(3) This plan is the basis for operational planning and budgeting, and therefore shall contain sufficient detail to provide an effective site management tool.

(b) Attachment 2-Fill cross-section.

(1) The fill cross-sections shall consist of plan profiles across the site clearly showing the top of the levee, top of the proposed fill, maximum elevation of proposed fill, top of the final cover, top of the wastes, existing ground, bottom of the excavations, side slopes of trenches and fill areas, gas vents or wells, and ground-water monitoring wells, plus the initial and static levels of any water encountered.

(2) The fill cross-sections shall go through or very near the soil borings in order that the boring logs obtained from the Soils Report, can also be shown on the profile.

(3) Large sites shall provide sufficient fill cross-sections, both latitudinally and longitudinally, so as to accurately depict the existing and proposed depths of all fill areas within the site. The plan portion shall be shown on an inset key map.

(4) Construction and design details of compacted perimeter or toe berms to be built in conjunction with above-ground (aerial-fill) waste disposal areas shall be included in the fill cross-sections.

(c) Attachment 3-Existing contour map. This is a constructed map showing the contours prior to any grading, excavation, and/or filling operations on the site. Appropriate vertical contour intervals shall be selected so that contours are not further apart than 100 feet as measured horizontally on the ground. Wider spacing may be used when approved by the executive director. The map should show the location and

quantities of surface drainage entering, exiting, or internal to the site and the area subject to flooding by a 100-year frequency flood.

(d) Attachment 4-Geology report. This portion of the application applies to owners or operators of municipal solid waste facilities that store, process, or dispose of municipal waste in landfills. If the MSWLF facility contains two or more MSWLF units, the information requested pertaining to regional geology and regional aquifers need only be provided once. The Geology Report shall be prepared and signed by a qualified ground-water scientist except that the reports required under paragraph (5) of this subsection shall be signed and sealed, where appropriate, as required by the Texas Engineering Practice Act. Previously prepared documents may be submitted but shall be supplemented as necessary to provide the requested information. Sources and references for information shall be provided. The Geology Report shall contain the information in paragraphs (1) -(6) of this subsection.

(1) The owner or operator shall provide a discussion of the regional physiography and topography in the vicinity of the facility. The discussion shall include, at a minimum, the distance to local surface water bodies and drainage features, the slope of the land surface (direction and rate), and the maximum and minimum elevations of the facility. Any limitation of the facility due to unfavorable topography (e.g., cliffs, floodplains) shall be discussed.

(2) The owner or operator shall provide a description of the regional geology of the area. This section shall include:

(A) a geologic map of the region with text describing the stratigraphy and lithology of the map units. An appropriate section of a published map series such as the Geologic Atlas of Texas prepared by the Bureau of Economic Geology is acceptable;

(B) a description of the generalized stratigraphic column in the facility area from the base of the lowermost aquifer capable of providing usable ground water, or from a depth of 1,000 feet, whichever is less, to the land surface. The geologic age, lithology, variations in lithology, thickness, depth, geometry, hydraulic conductivity, and depositional history of each geologic unit should be described based upon available geologic information. Regional stratigraphic cross-sections should be provided.

(3) The owner or operator shall provide a description of the geologic processes active in the vicinity of the facility. This description shall include:

(A) an identification of any faults and subsidence in the area of the facility. The information about faulting and subsidence shall include at least that required in §330.303(b) and §330.305 of this title (relating to Fault Areas and Unstable Areas, respectively);

(B) a discussion of the degree to which the facility is subject to erosion. The potential for erosion due to surface water processes such as overland flow, channeling, gullying, and fluvial processes such as meandering streams and undercut banks shall be evaluated. If the facility is located in a low-lying coastal area, historical rates of shoreline erosion shall also be provided; and

(C) an identification of wetlands located within the facility boundary.

(4) The owner or operator shall provide a description of the regional aquifers in the vicinity of the facility based upon published and open-file sources. The section shall provide:

(A) aquifer names and their association with geologic units described in paragraph (2) of this subsection;

(B) a description of the composition of the aquifer(s);

(C) a description of the hydraulic properties of the aquifer(s);

(D) information on whether the aquifers are under water table or artesian conditions;

(E) information on whether the aquifers are hydraulically connected;

(F) a regional water-table contour map or potentiometric surface map for each aquifer, if available;

(G) an estimate of the rate of ground-water flow;

(H) typical values or a range of values for total dissolved solids content of ground water from the aquifers;

(I) identification of areas of recharge to the aquifers within five miles of the site; and

(J) the present use of ground water withdrawn from aquifers in the vicinity of the facility. The identification, location, and aquifer of all water wells within one mile of the property boundaries of the facility shall be provided.

(5) The owner or operator shall provide the results of investigations of subsurface conditions at a particular waste management unit in the following reports.

(A) Subsurface investigation report. This report shall describe all borings drilled on site to test soils and characterize ground water and shall include a site map drawn to scale showing the surveyed locations and elevations of the borings. Boring logs shall include a detailed description of materials encountered including any discontinuities such as fractures, fissures, slickensides, lenses, or seams. Geophysical logs of the boreholes may be useful in evaluating the stratigraphy. Each boring shall be presented in the form of a log that contains, at a minimum, the boring number; surface elevation and location coordinates; and a columnar section with text showing the elevation of all contacts between soil and rock layers, description of each layer using the Unified Soil Classification, color, degree of compaction, and moisture content. A key explaining the symbols used on the boring logs and the classification terminology for soil type, consistency, and structure shall be provided.

(i) A sufficient number of borings shall be performed to establish subsurface stratigraphy and to determine geotechnical properties of the soils and rocks beneath the facility. Other types of samples may also be taken to provide geologic and geotechnical data. The number of borings necessary can only be determined after the general characteristics of a site are analyzed and will vary depending on the heterogeneity of subsurface materials. Locations with stratigraphic complexities such as non-uniform beds that pinch out, vary significantly in thickness, coalesce, or grade into other units, will require a significantly greater degree of subsurface investigation than areas with simple geologic frameworks.

(ii) Borings shall be sufficiently deep to allow identification of the uppermost aquifer and underlying hydraulically interconnected aquifers. Borings shall penetrate the uppermost aquifer and all deeper hydraulically interconnected aquifers and be deep enough to identify the aquiclude at the lower boundary. All the borings shall be at least five feet deeper than the elevation of the deepest excavation. In addition, at least the number of borings shown on the Table of Borings shall be drilled to a depth at least 30 feet below the deepest excavation planned at the waste management unit. If no aquifers exist within 50 feet of the elevation of the deepest excavation, at least one test hole shall be drilled

to the top of the first perennial aquifer beneath the site. Aquifers more than 300 feet below the lowest excavation and where the estimated travel times for constituents to the aquifer are in excess of 30 years need not be identified through borings. The executive director may accept data equivalent to a deep boring on the site to determine information for aquifers more than 50 feet below the site.

TABLE OF BORINGS

Size of Area in Acres	Number of Borings	Min. No. of Borings 30 Feet below the Elev. of Deepest Excavation
5 or less	2-4	2
5-10	4-6	3
10-20	6-10	5
20-50	10-15	7
50-100	15-20	7-12
More than 100	Determined in consultation with the executive director	

(iii) All borings shall be conducted in accordance with established field exploration methods. The hollow-stem auger boring method is recommended for softer materials; coring may be required for harder rocks. Other methods shall be used as necessary to obtain adequate samples for soil testing required in paragraph (5) of this subsection. Investigation procedures shall be discussed in the report.

(iv) The boring plan, including locations and depths of all proposed borings, shall be approved by the executive director prior to initiation of the work.

(v) Installation, abandonment, and plugging of the borings shall be in accordance with the rules of the commission.

(vi) Both the number and depth of borings may be modified because of site conditions with prior approval of the executive director.

(vii) Geophysical methods, such as electrical resistivity, may be used with authorization of the executive director to reduce the number of borings that may be necessary or to provide additional information between borings.

(viii) Cross-sections prepared from the borings depicting the generalized strata at the facility. For small waste management units two perpendicular cross-sections will normally suffice.

(ix) A text that describes the investigator's interpretations of the subsurface stratigraphy based upon the field investigation.

(B) Geotechnical report. This report shall include engineering data that describes the geotechnical properties of the subsurface soil materials and a discussion with conclusions about the suitability of the soils and strata for the uses for which they are intended. All engineering tests shall be performed in accordance with industry practice and recognized procedures such as described below. A brief discussion of engineering test procedures shall be included in the report.

(i) A laboratory report of soil characteristics shall be determined from at least one sample from each soil layer or stratum that will form the bottom and side of the proposed excavation and from those that are less than 30 feet below the lowest elevation of the proposed excavation. As many additional tests shall be performed as necessary to provide a typical profile of soil stratification within the site. No laboratory work need be performed on highly permeable soil layers such as sand or gravel. The samples shall be tested by a competent independent third-party soils laboratory.

(ii) Permeability tests shall be performed according to one of the following standards on undisturbed soil samples. Permeability tests shall be performed using tap water, not distilled water, as the permeant. Those undisturbed samples that represent the sidewall of any proposed trench, pit, or excavation shall be tested for the coefficient of permeability on the sample's in situ horizontal axis; all others shall be tested on the in situ vertical axis. All test results shall indicate the type of tests used and the orientation of each tested sample. All calculations for the final coefficient of permeability tests result for each sample tested shall be included in the report:

(I) Constant Head with Back Pressure per Appendix VII of Corps of Engineers Manual EM1110-2-1906, "Laboratory Soils Testing;" ASTM D5084 "Saturated Porous Materials Using a Flexible Wall Permeameter;"

(II) Falling Head per Appendix VII of Corps of Engineers Manual EM1110-2-1906, "Laboratory Soils Testing;"

(III) Sieve Analysis for the 40, 200, and less than 200 fractions per ASTM D422;

(IV) Atterberg Limits per ASTM D4318;

(V) Moisture-Density Relations per ASTM D698 or other modified test approved by the executive director where the compactive effort matches the anticipated on-site liner construction equipment;

(VI) Moisture Content per ASTM D2216.

(C) A ground-water investigation report. This report shall include the following:

(i) the depth at which ground water was encountered and records of after-level measurements in all borings. The cross sections prepared in response to subparagraph (A)(viii) of this paragraph shall be annotated to note the level at which ground water was first encountered and the level of ground water after equilibrium is reached or just prior to plugging, whichever is later. This water-level information shall also be presented on all borings required by subsection (d)(5) of this section and presented in a table format in the report;

(ii) records of water-level measurements in monitor wells. Historic water-level measurements made during any previous ground-water monitoring shall be presented in a table for each well;

(iii) all the information and data required in §330.231(e)(1) of this title (relating to Ground-Water Monitoring Systems); and

(iv) an analysis of the most likely pathway(s) for pollutant migration in the event that the primary barrier liner system is penetrated. This shall include any ground-water modeling data and results as described in §330. 231(e)(2) of this title (relating to Ground-Water Monitoring Systems) and shall consider changes in ground-water flow that are expected to result from construction of the facility.

(6) The owner or operator shall provide a description of the existing or proposed monitoring system that meets the requirements of §330.231 of this title (relating to Ground-Water Monitoring Systems). The owner or operator shall also provide engineering drawings of a typical monitoring well and a table of data for all proposed wells that includes the following information for each well: total depth of the well; depth to ground-water; surveyed elevation of the ground surface at the well; surveyed elevation of the top of each well casing (or that point consistently used to determine depth to ground-water); depth to the top and base of the screen; and depth to the top and base of the filter pack.

(e) Attachment 5-Ground-water characterization report. A ground-water characterization study and report is required from owners and operators of proposed MSWLF units or proposed lateral expansions. The report shall contain the following information:

(1) a tabulation of all ground-water monitoring data from wells on site or on adjacent MSWLF unit(s);

(2) identification of the uppermost aquifer and any lower aquifers that are hydraulically connected to it beneath the facility, including ground-water flow direction and rate, and the basis for such identification (i.e., the information obtained from hydrogeologic investigations of the facility area);

(3) on a topographic map as required under §330.52(b)(4)(C) of this title (relating to Technical Requirements of Part I of the Application), a delineation of the waste management area, the property boundary, the proposed "point of compliance" as defined under §330.200(d) of this title (relating to Design Criteria), the proposed location of ground-water monitoring wells as required under §330.231 of this title (relating to Ground-Water Monitoring Systems), and, to the extent possible, the information required in paragraph (2) of this subsection;

(4) a description of any plume of contamination that has entered the ground water from a MSWLF facility at the time that the application was submitted that:

(A) delineates the extent of the plume on the topographic map required under §330.52(b)(4)(C) of this title (relating to Technical Requirements of Part I of the Application); and

(B) identifies the concentration of each assessment constituent as defined in §330.235 of this title (relating to Assessment Monitoring Program) throughout the plume or identifies the maximum concentration of each assessment constituent in the plume;

(5) detailed plans and an engineering report describing the proposed ground-water monitoring program to be implemented to meet the requirements of §330.231 of this title (relating to Ground-Water Monitoring Systems);

(6) if the presence of constituents has not been detected in the ground water at the time of permit application, the owner or operator shall submit sufficient information, supporting data, and analyses to establish a detection monitoring program that meets the requirements of §330.234 of this title (relating to Detection Monitoring Program). This submission shall address the following items specified under §330.234 of this title (relating to Detection Monitoring Program):

(A) a proposed ground-water monitoring system;

(B) background values for each monitoring parameter or constituent listed in §330.241 of this title (relating to Constituents for Detection Monitoring), or procedures to calculate such values; and

(C) a description of proposed sampling, analysis, and statistical comparison procedures to be utilized in evaluating ground-water monitoring data;

(7) if the presence of constituents has been detected in the ground water at the point of compliance at the time of the permit application, the owner or operator shall submit sufficient information, supporting data, and analyses to establish an assessment monitoring program that meets the requirements of §330.235 of this title (relating to Assessment Monitoring Program). The owner or operator shall also submit an engineering feasibility plan for a corrective measures assessment necessary to meet the requirements of §330.236 of this title (relating to Assessment of Corrective Measures), unless the owner or operator obtains written authorization in advance from the executive director to submit a proposed permit schedule for submittal of such a plan. To demonstrate compliance with §330.235 of this title (relating to Assessment Monitoring Program), the owner or operator shall address the following items:

(A) a description of any special wastes previously handled at the MSWLF facility;

(B) a characterization of the contaminated ground water, including con-

centration of assessment constituents as defined in §330.235 of this title (relating to Assessment Monitoring Program);

(C) a list of assessment constituents as defined in §330.235 of this title (relating to Assessment Monitoring Program) for which assessment monitoring will be undertaken in accordance with §330.233 of this title (relating to Ground-Water Sampling and Analysis Requirements) and §330.235 of this title (relating to Assessment Monitoring Program);

(D) detailed plans and an engineering report describing the proposed ground-water monitoring system, in accordance with the requirements of §330.233 of this title (relating to Ground-Water Sampling and Analysis Requirements); and

(E) a description of proposed sampling, analysis, and statistical comparison procedures to be utilized in evaluating ground-water monitoring data; and

(8) if hazardous constituents have been measured in the ground water that exceed the concentration limits established in Table 1 of §330.200 of this title (relating to Design Criteria), or if ground-water monitoring at the waste boundary conducted at the time of permit application indicates the presence of hazardous constituents from the facility in the ground water at concentrations greater than established background values, the owner or operator shall submit sufficient information, supporting data, and analyses to establish a corrective action program that meets the requirements of §330. 236 of this title (relating to Assessment of Corrective Measures) and §330. 237 of this title (relating to Selection of Remedy). To demonstrate compliance with §330.236 of this title (relating to Assessment of Corrective Measures), the owner or operator shall address, at a minimum, the following items:

(A) a characterization of the contaminated ground water, including concentrations of assessment constituents as defined in §330.235 of this title (relating to Assessment Monitoring Program);

(B) the concentration limit for each constituent found in the ground water;

(C) detailed plans and an engineering report describing the corrective action to be taken;

(D) a description of how the ground-water monitoring program will demonstrate the adequacy of the corrective action; and

(E) the permit may contain a schedule for submittal of the information required in subparagraphs (C) and (D) of this paragraph provided the owner or operator obtains written authorization from the executive director prior to submittal of the complete permit application.

(f) Attachment 6-Ground-water protection plan and drainage plan. These plans shall reflect locations, details, and typical sections of levees, dikes, drainage channels, culverts, holding ponds, trench liners, storm sewers, leachate collection systems, or any other facilities relating to the protection of ground water and surface water. Adequacy of provisions for safe passage of any internal or externally adjacent floodwaters should be reflected here.

(1) A drawing(s) showing the drainage areas and drainage calculations shall be provided.

(2) Cross-sections or elevations of levees should be shown tied into contours. Natural drainage patterns shall not be significantly altered.

(3) The 100-year floodplain shall be shown on this attachment.

(4) As part of the attachment, the following information and analyses shall be submitted for review, as applicable.

(A) Drainage and Run-off Control Analyses:

(i) a description of the hydrologic method and calculations used to estimate peak flow rates and run-off volumes including justification of necessary assumptions;

(ii) the 25-year rainfall intensity used for facility design including the source of the data; all other data and necessary input parameters used in conjunction with the selected hydrologic method and their sources should be documented and described;

(iii) hydraulic calculations and designs for sizing the necessary collection, drainage, and/or detention facilities shall be provided.

(iv) discussion and analyses to demonstrate that natural drainage patterns will not be significantly altered as a result of the proposed landfill development;

(v) structural designs of the collection, drainage, and/or storage facilities, and results of all field tests to ensure compatibility with soils and;

(vi) a maintenance plan for ensuring the continued operation of the collection, drainage, and/or storage facilities, as designed along with the plan for restoration and repair in the event of a washout or failure; and

(vii) erosion and sedimentation control plan, including interim controls for phased development.

(B) Flood control and analyses.

(i) Identify whether the site is located within a 100-year floodplain. Indicate the source of all data for such determination and include a copy of the relevant Federal Emergency Management Agency (FEMA) flood map, if used, or the calculations and maps used where a FEMA map is not available. Information shall also be provided identifying the 100-year flood level and any other special flooding factors (e. g., wave action) that must be considered in designing, constructing, operating, or maintaining the proposed facility to withstand washout from a 100-year flood. The boundaries of the proposed landfill facility should be shown on the floodplain map.

(ii) If the site is located within the 100-year floodplain, the applicant shall provide information detailing the specific flooding levels and other events (e.g., Design Hurricane projected by Corps of Engineers) that impact the flood protection of the facility. Data should be that required by §§301.33-301.36 of this title (relating to Approval of Levees and Other Improvements).

(iii) No solid waste disposal and treatment operations shall be permitted in areas that are located in a floodway as defined by FEMA.

(g) Attachment 7-Final contour map. This is a constructed map showing the final contour of the entire landfill to include internal drainage and side slopes plus accommodation of surface drainage entering and departing the completed fill area plus areas subject to flooding due to a 100-year frequency flood. Cross-sections shall be provided.

(h) Attachment 8-Cost estimate for closure and post- closure care. The applicant shall submit a cost estimate for closure and post-closure care costs in accordance with §§330.280-330.286 of this title (relating to Financial Assurance).

(i) Attachment 9-Applicant's statement. The applicant, or the authorized representative empowered to make commitments for the applicant, shall provide a statement that he is familiar with the Site Development Plan and is aware of all commitments represented in the plan, that he is also familiar with all pertinent requirements in this chapter, and that he agrees to develop and operate the site in accordance with the plan, the regulations, and any permit special provisions that may be imposed.

(j) Attachment 10-Soil and liner quality control plan (SLQCP). The SLQCP shall be prepared in accordance with §§330.200-330.206 of this title (relating to Ground-Water Protection Design and Operation).

(k) Attachment 11-Ground-water sampling and analysis plan (GWSAP). The GWSAP shall be prepared in accordance with §§330.230-330.242 of this title (relating to Ground-Water Monitoring and Corrective Action).

(l) Attachment 12-Final closure plan. The final closure plan shall be prepared in accordance with §§330.250-330.256 of this title (relating to Closure and Post-Closure).

(m) Attachment 13-Post-closure care plan. The post-closure care plan shall be prepared in accordance with §§330.250-330.256 of this title (relating to Closure and Post-Closure).

(n) Attachment 14-Landfill gas management plan.

(1) Owners or operators of all MSWLF units shall ensure that:

(A) the concentration of methane gas generated by the facility does not exceed 25% of the lower explosive limit for methane in facility structures (excluding gas control or recovery system components); and

(B) the concentration of methane gas does not exceed the lower explosive limit for methane at the facility property boundary. For purposes of this section, "lower explosive limit" means the lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at 25 degrees Celsius and atmospheric pressure.

(2) Owners or operators of all MSWLF units shall implement a routine methane monitoring program to ensure that the standards of paragraph (1) of this subsection are met.

(A) the type and frequency of monitoring shall be determined based on the following factors:

(i) soil conditions;

(ii) the hydrogeologic conditions surrounding the facility;

(iii) the hydraulic conditions surrounding the facility;

(iv) the location of facility structures and property boundaries; and

(v) the location of any utility lines or pipelines that cross the MSWLF facility.

(B) The minimum frequency of monitoring shall be quarterly.

(3) If methane gas levels exceeding the limits specified in paragraph (1)(A) of this subsection are detected, the owner or operator shall:

(A) immediately take all necessary steps to ensure protection of human health and notify the executive director, local and county officials, emergency officials, and the public;

(B) within seven days of detection, place in the operating record the methane gas levels detected and a description of the steps taken to protect human health; and

(C) within 60 days of detection, implement a remediation plan for the methane gas releases, place a copy of the plan in the operating record, provide a copy to the executive director and notify the executive director that the plan has been implemented. The plan shall describe the nature and extent of the problem and the proposed remedy. After review, the executive director may require additional remedial measures.

(4) The executive director may establish alternative schedules for demonstrating compliance with paragraphs (2) and (3) of this subsection.

(5) The gas monitoring and control program shall continue for a period of thirty years after the final closure of the facility or until the owner or operator receives written authorization to reduce the program. Authorization to reduce gas monitoring and control shall be based on a demonstration by the owner or operator that there is no potential for gas migration beyond the property boundary or into on-site structures. Demonstration of this proposal shall be supported by data collected and additional studies as required.

(6) Gas monitoring and control systems shall be modified as needed to reflect changing on-site and adjacent land uses. Post-closure land use at the site shall not interfere with the function of gas monitoring and control systems. Any underground utility trenches that cross the MSWLF facility boundary shall be vented and monitored regularly.

(7) A landfill gas management plan shall be prepared that includes the following:

(A) a description of how landfill gases will be managed and controlled;

(B) a description of the proposed system(s), including installation procedures and time-lines for installation, monitoring procedures, and procedures to be used during maintenance; and

(C) a backup plan to be used if the main system breaks down or becomes ineffective.

(8) Perimeter monitoring network shall be installed in accordance with the following provisions:

(A) initial monitoring at small MSWLFs and larger MSWLFs that have no habitable structures within 3,000 feet of the waste placement boundary may consist of perimeter subsurface monitoring around the perimeter of the site using portable equipment and probes. If test results show the presence of methane gas above 10% of the LEL, a permanent monitoring system shall be installed; and

(B) permanent monitoring systems shall be installed on all other MSWLFs. Technical guidance on monitoring systems may be issued by the executive director.

(9) The monitoring network design shall include provisions for monitoring on-site structures, including, but not limited to, buildings, subsurface vaults, utilities, or any other areas where potential gas buildup would be of concern.

(10) All monitoring probes and on-site structures shall be sampled for methane during the monitoring period. Sampling for specified trace gases may be required by the executive director when there is a possibility of acute or chronic exposure due to carcinogenic or toxic compounds.

(11) Monitoring frequency shall be determined as follows.

(A) As a minimum, quarterly monitoring is required. The executive director may require more frequent monitoring based upon the factors listed in this section. When more frequent monitoring is necessary, the executive director shall notify the owner or operator.

(B) More frequent monitoring shall also be required at those locations where results of monitoring indicate that landfill gas migration is occurring or is accumulating in structures.

(o) Attachment 15-Leachate and contaminated water plan.

(1) The plan shall provide the details of the storage, treatment and dis-

posal of the leachate and/or gas condensate from the leachate collection system and/or the gas monitoring and collection system, where used. This plan shall include the following information:

(A) estimated rate of leachate removal;

(B) capacity of sumps;

(C) pipe material and strength;

(D) pipe network spacing and grading;

(E) collection sump materials and strength;

(F) drainage media specifications and performance; and

(G) demonstration that pipes and perforations will be resistant to clogging and can be cleaned or rehabilitated.

(2) Leachate and gas condensate may be disposed of in a MSWLF unit that is designed and constructed with a composite liner system and a leachate collection system that meets the requirements of §330.200 of this title (relating to Design Criteria). Contaminated surface water and ground water may not be placed in or on the MSWLF unit.

(3) Leachate, gas condensate, contaminated surface water, and contaminated ground water shall be disposed of at an authorized facility or as authorized by a NPDES permit.

(4) On-site collection ponds and impoundments for contaminated water shall be lined with an approved liner.

§330.57. Technical Requirements of Part IV of the Application. The Site Operating Plan shall contain the information required by §330.114 of this title (relating to Site Operating Plan).

§330.58. Technical Requirements of Part V of the Application. Construction Plans and Specifications of the proposed or modified facility shall be prepared and one copy maintained at the facility at all times during construction. After completion of construction, an as-built set of construction plans and specifications shall be submitted to the executive director and maintained at the facility and/or at the owner or operator's main office. These plans shall be made available for inspection by TWC and successors representatives or other interested parties.

§330.59. Additional Technical Requirements of the Application for Solid Waste Processing and Experimental Sites (Types V and VI).

(a) This section applies to all Type V sites that require a permit and all Type VI sites not involving land disposal, in addition to §§330.51-330.58 of this title (relating to Permit Procedures).

(b) The Site Development Plan shall include the following additional information.

(1) Process description.

(A) A description shall be provided of the process to be used, including details of all planned on-site facilities. Sufficient narrative and graphic details shall be provided to enable an evaluation of the operational capabilities, the design safety features, pollution control devices, and other health and environmental protective measures.

(B) A plan shall be provided for alternate processing or disposal of solid waste in the event that the processing site becomes inoperative for a period longer than 24 hours.

(C) If an incineration facility is to be constructed on site, an estimate of the amount and planned method for testing and final disposal of incinerator ash, an estimate of the volume of quench or process water, and the planned method of treatment and disposal of such water shall be provided.

(2) Sanitation. Solid waste processing facilities shall be designed to facilitate proper cleaning. This may be accomplished by:

(A) controlling surface drainage in the vicinity of the facility to prevent surface water run-off onto, into, and off the treatment area;

(B) constructing walls and floors in operating areas of masonry, concrete, or other hard-surfaced materials that can be hosed down and scrubbed;

(C) providing necessary connections and equipment to permit thorough cleaning with water or steam; and/or

(D) providing adequate floor drains to remove wash water.

(3) Water pollution control. All liquids resulting from the operation of solid waste processing facilities shall be disposed of in a manner that will not cause surface or ground-water pollution. Facilities shall provide for the treatment of wastewaters resulting from the process or from cleaning and washing. The procedure for wastewater disposal shall be in compliance with the rules and regulations of the commission.

(4) Air pollution control. The construction and operation of Type V and VI sites may require a Texas Air Control Board permit. Applicants for permits for these types of sites should consult with that agency on or before the application is filed with the executive director.

(5) Storage of solid waste. Solid waste processing facilities shall be designed for the rapid processing and minimum detention of solid waste at the facility. All solid waste capable of creating public health hazards or nuisances shall be stored indoors only and processed or transferred promptly and shall not be allowed to result in nuisances or public health hazards. If the facility is in continuous operation, such as for resource or energy recovery, provisions shall be made to ensure that wastes are not allowed to accumulate or remain on-site while awaiting processing or transfer for such periods that will allow the creation of nuisances or public health hazards due to odors, flybreeding, or harborage of other vectors.

(6) Ventilation. In the interest of odor control and employee safety, any structure associated with the processing of solid waste shall be adequately ventilated. Applicants for permits shall consult with the TACB at the time an application is filed with the executive director, or earlier, regarding TACB's jurisdiction and regulations in all matters involving the collection and emission of air contaminants through ventilating systems.

(7) Noise pollution. Noise pollution shall be taken into consideration in the design of solid waste processing facilities.

(8) Employee sanitation facilities. Adequate potable water and sanitary facilities shall be provided for all solid waste processing facilities.

§330.60. Technical Requirements of an Application for Registration of Solid Waste Facilities (Type V and Type VI).

(a) General.

(1) This section applies to Type V and Type VI sites that require a registration rather than a permit.

(2) Registration applicants shall submit applications in accordance with the requirements of §305.45 of this title (relating to Contents of Application for Permit) and §330.51 of this title (relating to Permit Application for Municipal Solid Waste Facilities).

(3) Applicants should consult with the executive director to confirm the applicability of specific requirements.

(4) Registration applicants shall submit four copies of the application.

(5) Even though an applicant may not be required to submit detailed supporting data, the executive director recommends that the applicant consider the requirements contained in §§330.150-330.159 of this title (relating to Operational Standards for Solid Waste Processing and Experimental Sites) as a guide in selecting a suitable site location and developing the operational plan. The commission also recommends that the applicant review the operational standards for the specific type of site before completing the application.

(b) Unless an exception is granted by the executive director, the registration application shall be supported by the following:

(1) Estimate of the cost of closure of the facility and evidence of financial assurance in that amount and in a form specified in §§330.280-330.286 of this title (relating to Financial Assurance).

(2) Evidence of competency to operate the site in accordance with §330.52(b)(9) of this title (relating to Technical Requirements of Part I of the Application).

§330.61. Land-Use Public Hearing. The executive director may process a permit application or partial application to the extent necessary to determine land-use compatibility alone. If the site is determined to be acceptable on the basis of land use, the executive director may consider technical matters related to the application at a later time. When this procedure is followed, an opportunity for a public hearing will be offered for each determination in accordance with §305.100 of this title (relating to Notice of Application).

§330.62. Property Rights.

(a) It is the responsibility of an owner or operator to possess or acquire a sufficient interest in or right to the use of the property for which a permit is issued, including the access route thereto. The granting of a permit does not convey any property rights or interest in either real or personal property; nor does it authorize any injury to private property, invasion of personal rights, or impairment of previous contract rights; nor any infringement of federal, state, or local laws or regulations outside the scope of the authority under which a permit is issued.

(b) The owner or operator shall retain the right of entry to the site for at least thirty years after termination of solid waste operations for inspection and maintenance of the site with the understanding that a longer period may be required for post-closure maintenance.

(c) In any lease agreement, specific provisions shall be included to delineate mineral rights attached to the property and the rights to any recoverable materials that may be buried on the property or landfill gases that may be produced. Executive director approval or a permit will be required if any on-site operations subsequent to closure of a landfill site involve disturbing the cover or liner of the landfill.

(d) It is also the responsibility of an owner or operator to obtain any permits or approvals that may be required by local agencies such as for building construction, discharge of uncontaminated waters into ditches under control of a drainage district, discharge of effluent into a local sanitary sewer system, etc.

§330.63. Duration and Limits of Permits.

(a) A permit is normally issued for the life of the site but may be revoked at any time if the operating conditions do not meet the minimum standards set forth in this chapter or for any other good cause.

(b) When deemed appropriate by the executive director a permit may be issued for a specific period of time. When an owner or operator has made timely and sufficient application for the renewal of a permit, the existing permit does not expire until the application has been finally determined by the commission.

(c) A permit is issued to a specific person (see definition for person contained in §330.2 of this title (relating to Definitions)) and may not be transferred from one person to another without complying with the transfer approval requirements of the commission.

(d) A permit is attached to the realty to which it pertains and may not be transferred from one site to another.

§330.64. Additional Standard Permit Conditions for Municipal Solid Waste Facilities.

(a) Within 30 days after the commission approval of a permit or permit amendment, the owner or operator shall submit three copies of the final approved Site Development Plan. These copies shall be loose-leaf bound and shall include all drawings and sketches. The outside binder shall be marked "Approved Site Development Plan" and shall indicate the date of commission approval. The executive director may allow an extension of the deadline if work required cannot reasonably be completed within 30 days.

(b) If at any time during the life of the site the site owner or operator becomes aware of any condition in the approved Site Development Plan that necessitates a change to accommodate new technology or improved methods or that makes it impractical to keep the site in compliance, the site owner or operator shall submit to the executive director a revised plan. Such proposed changes to the approved Site Development Plan shall be made in accordance with §305.62 of this title (relating to Amendment) and/or §305.70 of this title (relating to Municipal Solid Waste Permit Modification) and must be approved prior to their implementation.

(c) All drawings or other sheets prepared for revisions to a Site Development Plan or other previously approved documents, that may be required by this subchapter, shall be submitted in triplicate. The revised pages shall be marked for the current revision (i.e., "Revision Number 3"), dated, and punched for insertion into the loose-leaf binder. Drawings shall be 8 1/2 by 11 inches or 11 by 17 inches. However, standard-sized drawings (24 by 36 inches) folded to 8 1/2 by 11 inches may be submitted or required if reduction would render them illegible or difficult to interpret. All revised engineering drawings shall be signed and sealed by a Registered Professional Engineer responsible for their preparation and shall be included in the loose-leaf binder. Bound plans and/or reports shall be signed and sealed by the engineer, preferably of the first page.

(d) Preconstruction conference. Prior to the beginning of initial excavation or construction for a municipal solid waste facility or a lateral expansion, a preconstruction conference shall be held. All aspects of the permit, construction activities, and inspections shall be discussed. An initial preconstruction conference shall be held within 90 days after the issuance of a permit. Additional preconstruction conferences may be held prior to the opening of a new municipal solid waste landfill unit. TWC and successors representatives and owner's representatives, including the engineer, the geotechnical consultant, the contractor, and the site manager, shall attend the preconstruction conference.

(e) Pre-opening inspection. After all initial construction activity has been completed and prior to accepting any solid waste, the owner/operator shall contact TWC and successors representatives and request a pre-opening inspection. A pre-opening inspection shall be conducted by TWC and successors representatives within 14 days of notification by the owner or operator that all construction activities have been completed, accompanied by representatives of the owner/operator and the engineer.

(f) Pre-operation authorization. The municipal solid waste facility shall not accept solid waste until the executive director has confirmed in writing that all applicable submissions required by the permit, the approved Site Development Plan, and this chapter have been received and found to be acceptable, and that construction is in compliance with the permit and the approved Site Development Plan. If the executive director has not provided a written or verbal response within 14 days of completion of the pre-opening inspection, the facility shall be considered approved for placement of waste.

§330.65. Requirements of an Application for Registration of Solid Waste Facilities (Type V). This section applies to Type V sites that require a registration rather than a permit. All registration applicants shall submit four copies of the complete application. The registration applicant shall submit an application as follows.

(1) General Information. Part I of the application shall be in accordance with §330.52 of this title (relating to Technical Requirements of Part I of the Application). This part includes all items required by §305.45 of this title (relating to Contents of Application for Permit) and §§330.51-330.52 of this title (relating to Permit Procedures). The applicant should consult with the executive director to confirm the applicability of specific requirements. The requirements in those items for registrations are the same as those for permit. With regard to the submission of the Land Ownership Maps and a Land Owners List with Part I of the application, the applicant may request the executive director to waive those requirements. This letter of request should be included in the Part I of the application.

(2) Specific information.

(A) For Transfer Station facilities, provide evidence of population for a service area serving a population of less than 5,000 inhabitants according to the most recent federal decennial census.

(B) For Waste Separation, Recycling, and Composting facilities on permitted sites, provide, permit number, and name of the owner or operator.

(3) Land Use (for Transfer Station Facilities only).

(A) Show surrounding land use (i.e., farm or ranch land, commercial, residential, wooded, etc.) within one-half mile of the site on the topographic map required in Part I of the application.

(B) Applicant shall attach evidence of local government approval/acceptance/nondisapproval of the site location, e.g., building permit, license, or nonconforming use authorization. Issuance of a registration does not grant authorization for development/operation of the facility in noncompliance with local government authority.

(4) Plans and cross-sections. On a large-scale plan drawings of the site the applicant shall show the following information:

(A) site boundaries (show boundaries and dimensions of tract of land on which the site is to be developed);

(B) detailed facility layout and at least two cross- sections of the facility;

(C) location of structures, any utility easements, and distance to nearest residences (identify all pipelines by type and ownership);

(D) streets and roads providing ingress and egress to site, indicating type of surfaces and traffic pattern with flow arrows;

(E) vehicle parking for equipment, employees, and visitors;

(F) locations of fences and gates;

(G) safety features;

(H) provisions for controlling windblown waste;

(I) necessary connections for facility cleaning;

(J) floor drains and sump to collect waste waters;

(K) provision for a septic system or connection to a sewer system;

(L) provisions for controlling surface water drainage on or near the site. Show locations of any proposed dikes, berms, storm sewers, or levees. The site drainage design and calculations shall be prepared in accordance with §330.55 of this title (relating to Site Development Plan); and

(M) fire control facilities, e.g., fire hydrants, fire extinguishers, water tanks, and water well.

(5) Solid waste descriptive data:

(A) an estimated amount of solid waste to be received daily;

(B) the maximum amount of solid waste to be stored;

(C) the length of time solid waste is to remain on the site;

(D) the intended purpose for solid waste processed/stored at this site;

(E) the process/storage method for the solid waste.

(6) site operating plan. Even though an applicant may not be required to submit detailed supporting data, the applicant should consider the requirements contained in §§330.150-330.159 of this title (relating to Operational Standards for Solid Waste Processing and Experimental Sites) as a guide in developing the operational plan. The applicant should also review those operational standards specific to the type of site considered for operation before completing the plan.

(7) Additional technical information for composting facilities. For registration of composting facilities, additional technical information related to the specifics of composting shall be submitted by the applicant in accordance with the "permitting" design criteria for composting facilities provided by the commission.

(8) Evidence of financial assurance and evidence of competency. Unless an exception is granted by the executive director, the registration application shall be supported by the following:

(A) an estimate of the cost of closure of the facility and evidence of financial assurance in that amount and in a form specified in §§330.280-330.286 of this title (relating to Financial Assurance); and

(B) Evidence of competency to operate the site in accordance with §330.52(b)(9) of this title (relating to Technical Requirements of Part I of the Application).

(9) Required statements and certification. The applicant shall include the following statements and/or certificates sworn to and signed by the applicant and/or applicable signatory.

(A) Statement of applicant. I, ______________________________, state

that I have knowledge of the facts herein set forth and that these facts are true and correct, to the best of my knowledge and belief. I further state that, to my knowledge and belief; the project for which application is made will not in any way violate any law, rule, ordinance, or decree of any duly authorized governmental entity having jurisdiction. I further state that I am the applicant or am authorized to act for the city/county/applicant.

____

[Signature]

____

[Type Name and Title]

____

[Date]

Note: Provide documentation that the person signing the application meets the requirements of §305.44 of this title (relating to Signatories to Applications).

(B) Notary Public's certificate. Subscribed and sworn to before me, by the said ______________, this ___ day of __________ 19__, to certify which witness my hand and seal of office.

____

Notary Public in and for ________

County, Texas.

[Seal]

(D) Engineer's certification. I, ____________________, a Registered Professional Engineer in the State of Texas, do hereby certify that this application for registration was prepared under my supervision.

[Typed or Printed Name]

[Name of Engineering Firm]

[Street or P.O. Box]

[City, State, ZIP Code]

[Area Code, Telephone No.]

[Date]

[Seal]

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 March 2, 1993.

TRD-9319709 Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: March 4, 1993

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

Subchapter E. Permit Procedures and Design Criteria

• 31 TAC §§330.51-330.67

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

The repeals are proposed under the Texas Health and Safety Code, Chapter 361, which gives the commission all powers necessary and convenient under that chapter to carry out its responsibilities concerning the regulation and management of municipal solid waste.

§330.51. General.

§330.52. Permit Exemptions.

§330.53. Duration and Limits of Permits.

§330.54. Permits Issued Under Previous Regulations.

§330.55. Property Rights.

§330.56. Emergency Approval.

§330.57. Application Required.

§330.58. Preparation of Application.

§330.59. Submission of Application.

§330.60. Land Use Public Hearing.

§330.61. Pre-application Review.

§330.62. General.

§330.63. General Information Required for All Sites-Permit/Registration Application, Part A.

§330.64. Technical Information Required for Landfill Sites Serving Less Than 5,000 Persons-Permit Application, Part B.

§330.65. Technical Information Required for Landfill Sites Serving 5,000 Persons or More-Site Development Plan.

§330.66. Technical Information Required for Solid Waste Processing and Experimental Sites.

§330.67. Technical Information Required for Registration of Solid Waste Facilities-Part B, Section II.

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 March 2, 1993.

TRD-9319698 Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: April 9, 1993

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

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Subchapter F. Operational Standards for Solid Waste Land Disposal Sites

• 31 TAC §§330.111-330.139

The new sections are proposed under the Texas Health and Safety Code, Chapter 361, which gives the commission all powers necessary and convenient under that chapter to carry out its responsibilities concerning the regulation and management of municipal solid waste.

§330.111. General. The approved Site Development Plan, the Site Operating Plan, the Final Closure Plan, the Post-Closure Maintenance Plan, the Landfill Gas Management Plan, and all other documents and plans required by this chapter shall become operational requirements and shall be considered a part of the operating record of the facility. Any deviation from the permit and incorporated plans or other related documents associated with the permit is a violation of this chapter.

§330.112. Pre-Operation Notice. The owner or operator shall provide written notice in the form of a Soils and Liner Evaluation Report as described in §330.206 of this title (relating to Soils and Liner Evaluation Report (SLER) and Flexible Membrane Liner Evaluation Report (FMLER)) of the final construction and lining of a new municipal solid waste landfill unit to the executive director for review and approval prior to the emplacement of waste. If the executive director has not provided a verbal or written response by the end of the 14th day following the executive director's receipt of the report, the municipal solid waste landfill unit shall be considered approved for the placement of solid waste. This provision is not applicable to the initial opening of a municipal solid waste landfill facility.

§330.113. Record-Keeping Requirements.

(a) A copy of the permit, the approved Site Development Plan, the Site Operating Plan, the Final Closure Plan, the Post-Closure Maintenance Plan, the Landfill Gas Management Plan, and any other required plan or other related document shall be maintained at the municipal solid waste facility. This requirement shall be considered a part of the operating record for the facility.

(b) The owner or operator shall promptly record and retain in an operating record to be located at the facility or an alternate location approved by the executive director the following information:

(1) any and all location-restriction demonstrations;

(2) inspection records, training procedures, and notification procedures relating to excluding the receipt of hazardous waste;

(3) all results from gas monitoring and any remediation plans relating to explosive and other gases;

(4) any and all unit design documentation for the placement of leachate or gas condensate in a municipal solid waste landfill;

(5) any and all demonstration, certification, findings, monitoring, testing, and analytical data relating to ground-water monitoring and corrective action;

(6) closure and post-closure care plans and any monitoring, testing, or analytical data relating to post-closure requirements;

(7) any and all cost estimates and financial assurance documentation relating to financial assurance for closure and post-closure;

(8) any and all information demonstrating compliance with the small community exemption criteria;

(9) copies of all correspondence and responses relating to the operation of the facility, modifications to the permit, approvals, and other matters pertaining to technical assistance;

(10) any and all documents, manifests, trip tickets, etc., involving special waste; and

(11) any other document(s) as specified by the approved permit or by the executive director.

(c) The owner or operator shall provide written notification to the executive director for each occurrence that documents from subsection (a) of this section are placed into or added to the operating record. All information contained in the operating record shall be furnished upon request to the executive director and shall be made available at all reasonable times for inspection by the executive director.

(d) The owner or operator shall retain all information contained within the operating record and the different plans required for the facility for the life of the facility including the post-closure care period.

(e) The executive director may set alternative schedules for recordkeeping and notification requirements as specified in subsections (a)-(d) of this section, except for notification requirements contained in §§330.300-330.305 of this title (relating to Location Restrictions) for any proposed lateral expansion located within a five-mile radius of any airport runway end used by turbojet or piston-type aircraft or notification relating to landowners whose property overlies any part of the plume of contamination if contaminants have migrated off-site as indicated by ground-water sampling.

§330.114. Site Operating Plan. The Site Operating Plan (SOP) shall provide operating procedures for the site management and the site operating personnel in sufficient detail to enable them to conduct the day-to-day operations of the facility. As a minimum, the SOP shall include specific guidance, procedures, instructions, and schedules on the following:

(1) a jcb description for each category of personnel to be employed at the facility and for the supervisory personnel in the chain-of-command;

(2) a description, including size, type, and function, of the equipment to be utilized at the facility;

(3) a detailed description of the procedures that the operating personnel shall follow concerning the operational requirements of this subchapter;

(4) other instructions as necessary to ensure that operating personnel comply with any other local, state, or federal regulation for the operational standards of the type of work involved at the facility; and

(5) procedures for the detection and prevention of the disposal of regulated hazardous waste as defined in 40 Code of Federal Regulations Part 261 and of polychlorinated biphenyls (PCB) wastes as defined in 40 Code of Federal Regulations Part 761. The detection and prevention program shall include the following:

(A) random inspections of incoming loads unless the owner or operator takes other steps to ensure that the incoming loads do not contain regulated hazardous waste or PCB wastes. The inspection procedures shall be identified in the plan along with a backup procedure if hazardous waste is identified. The procedure shall include the inspection of compactor vehicles;

(B) records of all inspections;

(C) training for appropriate facility personnel responsible for inspecting loads to recognize regulated hazardous waste or PCB waste;

(D) notification of the executive director of any incident involving the disposal of a regulated hazardous waste or a PCB waste at the landfill; and

(E) provisions for the remediation of the incident;

(6) a Fire Protection Plan that shall identify the fire protection standards to be used at the facility and the training of personnel in fire-fighting techniques.

§330.115. Fire Protection. The owner or operator shall maintain a stockpile of earth within 2,500 feet of the working face or active disposal area. The stockpile shall be sized to cover the entire working face or active disposal area. Sufficient on-site equipment for movement of that earth shall be provided at all landfill sites. The executive director may approve alternate methods of fire protection. Accidental fires shall be promptly extinguished. The potential for accidental fires shall be minimized by use of proper compaction and earth cover.

§330.116. Access Control. Public access to all municipal solid waste facilities shall be controlled by means of artificial barriers, natural barriers, or a combination of both, appropriate to protect human health and safety and the environment. Uncontrolled access to other operations located at a municipal solid waste facility shall be prevented.

§330.117. Unloading of Waste.

(a) The unloading of solid waste shall be confined to as small an area as practical. An attendant shall be provided at all sites to monitor all incoming loads of waste. An attendant shall also be on duty during regular operating hours at the working face or active disposal area of all landfill sites to direct unloading of solid waste. Appropriate signs shall also be used to indicate where vehicles are to unload. The use of forced access lanes, identified by ditches, dikes, fences, or other means, shall be used in conjunction with signs for the prevention of indiscriminate dumping. The owner or operator is not required to accept any solid waste which they determine will cause or may cause problems in maintaining full and continuous compliance with these sections. Small MSWLFs may submit a request for a permit modification to receive approval for an alternate plan if sufficient justification is provided.

(b) The unloading of waste in unauthorized areas is prohibited. Necessary steps shall be taken by the owner or operator to ensure compliance with this provision. Any waste deposited in an unauthorized area shall be removed promptly and disposed of properly.

(c) The unloading of prohibited wastes at the municipal solid waste facility shall not be allowed. Necessary steps shall be taken by the owner or operator to ensure compliance with this provision. Any prohibited waste shall be returned promptly to the transporter or generator of the waste.

(d) Any MSWLF facility may establish a brush and/or construction-demolition (B&CD) waste area on-site designated to receive B&CD waste. Any municipal solid waste facility may establish a B&CD area on site.

(e) At Type IV sites, only B&CD wastes and rubbish (trash) that are free of putrescible and household waste may be accepted.

(f) In addition to the other operating requirements of this subchapter, Type IV landfill operators that accept rubbish shall provide the following during all periods of operation.

(1) A written procedure retained on site to ensure that containers with any putrescible wastes are not accepted. This might include or be a combination of a manifest system, surcharges, contractual agreements with transporters, or other acceptable means. This written procedure shall be made available for review by the executive director. The procedure shall be followed and shall be modified as necessary to accomplish its purpose.

(2) A written procedure retained on site for the removal of any putrescible wastes to an approved disposal facility shall specify the means to be used for removal of putrescible wastes illegally disposed of at the site. In all cases, such wastes shall be removed from the working face immediately upon discharge and returned to the offending transporters's vehicle or placed in suitable collection bins and shall not be allowed to remain on the site in the collection bins for more than 24 hours. The equipment necessary to meet the chosen alternative shall be specified and shall be on site and operable during operating hours. This written procedure shall be made available for review by the executive director. The procedure shall be followed and shall be modified as necessary to accomplish its purpose.

(3) A working-face monitor to inspect each load that is dumped at the site shall have the authority and responsibility to reject unauthorized loads, have unauthorized material removed by the transporter, and/or assess appropriate surcharges and have the unauthorized material removed by on-site personnel.

(4) A procedure whereby the transporter certificates required by §330.32 of this title (relating to Collection and Transportation Requirements) shall be retained at the landfill and be available for inspection by the executive director.

(g) Type IV landfill owners or operators shall not accept wastes from completely enclosed containers or enclosed vehicles except in accordance with §330.135 of this title (relating to Waste in Enclosed Containers or Enclosed Vehicles Accepted at Type IV Landfills).

(h) Type IV landfill owners or operators shall post large conspicuous warning signs at all entrances to the site stating that putrescible and household wastes are not accepted and stating the landfill's requirements for transporters, such as certificates, manifests, and surcharges or other penalties that may be imposed in the event that transporters do not meet the requirements of this chapter.

(i) At Type VIII sites, only used and scrap tires free of any other type of waste may be accepted.

§330.118. Hours of Operation. The operating hours of a municipal solid waste facility shall be any time between the hours of 7 a.m. and 7 p.m., unless otherwise approved in the permit or the Site Development Plan. Operating hours within the 7 a.m. to 7 p.m. span do not require other specific approval. The executive director may approve alternate operating hours for special occasions, special purpose events, holidays, or other special occurrences as specified in §305.70 of this title (relating to Municipal Solid Waste Permit Modification).

§330.119. Site Sign. Each site shall conspicuously display at all entrances to the site a sign measuring at least four feet by four feet with letters at least three inches in height stating the type of site, the hours and days of operation, and the permit number or site number. The posting of erroneous or misleading information shall constitute a violation of this section.

§330.120. Control of Windblown Waste and Litter. Windblown material and litter shall be collected and returned to the active disposal area or working face as necessary to minimize unhealthy, unsafe, or unsightly conditions.

(1) A portable fence may be employed to confine windblown material resulting from unloading, spreading, and compaction operations. If a portable fence is not practical, other suitable practices shall be employed to control windblown material.

(2) Litter scattered throughout the site, along fences and access roads, and at the gate due to wind or as a result of waste falling from vehicles shall be picked up at least weekly and returned to the active disposal area or working face.

§330.121. Easements and Buffer Zones.

(a) Easement Protection. No solid waste unloading, storage, disposal, or facil-

ity operations shall occur within any easement, buffer zone, or right-of-way that crosses the site. No solid waste disposal shall occur within 25 feet of the center line of any utility line or pipeline easement, unless otherwise authorized by the executive director. All pipeline and utility easements shall be clearly marked with posts which extend at least six feet above ground level, spaced at intervals no greater than 300 feet.

(b) Buffer Zones. A minimum separating distance of 50 feet shall be maintained between facility operations and the boundary of the site, unless otherwise authorized by the executive director. The buffer zone shall not be narrower than that necessary to provide for safe passage for fire fighting and other emergency vehicles.

§330.122. Landfill Markers and Benchmark. All required landfill markers and the benchmark shall be maintained so that they are visible at any time. Markers that are removed or destroyed shall be replaced within 15 days of the removal or destruction. All markers shall be repainted as necessary to retain visibility.

§330.123. Materials Along the Route to the Site. The site owner or operator shall take steps to ensure that vehicles hauling waste to his site are enclosed or provided with a tarpaulin, net, or other means to properly secure the load in order to prevent the escape of any part of the load by blowing or spilling. The owner or operator shall take actions such as posting signs, reporting offenders to proper law enforcement officers, adding surcharges, or similar measures. The operator shall be responsible for the cleanup of waste materials spilled along and within the right-of-way of all public access roads serving the site for a distance of two miles in either direction from any entrance to the site. The site operator shall consult with officials of the Texas Department of Transportation concerning cleanup of State highways and right-of-ways.

§330.124. Disposal of Large Items.

(a) Large, heavy, or bulky items, which cannot be incorporated in the regular spreading, compaction, and covering operations, should be recycled. A special area shall be established to collect these items. This special collection area shall be designated as a large-item salvage area. The owner/operator shall remove the items from the site often enough to prevent these items from becoming a nuisance and to preclude the discharge of any pollutants from the area.

(b) Items that can be classified as large, heavy, or bulky can include, but are not limited to, white goods (household appliances), air conditioner units, metal tanks, large metal pieces, and automobiles.

§330.125. Air Criteria.

(a) The landfill is subject to Texas Air Control Board (TACB) jurisdiction concerning burning and air pollution control. The owner or operator shall ensure that any unit of the municipal solid waste facility does not violate any applicable requirement of the approved State Implementation Plan developed under the Clean Air Act, §110, as amended.

(b) Any ponded water at the site shall be controlled to avoid its becoming a nuisance. In the event objectionable odors do occur, appropriate measures shall be taken to alleviate the condition.

§330.126. Disease Vector Control. The site operator shall take the appropriate steps to prevent and control on-site populations of disease vectors using proper compaction and daily cover procedures, and the use of other approved methods when needed.

§330.127. Site Access Roads.

(a) All-weather roads shall be provided within the site to the unloading area(s) designated for wet-weather operation. The tracking of mud and trash onto public roadways from the site shall be minimized.

(b) Dust from on-site and other access roadways shall not become a nuisance to surrounding areas. A water source and necessary equipment or other means of dust control approved by the executive director shall be provided.

(c) All on-site and other access roadways shall be maintained on a regular basis. Litter and any other debris shall be frequently picked up and taken to the active disposal area or working face. Access roadways shall be regraded as necessary to prevent depressions, ruts, and potholes.

§330.128. Salvaging and Scavenging. Salvaging shall not be allowed to interfere with prompt sanitary disposal of solid waste or to create public health nuisances. Salvaged materials may be considered as potential recycled materials. The owner/operator shall remove the salvaged items from the site often enough to prevent the items from becoming a nuisance, to preclude the discharge of any pollutants from the area, and to prevent an excessive accumulation of the material at the site. Class I industrial and special wastes received at the disposal site shall not be salvaged. Pesticide, fungicide, rodenticide, and herbicide containers shall not be salvaged unless being salvaged through a State supported recycling program. Scavenging shall not be allowed.

§330.129. Endangered Species Protection. The facility and the operation of the facility shall not result in the destruction or adverse modification of the critical habitat of endangered or threatened species, or cause or contribute to the taking of any endangered or threatened species.

§330.130. Landfill Gas Control. Landfill gases shall be monitored in accordance with the Landfill Gas Management Plan. The required reports and other submittals shall be included in the operating record of the facility and submitted to the executive director.

§330.131. Abandoned Oil and Water Wells.

(a) The site operator shall immediately provide written notification to the executive director of the location of any and all existing or abandoned water wells situated within the site upon such discovery during the course of site development and facility operation. The site operator shall, within 30 days of such a discovery, provide the executive director with written certification that all such wells have been capped, plugged, and closed in accordance with all applicable rules and regulations of the commission or other state agency.

(b) The site operator shall immediately provide written notification to the executive director of the location of any and all existing or abandoned on-site crude oil or natural gas wells, or other wells associated with mineral recovery. The site owner or operator shall provide the executive director with written certification that all such wells have been properly capped, plugged, and closed in accordance with all applicable rules and regulations of the Railroad Commission of Texas.

(c) Any water or other type of wells under the jurisdiction of the commission shall be plugged in accordance with all applicable commission requirements and additional requirements imposed by the executive director. A copy of the well plugging report required to be submitted to the appropriate state agency shall also be submitted to the executive director within 30 days after the well has been plugged.

§330.132. Compaction. Solid waste shall be spread and compacted by repeated passages of suitable compaction equipment such that each layer of solid waste is thoroughly compacted.

§330.133. Landfill Cover.

(a) Daily Cover. All landfills, with the exception of Type IV landfills, shall

provide six-inches of well-compacted earthen material not previously mixed with garbage, rubbish, or other solid waste at the end of each operating day to control disease vectors, fires, odors, windblown litter or waste and scavenging, unless the executive director requires a more frequent interval to control disease vectors, partial tires, fires, odors, windblown litter or waste and scavenging. Landfills that operate on a 24-hour basis shall cover the working face or active disposal area at least once every 24 hours. All Type IV facilities shall follow the requirements of this subsection except the rate of cover shall be no less than weekly.

(b) Intermediate Cover. All areas that have received waste but will be inactive for longer than 180 days shall provide intermediate cover. This intermediate cover shall be an additional six inches of well-compacted earthen material not previously mixed with garbage, rubbish, or other solid waste for a total of not less than 12 inches of cover. The intermediate cover shall be graded to prevent ponding of water. Run-off from areas which have received intermediate cover shall not be considered as having come into contact with the working face or leachate for the purpose of §330.55(b)(6) of this title (relating to Contaminated Water Treatment).

(c) Alternative Material Daily Cover. Alternative material daily cover (ADC) may be allowed by permit provision or by modification in accordance with §305.70 of this title (relating to Municipal Solid Waste Class I Modifications).

(1) An ADC operating plan shall be included in the Site Development Plan that includes the following:

(A) a description and thickness of the alternative material to be used;

(B) its effect on vectors, fires, odors, and windblown litter and waste;

(C) the operational methods to be utilized at the site when using this alternative material;

(D) chemical composition of the material and the Material Safety Date Sheet(s) for the alternative material; and

(E) any other pertinent characteristic, feature, or other factors related to the use of this alternative material.

(2) A status report on the ADC shall be submitted on a quarterly basis to the executive director describing the effectiveness of the alternative material, any problems that may have occurred, and corrective actions required as a result of such problems.

(3) ADC shall not be allowed when the landfill is closed for a period greater then 24 hours.

(d) Temporary waiver. The executive director may grant a temporary waiver from the requirements of subsections (a)-(c) of this section if the owner/operator demonstrates that there are extreme seasonal climatic conditions that make meeting such requirements impractical.

(e) Final Cover. Final cover for the landfill shall be in accordance with the Site Closure Plan.

(f) Erosion of Cover. Erosion of final or intermediate cover shall be repaired promptly by restoring the cover material, grading, compacting, and seeding it as necessary. Such periodic inspections and restorations are required during the entire operational life and for the post-closure maintenance period.

(g) Cover Log. Each landfill shall keep a cover application log on site readily available for inspection by commission representatives and authorized agents or employees of local governments having jurisdiction. This log shall specify the date cover (no exposed waste) was accomplished, how it was accomplished, and the last area covered. This applies to daily, intermediate, and alternate daily cover. For final cover, this log shall specify the area covered, the date cover was applied, and the thickness applied that date. Each entry shall be certified by the signature of the on-site supervisor that the work was accomplished as so stated in the log.

§330.134. Ponded Water. The ponding of water over waste on the MSWLF unit, regardless of its origin, shall be prevented. Ponded water that occurs in the active portion of a MSWLF unit or on a closed MSWLF unit shall be eliminated as quickly as possible and the area in which the ponding occurred shall be filled in and regraded within seven days of the occurrence.

§330.135. Waste in Enclosed Containers or Enclosed Vehicles Accepted at Type IV Landfills. Acceptance of waste in enclosed containers or enclosed vehicles at Type IV landfills shall be in accordance with the following requirements.

(1) Waste in enclosed containers or enclosed vehicles shall not be accepted at a Type IV landfill unless all of the following conditions have been met.

(A) The landfill to receive the waste shall be participating in the funding program to monitor these activities as detailed in paragraph (2) of this subsection.

(B) Each enclosed container or enclosed vehicle shall have all required approvals and/or permits from the executive director in accordance with §330.32 of this title (relating to Collection and Transportation Requirements).

(C) Enclosed containers or enclosed vehicles shall only be accepted at their designated time and on the specified day in accordance with these sections, commission permits, or other orders of the commission.

(D) A TWC inspector shall be on site and shall witness the unloading process to ensure that no putrescible waste is present. Any waste considered nonallowable by the TWC inspector shall be removed from the working face and subsequently from the site in accordance with §330.116 of this title (relating to Access Control).

(E) Each transporter delivering waste in enclosed containers or enclosed vehicles shall, prior to discharging the load, provide to the landfill operator a transporter trip ticket for the route he is delivering. Trip tickets shall be maintained as part of the operating record.

(F) The executive director may revoke a transporter's authorization to deliver waste to a Type IV MSW facility for failure to comply with this chapter.

(2) The executive director will determine the approximate annual costs of implementing and maintaining the surveillance and enforcement of all the activities associated with the acceptance of enclosed containers or enclosed vehicles at Type IV landfills.

(A) Notification of these costs will be provided to each affected holder of a Type IV landfill permit with notice of public hearing to apportion these costs.

(B) The public hearing will be held at a location to be determined by the commission with 20 days advance notice. Notice will be provided Type IV landfill operators by written notice in regular and certified mail.

(C) The public hearing shall be for the purpose of establishing the total compensation and expenditures required to administer this program and the apportionment of those costs to the Type IV landfill operators to be reimbursed to the commission.

(D) Unless other arrangements are made, the apportioned monthly payments will be due by the 10th day of each month.

(E) The apportioned costs to each Type IV landfill may be altered periodically to add or subtract landfills from the program. A 30-day notice will be provided to each participating Type IV landfill and/or proposed additional landfill and a hearing will be held upon request by one of the affected parties or on the commission's own motion.

(3) A Type IV landfill operator who is delinquent in making his monthly payment shall immediately halt acceptance of waste in enclosed containers or enclosed vehicles and may also be subject to other penalties in accordance with these sections or the Texas SWDA.

(4) Stationary compactors permitted in accordance with §330.25 of this title (relating to Requirements for Stationary Compactors) and municipal transporter routes permitted in accordance with §330.32 of this title (relating to Collection and Transportation Requirements) are exempt from the requirements of paragraphs (1)-(3) of this section. However, the landfill operator shall obtain from the transporter a hauler trip ticket for a municipal transporter route or a stationary compactors, as appropriate, prior to allowing discharge of the material at the landfill. These trip tickets shall be maintained as a part of the operating record.

§330.136. Disposal of Special Wastes.

(a) The acceptance and/or disposal of a special waste which is not specifically identified in subsections (b) or (c) or (e) of this section, or in §330.137 of this title (relating to Disposal of Industrial Wastes), requires prior written approval from the executive director.

(1) Approvals will be waste specific and/or site specific and will be granted only to appropriate sites operating in compliance with this chapter.

(2) Requests for approval to accept special wastes shall be submitted to the executive director and shall include, but are not limited to, the following:

(A) a complete description of the chemical and physical characteristics of each waste, a statement as to whether or not each waste is a Class 1 waste as defined in §330.2 of this title (relating to Definitions), and the quantity and rate at which each waste is produced and/or the expected frequency of disposal;

(B) an operational plan containing the proposed procedures for handling each waste and listing required protective equipment for operating personnel and on-site emergency equipment; and

(C) a contingency plan outlining responsibility for containment and cleanup of any accidental spills occurring during the delivery and/or disposal operation.

(3) Vacuum truck, as used in this section, refers to any vehicle which transports liquid waste to a solid waste disposal or processing site. A vacuum truck shall transport liquid waste to a landfill site that has a sludge stabilization and solidification process or to a Type V processing site for sludges, grease trap, or grit trap waste. The owner or operator shall submit written notification to the executive director of the liquids-processing activity as required in §330.8 of this title (relating to Notification Requirements).

(4) The executive director may issue an approval to receive special waste without a written request from the owner or operator; however, in such cases the site operator is not required to accept the waste.

(5) The executive director may revoke an authorization to accept special waste if the owner or operator does not maintain compliance with these rules or conditions imposed in the authorization to accept special waste.

(6) A site accepting special waste shall submit to the executive director a monthly summary of special wastes received. This report shall be submitted no later than the 25th day of the month following the month in which the waste was received. Reports shall be submitted on forms provided by the executive director. Failure to file required reports in a timely manner shall be a violation of these rules.

(b) Receipt of the following special wastes does not specifically require written authorization for acceptance provided the waste is handled in accordance with the noted provisions for each waste.

(1) Special wastes from health care related facilities which have not been treated in accordance with the procedures specified in §§330.1001-330.1009 this title (relating to Medical Waste Management) shall not be accepted at a MSWLF facility unless authorized in writing by the executive director. The executive director may provide this authorization when a situation exists which requires disposal of untreated wastes in order to protect the human health and the environment from the effects of a natural or man-made disaster.

(2) Dead animals and/or slaughterhouse waste may be accepted at any MSWLF facility without further approval from the executive director provided the carcasses and/or slaughterhouse waste are covered by three feet of other solid waste or at least two feet of soil immediately upon receipt.

(3) Regulated asbestos-containing material (RACM) as defined in 40 CFR §61 may be accepted at a Type I or Type I-AE MSWLF facility in accordance with subparagraphs (A)-(I) of this paragraph provided the MSWLF facility has been authorized to accept RACM. The site operator contemplating acceptance of RACM shall provide written notification to the executive director of the intent to accept RACM.

(A) To receive authorization to accept RACM, owner or operator shall dedicate a specific area or areas of the site to receive RACM and shall provide written notification to the executive director of the area or areas to be designated for receipt of RACM. After initial authorization to receive RACM is issued, additional areas may be designated by providing written notice to the executive director.

(B) The location of the area designated to receive the RACM shall be surveyed and marked by a Registered Professional Land Surveyor and identified on a current site diagram which is maintained at the landfill. A copy of the current site diagram identifying the RACM area shall be submitted to the executive director immediately upon completion of the diagram. The site shall maintain a record of each load of RACM accepted as to its location, depth, and volume of material.

(C) Upon closure of the MSWLF unit which accepted RACM, a specific notation that the site accepted RACM shall be placed in the deed records for the site with a site diagram identifying the RACM disposal areas. Concurrently, a notice of the deed recordation and a copy of the site diagram identifying the asbestos disposal areas shall be submitted to the executive director.

(D) Delivery of the RACM to the site shall be coordinated with the on-site supervisor so the waste will arrive at a time it can be properly handled and covered.

(E) RACM shall be accepted at the site only in tightly closed and unruptured containers or bags or shall be wrapped as necessary with six-mil polyethylene.

(F) The bags or containers holding the RACM shall be placed below natural grade level. Where this is not possible or practical, provisions shall be made to ensure that the waste will not be subject to future exposure through erosion or weathering of the intermediate and/or final cover. RACM which is placed above natural grade shall be located in the MSWLF unit such that it is, at closure of the MSWLF unit, not less than 20 feet from any final slide slope of the unit and shall be at least 10 feet below the final surface of the unit.

(G) The bags or containers holding the RACM shall be carefully unloaded and placed in the final disposal location. They shall be covered promptly with 12 inches of clean earthen material or three feet of solid waste containing no asbestos. Care shall be exercised in the application of the cover so that the bags or containers are not ruptured.

(H) A contingency plan in the event of accidental spills (e.g., ruptured bags or containers) shall be prepared by the owner or operator prior to accepting RACM. The plan shall specify the responsible person(s) and the procedure for the collection and disposal of the spilled material.

(I) RACM which has been designated as a Class 1 industrial waste may be accepted by a Type I municipal solid waste landfill authorized to accept RACM provided the RACM waste is handled in accordance with the provisions of this paragraph and the landfill operator complies with the provisions of §330.137(g)-(i) of this title (relating to Disposal of Industrial Wastes).

(4) Non-regulated asbestos-containing materials (non-RACM) may be accepted for disposal at any municipal solid waste landfill provided the wastes are placed on the active working face and covered in accordance with this chapter. Under no circumstances shall any material containing non-RACM be placed on any surface or roadway which is subject to vehicular traffic or disposed of by any other means by which the material could be crumbled into a friable state.

(5) Empty containers which have been used for pesticides, herbicides, fungicides, or rodenticides shall be disposed of in accordance with subparagraphs (A) and (B) of this paragraph.

(A) These containers may be disposed of at any landfill site provided that:

(i) the containers are triple-rinsed prior to receipt at the site;

(ii) the containers are rendered unusable prior to or upon receipt at the site; and

(iii) the containers are covered by the end of the same working day they are received.

(B) Those containers for which triple-rinsing is not feasible or practical (e.g., paper bags, cardboard containers) may be disposed of under the provisions of paragraph (6) of this subsection or in accordance with §330.137 of this title (relating to Disposal of Industrial Wastes), as applicable.

(6) Municipal hazardous waste from a conditionally exempt small quantity generator (CESQG) may be accepted at a Type I municipal solid waste site without further approval from the executive director provided the amount of waste does not exceed 220 pounds (100 kilograms) per month per generator, and provided the landfill owner/operator is willing to accept the waste.

(7) Sludges, grease trap waste, grit trap waste, or liquid wastes from municipal sources can be accepted at a Type I municipal solid waste landfill for disposal only if the material has been, or is to be, treated or processed and the treated/ processed material has been tested, in accordance with the Method 9095 (Paint Filter Liquids Test), as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (EPA Publication Number SW-846), as amended, and is certified to contain no free liquids. Prior to treatment or process of this waste at the landfill, the owner or operator shall submit written notification to the executive director of the liquids processing activity as required in §330.8 of this title (relating to Notification Requirements).

(c) Used-oil filters from internal combustion engines shall not be intentionally and knowingly accepted for disposal at landfills permitted under this chapter except as provided in paragraphs (1)-(4) of this subsection.

(1) Used-oil filters shall not be offered for disposal by a generator and/or be intentionally and knowingly accepted for landfill disposal on or after June 1, 1992, unless the filter has been:

(A) crushed to less than 20% of its original volume to remove all free flowing used-oil; or

(B) processed by a method other than crushing to remove all free flowing used-oil. A filter is considered to have been processed if:

(i) the filter has been separated into component parts and the free-flowing used-oil has been removed from the filter element by some means of compression in order to remove free-flowing used-oil;

(ii) the used filter element of a filter consisting of a replaceable filtration element in a reusable or permanent housing has been removed from the housing and pressed to remove free-flowing used-oil; or

(iii) the housing is punctured and the filter is drained for at least 24 hours.

(2) Used-oil filters (to include filters which have been crushed and/or processed to remove free-flowing used-oil) shall not be offered for landfill disposal by any non-household generator specified as follows and shall not be intentionally or knowingly accepted by any landfill permitted and regulated under this chapter as follows:

(A) on or after August 1 1992, by any non-household generator located in a county with a population greater than 1 million;

(B) on or after October 1, 1992, by any non-household generator located in a county with a population greater than 200,000 which is located on or east of a line defined by Interstate Highways 37, 35, and 35W;

(C) on or after December 1, 1992, by any non-household generator located in a county with a population greater than 200, 000;

(D) on or after February 1, 1993, by any non-household generator located in a county with a population greater than 100,000 which is located on or east of a line defined by Interstate Highways 37, 35, and 35W;

(E) on or after April 1, 1993, by any non-household generator located in a county with a population greater than 50,000 which is located on or east of a line defined by Interstate Highways 37, 35, and 35W;

(F) on or after June 1, 1993, by any non-household generator located in a county with a population greater than 100,000;

(G) on or after August 1, 1993, by any non-household generator located in a county with a population greater than 50,000;

(H) on or after October 1, 1993, by any non-household generator located in a county located on or east of a line defined by Interstate Highways 37, 35, and 35W; and

(I) on or after December 1, 1993, by any non-household generator located in any county of the state.

(3) On or after April 1, 1994, used-oil filters shall not be offered for landfill disposal by any generator, and/or shall not be intentionally or knowingly accepted for landfill disposal by a landfill permitted under this chapter.

(4) The executive director may extend, in 60-day increments, the time periods specified in paragraphs (2)(A)-(I) or (3) of this subsection if the executive director finds that commercial waste services for collection and recycling of used-oil filters are not available. The extension may be limited to any county or group of counties as the executive director deems necessary.

§330.137. Disposal of Industrial Wastes.

(a) All Class 1 industrial solid waste is required to be manifested. Owners or operators of MSWLF facilities shall not accept such wastes without prior written approval from the executive director or specific authorization in the permit.

(b) Wastes which are Class 1 only because of asbestos content may be accepted at any Type I or Type I-AE MSWLF facility which is authorized to accept regulated asbestos-containing material (RACM) as stated in §330.136(b)(3)(I) of this title (relating to Disposal of Special Wastes). Authorization to accept such wastes is implied in the authorization to accept RACM unless the acceptance of industrial wastes is prohibited by the permit. All Class 1 industrial asbestos wastes shall be manifested and owner or operator of the MSWLF facility shall comply with the requirements of subsections (g)-(i) of this section.

(c) Unless the facility permit authorizes the acceptance of Class 1 industrial waste, an authorization to accept Class 1 wastes will be waste-specific and/or site-specific and will be granted only to appropriate sites that are operating in compliance with this chapter. Requests for authorization to accept Class 1 solid wastes shall be submitted in writing to the executive director and shall include, but are not limited to, the following:

(1) a complete description of the chemical and physical characteristics of the waste, a statement as to whether or not the waste is a hazardous waste as defined in §330.2 of this title (relating to Definitions), and the quantity and rate at which the waste is produced and/or the expected frequency of disposal;

(2) an operational plan containing the proposed procedures for handling the waste and a listing of required protective equipment for operating personnel and on-site emergency equipment. This plan shall become a part of the site operating plan; and

(3) a contingency plan outlining responsibility for containment and cleanup of any accidental spills occurring during the delivery and/or disposal operation. This plan shall become a part of the site operating plan.

(d) Facilities which accept Class 1 wastes, other than asbestos-containing material, shall have dedicated trenches which meet the following requirements.

(1) The trenches designated for Class 1 wastes shall have a composite liner system consisting of two components. The upper component shall consist of a minimum of a 30-mil flexible membrane liner (FML) and the lower component shall consist of at least a three-foot layer of compacted soil with a hydraulic conductivity of no more than $1x10^{-7}$ cm/sec. FML components consisting of high density polyethylene (HDPE) shall be at least 60-mil thick. The FML component shall be installed in direct and uniform contact with the compacted soil component. The liner system installed for Class 1 trenches is subject to the requirements of §330.205 of this title (relating to Soils and Liner Quality Control Plan). These trenches shall be designated on the Site Development Plan.

(2) The trenches designated for Class 1 wastes shall have a leachate-collection system designed and constructed to maintain less than a 30-cm depth of leachate over the liner. The leachate-collection and leachate-removal system shall be:

(A) constructed of materials that are chemically resistant to the leachate expected to be generated;

(B) of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and by any equipment used at the landfill; and

(C) designed and operated to function through the scheduled closure and post-closure period of the landfill. The leachate-collection system design criteria and performance standards shall be, at a minimum, in accordance with the commission's most recent policy and guidelines on this subject.

(3) Stormwater run-on/run-off facilities such as berms and ditches placed to protect the dedicated trench(es) shall be provided in accordance with §330. 54 of this title (relating to Technical Requirements of Part III of the Application).

(4) The site shall have a ground-water monitoring system installed which is capable of detecting the migration of pollutants from the landfill and is sampled semiannually for the parameters specified in §§330.230-330.242 of this title (relating to Ground-Water Monitoring and Corrective Action).

(5) The final cover placed over the dedicated Class 1 waste trench shall consist of a minimum of 18 inches of uncontaminated topsoil overlying four feet of compacted clay-rich soil material meeting the requirements of §§330.250-330.256 of this title (relating to Closure and Post-Closure) unless waste is to be placed on top of the Class 1 wastes. If waste is to be placed above Class 1 wastes, the Class 1 waste shall first be covered with a four-foot layer of compacted clay-rich soil. The final cover over the aerial fill shall meet the requirements of §§330.250-330.256 of this title (relating to Closure and Post-Closure) and shall include a flexible membrane component.

(6) Class 1 industrial solid waste other than asbestos-containing waste shall not be placed above the surrounding natural ground surface elevation. Class 1 industrial solid waste which is Class 1 only because of asbestos content shall be managed in accordance with the provisions of §330.136(b)(3) of this title (relating to Disposal of Special Wastes).

(e) The executive director may issue an approval to receive Class I Industrial Solid Waste without a written request from the owner or operator; however, in such cases the site operator is not required to accept the waste.

(f) Unless specifically authorized by the facility permit, a Type I MSWLF facility permitted after October 9, 1993, may not accept Class 1 industrial nonhazardous wastes in excess of 20% of the total amount of waste (not including Class 1 wastes) accepted during the current or previous year. The amount of waste may be determined by volume or by weight, but the same unit of measure shall be used for each year, unless a variance is authorized by the executive director.

(g) Any authorization to accept a Class 1 waste is subject to the site operating in compliance with these rules and any specific conditions required under any letter(s) of authorization. Failure to operate the site in compliance with these rules or any special conditions imposed by the executive director shall be justifiable grounds for the

executive director to revoke the authorization to accept a Class 1 waste.

(h) All shipments of a Class 1 waste shall be accompanied by a manifest (waste-shipping control ticket) as required by the commission. The facility operator or his designated representative shall sign the manifest for any authorized shipments of Class 1 waste. The facility operator shall not accept or sign for shipments of Class 1 waste for which the authorization to accept has not been granted by the executive director or has not been authorized by permit provisions. The site operator shall retain the disposal facility copy of the manifest for a period of three years. This time period is automatically extended if any enforcement action involving the owner, operator, or MSWLF facility is initiated or pending by the executive director.

(i) A facility which accepts any Class 1 waste shall submit to the executive director a written report of Class 1 waste received. This report shall be submitted no later than the 25th day of the month following the month in which the waste was received. Reports shall be submitted on forms provided by the commission and shall include all information required. Monthly reports shall be filed by facilities which have received Class 1 wastes including those months in which no Class 1 waste is received at the facility unless an exception is granted by the executive director. Failure to file such reports in a timely manner shall constitute a violation of these rules.

(j) Class 2 industrial solid waste, except special wastes as defined in §330. 2 of this title (relating to Definitions), may be accepted at any Type I or Type I-AE municipal solid waste landfill provided the acceptance of such waste does not interfere with site operation.

(k) Class 3 industrial solid waste may be disposed of at any municipal solid waste landfill provided the acceptance of such waste does not interfere with site operation.

§330.138. Screening of Deposited Waste. Screening of deposited waste materials at a MSW facility shall be provided by the owner or operator for the facility where the executive director determines a need for such screening is necessary or where permit or design requirements so dictate.

§330.139. Contaminated Water Discharge. The owner or operator of a MSW facility shall not discharge contaminated water without specific written authorization.

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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TRD-9319710 Mary Ruth Holder
Director, Legal Division
Texas Water Commission

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

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• 31 TAC §§330.112-330.114, 330.121-330.124, 330.131-330. 155

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

The repeals are proposed under the Texas Health and Safety Code, Chapter 361, which gives the commission all powers necessary and convenient under that chapter to carry out its responsibilities concerning the regulation and managemer' of municipal solid waste.

§330.112. Meetings and Inspections Prior to Constructing and Opening New Facilities.

§330.113. Effect of Updated Regulations on Existing Sites.

§330.114. Evidence of Financial Responsibility.

§330.121. General Liner Requirements and Alternatives.

§330.122. Soil and Liner Quality Control.

§330.123. Miscellaneous Standards for the Protection of Ground and Surface Waters.

§330.124. Groundwater Protection Systems.

§330.131. Fire Protection.

§330.132. Unloading.

§330.133. Access Control.

§330.134. Control of Windblown Material.

§330.135. Industrial Wastes.

§330.136. Disposal of Special Wastes.

§330.137. Disposal of Class I Wastes.

§330.138. Easement Protection.

§330.139. Boundary Buffer Zones.

§330.140. Materials Along Route to Site.

§330.141. Screening of Deposited Waste.

§330.142. Disposal of Large Items.

§330.143. Open Burning.

§330.144. Victor Control.

§330.145. Site Access Roads.

§330.146. Salvaging and Scavenging.

§330.147. Endangered Species Protection.

§330.148. Gas Control.

§330.149. Abandoned Oil and Water Wells.

§330.150. Compaction, Intermediate Cover, and Final Cover.

§330.151. Odor and Air Pollution Control.

§330.152. Site Completion and Closure Procedures.

§330.153. Post-Closures Maintenance.

§330.154. Post-Closure Use of Landfilled Areas.

§330.155. Waste in Enclosed Containers or Enclosed Vehicles in Type IV Landfills.

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Subchapter G. Operational Standards For Solid Waste Processing and Experimental Sites

• 31 TAC §§330.150-330.159

The new sections are proposed under the Texas Health and Safety Code, Chapter 361, which gives the commission all powers necessary and convenient under that chapter to carry out its responsibilities concerning the regulation and management of municipal solid waste.

§330.150. General Certain practices shall be followed to ensure that the health, safety, and aesthetic aspects of a community are not endangered by the location and operation of solid waste processing or experimental sites. The criteria contained in paragraphs (1)-(19) of this section are intended to minimize safety hazards and assist in the health and maintenance of an appearance compatible with other activities in the vicinity of such sites, and must be complied with for the operation being conducted. The provisions of the Site Development Plan, the Site Operating Plan, and any other plan prepared for the facility shall also be applicable. The owner or operator of any solid waste processing and experimental site shall comply with the following:

(1) §330.111 of this title (relating to General);

(2) §330.113 of this title (relating to Record-Keeping Requirements);

(3) §330.114 of this title (relating to Site Operating Plan);

(4) §330.116 of this title (relating to Access Control);

(5) Unloading of Waste:

(A) §330.117(a)-(d) of this title (relating to Unloading of Waste);

(B) at Type V facilities only those wastes specified in the permit by type and volume

(C) at recycling collection facilities, citizens' collection stations, or other types of collection facilities used for citizens to dispose of waste materials, the waste materials shall be unloaded into the container(s) provided.

(6) §330.118 of this title (relating to Hours of Operation);

(7) §330.119 of this title (relating to Site Sign);

(8) §330.121 of this title (relating to Easements and Buffer Zones);

(9) §330.123 of this title (relating to Materials Along the Route to the Site);

(10) §330.124 of this title (relating to Disposal of Large Items);

(11) §330.125 of this title (relating to Air Criteria) ;

(12) §330.126 of this title (relating to Disease Vector Control);

(13) §330.127 of this title (relating to Site Access Roads);

(14) §330.128 of this title (relating to Salvaging and Scavenging);

(15) §330.129 of this title (relating to Endangered Species Protection);

(16) §330.131 of this title (relating to Abandoned Oil and Water Wells);

(17) §330.134 of this title (relating to Ponded Water);

(18) §330.136 of this title (relating to Disposal of Special Wastes);

(19) §330.137 of this title (relating to Disposal of Industrial Wastes);

§330.151. Overloading and Breakdown.

(a) The design capacity of a solid waste processing or experimental facility shall not be exceeded during operation. The facility shall not accumulate solid waste in quantities that cannot be processed within such time as will preclude the creation of odors, insect breeding, or harborage of other vectors. If such accumulations occur, additional solid waste shall not be received until the adverse conditions are abated.

(b) If a significant work stoppage should occur at a solid waste processing or experimental facility due to a mechanical breakdown or other causes, the facility shall accordingly restrict the receiving of solid waste. Under such circumstances, incoming solid waste shall be diverted to an approved backup processing or disposal facility. If the work stoppage is anticipated to last long enough to create objectionable odors, insect breeding, or harborage of vectors, steps shall be taken to remove the accumulated solid waste from the site to an approved backup processing or disposal facility.

§330.152. Sanitation.

(a) At processing facilities, all working surfaces that come in contact with wastes shall be washed down on a weekly basis at the completion of processing. Processing facilities that operate on a continuous basis shall be swept daily and washed down at least two times per week.

(b) Wash waters shall not be allowed to accumulate on site without proper treatment to prevent the creation of odors or an attraction to vectors.

(c) All wash waters shall be collected and disposed of in an authorized manner.

§330.153. Water Pollution Control.

(a) Surface drainage in and around the facility shall be controlled to minimize surface water running onto, into, and off the treatment area.

(b) Unless wash or quench waters are disposed of into a sanitary sewer, they shall not otherwise be disposed of except in accordance with the rules and regulations of the State concerning discharge of polluted waters.

(c) Off-site discharge of contaminated waters shall be made only after approval under the National Pollutant Discharge Elimination System (NPDES) authority.

(d) Ground-water monitoring may be required by the executive director and shall be maintained in accordance with the requirements of §§330.230-330.242 of this title (relating to Ground-Water Monitoring and Corrective Action).

§330.154. Ventilation and Air Pollution Control.

(a) Ventilation shall be provided in accordance with the appropriate Texas Air Control Board (TACB) rules and regulations.

(b) Municipal solid waste processing facilities are subject to TACB jurisdiction concerning air pollution control.

§330.155. Litter Control.

(a) If a facility is not completely enclosed, the owner or operator shall provide a wire or other type fencing or screening when necessary to minimize windblown materials.

(b) Litter or windblown material resulting from the operation shall be collected and returned to the processing area at least twice per week to minimize unsightly conditions and fire hazards.

§330.156. Safety. The owner or operator shall develop and implement a safety plan adapted to the nature of the facility. An educational program in safety procedures for all employees shall be conducted. Supervision of all activities shall be maintained to ensure the safety of all persons on the premises.

§330.157. Fire Protection.

(a) An adequate supply of water under pressure shall be available for firefighting purposes.

(b) Firefighting equipment shall be readily available.

(c) A fire-protection plan shall be established, and all employees shall be trained in its contents and use.

§330.158. Employee Sanitation Facilities. Potable water and sanitary facilities shall be provided for all employees and visitors.

§330.159. Facility Completion and Closure Procedures. The Facility Completion and Closure Plan shall control the closure and completion requirements of a processing or experimental facility.

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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• 31 TAC §§330.171-330.180

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

The repeals are proposed under the Texas Health and Safety Code, Chapter 361, which gives the commission all powers necessary and convenient under that chapter to carry out its responsibilities concerning the regulation and management of municipal solid waste.

§330.171. General.

§330.172. Overloading and Breakdown.

§330.173. Sanitation and Vector Control.

§330.174. Water Pollution Control.

§330.175. Ventilation and Air Pollution.

§330.176. Litter Control.

§330.177. Safety.

§330.178. Fire Protection.

§330.179. Employee Sanitation Facilities.

§330.180. Miscellaneous Operational Standards.

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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Subchapter H. Ground-Water Protection Design and Operation

• 31 TAC §§330.200-330.206

The new sections are proposed under the Texas Health and Safety Code, Chapter 361, which gives the commission all powers necessary and convenient under that chapter to carry out its responsibilities concerning the regulation and management of municipal solid waste.

§330.200. Design Criteria.

(a) New MSWLF units and lateral expansions shall be constructed in accordance with one of the two following provisions approved by the executive director:

(1) a design that ensures that the concentration values listed in Table 1 of this section will not be exceeded in the uppermost aquifer at the relevant point of compliance, as specified by the executive director under subsection (d) of this section; or

(2) a composite liner, as defined in subsection (b) of this section, and a leachate collection system that is designed and constructed to maintain less than a 30-cm depth of leachate over the liner.

(b) For purposes of this section, "composite liner" means a system consisting of two components; the upper component must consist of a minimum 30-mil flexible membrane liner (FML) and the lower component must consist of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} cm/sec. FML components consisting of High Density Polyethylene (HDPE) shall be at least 60-mil thick. The FML component must be installed in direct and uniform contact with the compacted soil component.

(c) When approving a design that complies with subsection (a)(1) of this section, the executive director may consider at least the following factors:

(1) the hydrogeologic characteristics of the facility and surrounding land;

(2) the climatic factors of the area; and

(3) the volume and physical and chemical characteristics of the leachate.

(d) For purposes of this section, the relevant point of compliance is defined in §330.2 of this title (relating to Definitions). In determining the relevant point of compliance, the executive director may consider at least the following factors:

(1) the hydrogeologic characteristics of the facility and surrounding land;

(2) the volume and physical and chemical characteristics of the leachate;

(3) the quantity, quality, and detection of flow of ground water;

(4) the proximity and withdrawal rate of the ground-water users;

(5) the availability of alternative drinking water supplies;

(6) the existing quality of the ground water,including other sources of contamination and their cumulative impacts on the ground water and whether ground water is currently used or reasonably expected to be used for drinking water;

(7) public health, safety, and welfare effects; and

(8) practicable capability of the owner or operator.

TABLE 1

Chemical	MCL (mg/l)
Arsenic	0.05
Barium	1.0
Benzene	0.005
Cadmium	0.01
Carbon tetrachloride	0.005
Chromium (hexavalent)	0.05
2,4-Dichlorophenoxy acetic acid	0.1
1,4-Dichlorobenzene	0.075
1,2-Dichloroethane	0.005
1,1-Dichloroethylene	0.007
Endrin	0.0002
Fluoride	4
Lindane	0.004
Lead	0.05
Mercury	0.002
Methoxychlor	0.1
Nitrate	10
Selenium	0.01
Silver	0.05
Toxaphene	0.005
1,1,1-Trichloroethane	0.2
Trichloroethylene	0.005
2,4,5-Trichlorophenoxy acetic acid	0.01

Vinyl chloride 0.002

(e) Type IV landfills authorized to dispose of brush and demolition materials only shall meet one of the following ground-water protection requirements listed in paragraph (1) or (2) and in addition all Type IV sites shall have Soils and Liner Quality Control Plan as described in paragraph (3) of this subsection.

(1) There shall exist at least four feet of in-situ soil between the deposited waste and ground water. This in-situ soil shall constitute an in-situ liner and shall meet all the physical properties for a constructed liner as detailed in §330.205(c)(6) of this title (relating to Soil and Liner Quality Control Plan). In-situ liners shall not exhibit any primary or secondary physical features such as jointing, fractures, bedding planes, solution cavities, root holes, desiccation shrinkage cracks etc.

(2) There shall be at least a three-foot thick compacted clay liner between the deposited waste and ground water. The constructed liner shall meet all the criteria detailed in §330.205 of this title (relating to Soil and Liner Quality Control Plan) and shall at a minimum have one foot of protective cover overlying the compacted liner after all quality control testing and final thickness determinations are complete.

(3) All Type IV landfill permits shall include a Soils and Liner Quality Control Plan (SLQCP) as required by §330.205 of this title (relating to Soil and Liner Quality Control Plan) and should follow the latest technical guidelines of the executive director. The owner or operator shall submit a Soils and Liner Evaluation Reports (SLERs) in accordance with §330.206 of this title (relating to Soils and Liner Evaluation Report (SLER) and Flexable Membrane Liner Evaluation Report (FMLER).

§330.201. Leachate Collection System. Leachate-collection and associated leachate-removal systems shall be:

(1) constructed of materials that are chemically resistant to the leachate expected to be generated;

(2) of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and by any equipment used at the landfill; and

(3) designed and operated to function through the scheduled closure and post-closure period of the landfill.

§330.202. Alternate Design. Alternate liner designs may be authorized by the executive director if the owner or operator provides a rigorous demonstration by computerized design modeling (for example, the "Help" and "Multi-Media" models) that shows that the maximum contaminant levels detailed in §330.200 of this title (relating to Design Criteria), Table 1 will not be exceeded at the point of compliance. At the discretion of the executive director, a field demonstration may be required to prove the practicality and performance capabilities of an alternative design.

§330.203. Special Conditions (Liner Design Constraints).

(a) If ground water is encountered in the disposal excavations, or in cases where excavations extend below the seasonal high-water table, material with a weight equivalent to one foot of compacted clay liner for every two feet of static water head shall be used as a basis for the construction of a liner between the deposited solid waste and the ground water. The total thickness of the liner shall consist of no less than three feet of soil with a permeability coefficient of no more than 1x10[illegible] cm/sec, a liquid limit of no less than 30, a plasticity index of no less than 15, and a percent passing Number 200 sieve of no less than 30, plus an additional thickness of other material as required in this subsection. Pressure release systems may be used to reduce the amount of liner support construction.

(b) Leachate-collection systems (LCS) used in conjunction with liner ballast shall be designed to allow leachate levels to be maintained at or below 30 cm during the operating life of the unit and through the closure and post-closure periods.

§330.204. Geological Faults. New MSWLF units and lateral expansions shall not be located within 200 feet of a fault that has had displacement in Holocene time (approximately 11,000 years) unless the owner/operator demonstrates to the executive director that an alternative setback distance of less than 200 feet will prevent damage to the structural integrity of the MSWLF unit and will be protective of human health and the environment. All applications submitted for the operation of a MSWLF facility shall include a preliminary fault investigation report, as required in §330. 303 of this title (relating to Fault Areas), prepared by a geologist or an engineer experienced in fault determinations. The report shall include all results of direct site observations and a literature review of historical seismic activity and faulting in the area. If a facility is to be located within areas which may be subject to differential subsidence or active geological faulting, the application must include detailed fault studies. When an active fault is known to exist within one-half mile of the site, the site shall be investigated for both previously identified and unknown faults. Areas experiencing withdrawal of crude oil, natural gas, sulfur, etc., or significant amounts of ground water shall be investigated in detail for the possibility of subsidence-faulting/growth-faulting which could adversely affect the integrity of landfill liners. The studies shall establish the fault-displaced limits of the zones of influence of all active faulted areas within the site vicinity. Unless the applicant can provide substantial evidence that the zone of influence will not affect the site, no solid waste disposal activity shall be undertaken within a zone of influence of active geological faulting or differential subsidence. The studies shall include information or data on the items in paragraphs (1)-(11) of this subsection, as applicable:

(1) structural damage to constructed facilities (roadways, railways, and buildings);

(2) scarps in natural ground;

(3) presence of surface depressions (sag ponds and ponded water);

(4) lineations noted on aerial maps and topographic sheets;

(5) structural control of natural streams;

(6) vegetation changes;

(7) electrical spontaneous potential and resistivity logs (correlation of sub-

surface strata to check for stratigraphic offsets);

(8) earth electrical resistivity surveys (indications of anomalies which may represent fault planes);

(9) open trench excavations (visual examinations to detect changes in subsoil texturing and/or weathering indicating stratigraphic offsets);

(10) changes in elevations of established benchmarks; and

(11) references to published geological literature pertaining to area conditions.

§330.205. Soils and Liner Quality Control Plan.

(a) A landfill must have an approved Soils and Liner Quality Control Plan (SLQCP) prepared under the direction of a registered professional engineer. The SLQCP must be included in the Site Development Plan to provide operating personnel adequate procedural guidance for assuring continuous compliance with ground-water protection requirements. The plan shall specify construction methods employing good engineering practices for compaction of clay soils to form a liner. Unless alternate construction procedures are approved in writing by the executive director, all constructed liners shall be keyed into an underlying formation of sufficient strength to ensure stability of the constructed lining. The SLQCP shall address the installation and testing of a FML liner, if used. Proposed dewatering plans shall be included. The SLQCP shall include the following information.

(1) Constructed liner details, where applicable shall be depicted on cross-sections of a typical trench showing the slope, widths, and thicknesses for compaction lifts. The amount of compaction shall be expressed as a percentage of a predetermined laboratory density.

(2) Soil and liner quality-control testing procedures, to include sampling frequency, shall be included in the SLQCP. All field sampling and testing, both during construction and after completion, shall be performed by a person acting in compliance with the provisions of the Texas Engineering Practice Act and other state laws and regulations. The professional of record who signs the Soils and Liner Evaluation Report (SLER) or his representative should be on site during all liner construction. Quality control of construction and quality assurance of sampling and testing procedures should follow the latest technical guidelines of the executive director.

(b) An SLQCP shall also:

(1) describe and illustrate, for operating personnel, all necessary procedures for assuring continuous compliance with this subsection;

(2) provide guidance needed for testing and reporting evaluation procedures to the professional who will prepare the SLERs for the site;

(3) specify materials, equipment, and construction methods for the compaction of clay soils to form impermeable liners for the conditions described in subparagraphs (A) and (B) of this paragraph. The SLQCP shall adhere to the testing frequencies and procedures as specified.

(A) Details for the overexcavation and recompaction of the in-situ soils, or the compaction of soils from a borrow source, shall be depicted on cross-sections of a typical trench showing the slope, widths, and thicknesses for compaction lifts.

(B) Procedures to be followed when excavations, trenches, or disposal areas extend into or have the potential to extend into the ground water shall be in accordance with the provisions provided in §330. 203 of this title (relating to Special Conditions (Liner Design Constraints)); and

(4) describe installation methods and quality control testing and reporting for any FML that may be required or authorized by the executive director as a part of a composite liner.

(c) Soil liner quality control testing frequencies and procedures shall be in accordance with the executive director's most recent guidelines and the following.

(1) All field sampling and testing, both during construction and after completion of the lining, shall be performed by a qualified professional experienced in geotechnical engineering and/or engineering geology, or under his direct supervision.

(2) All liners should have continuous on-site inspection during construction by the professional of record or his designated representative.

(3) The amount of compaction of clay liners shall be expressed as a percentage of a maximum dry density based on a compaction test specified by a registered professional engineer. The compaction of the clay liner shall have been proven by soils laboratory testing to provide a coefficient of permeability of 1x10[illegible] cm/sec or less.

(4) The SLQCP shall define the frequency of testing for each of the test procedures listed in subparagraphs (A)-(F) of this paragraph. These frequencies shall be expressed in numbers of tests per specific area of liner per lift or specific thickness of liner, unless an alternate frequency is approved by the executive director:

(A) coefficient of permeability;

(B) Sieve analysis;

(C) Atterberg limits;

(D) density;

(E) moisture content;

(F) thickness verification.

(5) Unless otherwise approved by the executive director, all soil tests performed on any in-situ or constructed soil liners shall be in accordance with the standards in subparagraphs (A)-(E) of this paragraph.

(A) laboratory permeability tests. Permeability tests shall be run using tap water and not distilled water. All test data must be submitted on permeability tests regardless of test method used. At a minimum, the calculations of the last data set reported for each sample and the resultant coefficient of permeability shall be reported as supporting data. Tests shall be either constant head with back pressure (Appendix VII of Corps of Engineers Manual, EM 1110-2-1906; ASTM D5084, "Measurement of Hydraulic Conductivity of Saturated Porous Materials Using a Flexible Wall Permeameter,") or falling head (Appendix VII of Corps of Engineers Manual, EM1110-2-1906);

(B) Sieve analysis (40, 200, -200 sieves);

(C) Atterberg limits (ASTM D4318);

(D) moisture-density relations (ASTM D698 or any executive-director-approved modified test whose compactive effort matches the on site construction equipment);

(E) moisture content (ASTM D2216).

(6) All soils used as constructed liners must have the following minimum values verified by testing in a soils laboratory: Plasticity index–Equal to or Greater than 15; Liquid limit–Equal to or Greater than 30; Percent passing 200 mesh sieve (-200) Equal to or Greater than 30%; Percent passing 1 1/2 inches screen–100%; Coeffi-

cient of permeability less than or equal to 1 x 10[illegible] cm/sec.

(7) Permeability tests for proving the suitability of soils to be used in constructing clay liners shall be performed in the laboratory using the procedures and guidance of paragraph (5)(A) of this subsection. Field quality control must be provided by field density tests based on predetermined moisture-density compaction curves, Atterberg limits, and laboratory permeabilities of undisturbed field samples of compacted liner soils, unless an alternate plan is approved by the executive director.

(8) Field permeability testing of in-situ soils or constructed soil liners shall be in accordance with ASTM D 5093 for those soil liners which are in the floor of the excavation and a variation of the Boutwell STEI field permeability test approved by the executive director for the sidewalls, or in accordance with guidance furnished by the executive director.

(9) All quality control testing of soil liners shall be performed during the construction of the liner. In no instance shall any quality control field or laboratory testing be undertaken after completion of liner construction, except for that testing which is required of the final constructed lift, confirmation of liner thickness, or cover material thickness.

(10) All soil testing and evaluation of either in-situ soil or constructed soil liners shall be complete prior to installing the LCS or, if no LCS is required, prior to adding the one foot of protective cover on the area under evaluation.

(d) Soil liner field density shall be at least 95% maximum dry density. The moisture content of the soil liner shall be at optimum or wetter, as determined by the appropriate laboratory compaction test.

(e) Unless alternate construction procedures have prior written approval by the executive director, all constructed soil liners shall be keyed into an underlying formation of sufficient strength to ensure stability of the constructed lining.

(f) Each SLER shall be prepared in accordance with the approved SLQCP. Any deviation from an approved SLQCP must have prior written approval from the executive director.

(g) Soil liners shall not be compacted with a bulldozer or any track-mobilized equipment unless it is used to pull a pad-footed roller. All soil liners shall be compacted with a pad-footed or prong-footed roller only. The maximum clod size of the compacted liner soils shall be approximately one inch in diameter. In all cases soil clods shall be reduced to the smallest size necessary to achieve the coefficient of permeability reported by the testing laboratory and to destroy any macrostructure evidenced after the compaction of the clods under density-controlled conditions.

(h) The liner soil material shall contain no rocks or stones larger than one inch in diameter or that total more than 10% by weight. Rock content shall not be a detriment to the integrity of the overlying geomembrane.

§330.206. Soils and Liner Evaluation Report (SLER) and Flexible Membrane Liner Evaluation Report (FMLER).

(a) Prior to the disposal of solid waste in any trench, or on any area, excavation, or unprotected surface, a SLER and a FMLER shall be submitted to the executive director for review and approval. If the approved design does not require a synthetic liner, a FMLER is not required.

(b) Each SLER and FMLER shall be submitted in triplicate (including all attachments) to the Municipal Solid Waste Division and shall be prepared in accordance with the methods and procedures contained in the approved SLQCP. The evaluated disposal trench, excavation, or area should not be used for the receipt of solid waste until approval is received from the executive director. The executive director will make every effort to review and respond to the permittee either verbally or in writing within 14 days from the date on which the SLER document is date-stamped by the Municipal Solid Waste Division. Verbal approval may be obtained from the executive director, which will be followed by written concurrence. If no response, either written or verbal, is provided within 14 days, the SLER or FMLER shall be considered approved.

(c) The executive director shall be provided sufficient documentation to assure that the potential for contamination of waters in the state is minimized. If the executive director determines that the SLER is incomplete or that the test data provided are insufficient to support the evaluation conclusions, additional test data or other information may be required, and use of the trench or disposal area will not be allowed until such additional data are received, reviewed, and approved. Each SLER must be signed and, where applicable, sealed by the individual performing the evaluation and counter-signed by the site operator or his authorized representative.

(d) Markers shall be placed on site at the MSWLF facility so that all disposal areas for which a SLER has been submitted and approved by the executive director are readily determinable. Such markers are to provide site workers immediate knowledge at all times of the extent of approved disposal areas. These markers shall be located so that they are not destroyed during operations and shall be in accordance with §330.55(b)(10) of this title (relating to site development plan).

(e) The surface of a constructed soil liner should be covered with a layer of solid waste within a period of six months to mitigate the effects of surface erosion and rutting due to traffic. Liner surfaces not covered with waste within six months shall be checked by the SLER evaluator, who shall then submit a letter report on his findings to the executive director. Any required repairs shall be performed immediately. A new SLER shall be submitted on the new construction for all liners that need repair due to damage.

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 March 2, 1993.

TRD-9319712 Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: April 9, 1993

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

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Subchapter I. Ground-Water Monitoring and Corrective Action.

• 31 TAC §§330.230-330.231, 330.233-330.242

The new sections are proposed under the Texas Health and Safety Code, Chapter 361, which gives the commission all powers necessary and convenient under that chapter to carry out its responsibilities concerning the regulation and management of municipal solid waste.

§330.230. Applicability.

(a) The requirements in this subchapter apply to all Municipal Solid Waste Landfills (MSWLF) units, except as provided in §330.3(e) of this title (relating to Applicability), in §330.239 of this title (relating to Ground-Water Monitoring at Type IV Landfills), in §330.240 of this title (relating to Ground-Water Monitoring at Other Types of Landfills and Facilities), and in subsection (b) of this section.

(b) Ground-water monitoring requirements under §§330. 231-330.235 of this title (relating to Ground-Water Monitoring and Corrective Action) may be suspended by the executive director for a MSWLF unit if the owner or operator can demonstrate that there is no potential for migration of hazardous constituents from that MSWLF unit to the uppermost aquifer as defined in §330.2 of this title (relating to

Definitions) during the active life and the closure and post-closure care period of the unit. This demonstration shall be certified by a qualified ground-water scientist and approved by the executive director, and shall be based upon:

(1) site-specific field-collected measurements, sampling, and analysis of physical, chemical, and biological processes affecting contaminant fate and transport; and

(2) contaminant fate and transport predictions that maximize contaminant migration and consider impacts on human health and the environment.

(c) Owners and operators of MSWLF units shall comply with the ground-water monitoring requirements of this subchapter according to the following schedule unless an alternative schedule is specified under subsection (d) of this section. Not later than the applicable effective date, the owner or operator shall submit a certification that the system is in compliance with §330.231 of this title (relating to Ground-Water Monitoring Systems). The certification shall be submitted not later than the applicable effective date, unless a later date is approved by the executive director in writing.

(1) Owners or operators of existing MSWLF units that have ground-water monitoring systems in place prior to the effective date of these regulations shall continue the monitoring programs in accordance with regulations in effect prior to October 9, 1993, and the applicable permit provisions until the effective dates of paragraphs (2), (3), or (4) of this subsection.

(2) Owners or operators of existing MSWLF units and lateral expansions less than one mile from a drinking-water intake as defined in §330.2 of this title (relating to Definitions) shall submit to the executive director a documented certification signed by a qualified ground-water scientist that the facility is in compliance with the ground-water monitoring requirements specified in §§330.231-330.235 of this title (relating to Ground-Water Monitoring and Corrective Action) by October 9, 1994.

(3) Owners or operators of existing MSWLF units and lateral expansions more than one mile but less than two miles from a drinking-water intake shall submit to the executive director a documented certification signed by a qualified ground-water scientist that the facility is in compliance with the ground-water monitoring requirements specified in §§330. 231-330.235 of this title (relating to Ground-Water Monitoring and Corrective Action) by October 9, 1995.

(4) Owners or operators of existing MSWLF units and lateral expansions more than two miles from a drinking-water intake shall submit to the executive director a documented certification signed by a qualified ground-water scientist that the facility is in compliance with the ground-water monitoring requirements specified in §§330.231-330.235 of this title (relating to Ground-Water Monitoring and Corrective Action) by October 9, 1996.

(5) Owners or operators of new MSWLF units shall submit to the executive director a documented certification signed by a qualified ground-water scientist that the facility is in compliance with the ground-water monitoring requirements specified in §§330.231-330.235 of this title (relating to Ground-Water Monitoring and Corrective Action) before waste can be placed in the unit.

(d) The executive director may specify an alternative schedule for the owners or operators of existing MSWLF units and lateral expansions to comply with ground-water monitoring requirements specified in §§330.231-330.235 of this title (relating to Ground-Water Monitoring and Corrective Action). This schedule will ensure that 50 percent of all existing MSWLF units are in compliance by October 9, 1994, and that all existing MSWLF units are in compliance by October 9, 1996. The following factors may be considered in determining any potential risks to human health and the environment posed by a MSWLF unit proposed for an alternative compliance schedule:

(1) proximity of human and environmental receptors;

(2) design of the MSWLF unit;

(3) age of the MSWLF unit;

(4) size of the MSWLF unit;

(5) types and quantities of wastes disposed including sewage sludge; and

(6) resource value of the underlying aquifer including current and future uses, proximity and withdrawal rate of users, and ground-water quality and quantity.

(e) Once established at a MSWLF unit, ground-water monitoring shall be conducted throughout the active life and post-closure care period of that MSWLF unit as specified in §330.254 of this title (relating to Post-Closure Care Maintenance Requirements).

§330.231. Ground-Water Monitoring Systems.

(a) A ground-water monitoring system shall be installed that consists of a sufficient number of monitoring wells, installed at appropriate locations and depths, to yield representative ground-water samples from the uppermost aquifer as defined in §330.2 of this title (relating to Definitions).

(1) Background wells shall be installed to allow determination of the quality of background ground water that has not been affected by leakage from a unit. A determination of background quality may include sampling of wells that are not hydraulically upgradient of the waste management area if hydrogeologic conditions do not allow the owner or operator to determine which wells are hydraulically upgradient or if sampling at other wells will provide a better indication of background ground-water quality than is possible from upgradient wells.

(2) The downgradient monitoring system shall include monitoring wells installed to allow determination of the quality of ground water passing the relevant point of compliance as defined in §330.2 of this title (relating to Definitions). The downgradient monitoring system shall be installed to ensure the detection of ground-water contamination in the uppermost aquifer. When physical obstacles preclude installation of the ground-water monitoring wells at existing units, the wells may be installed at the closest practicable distance hydraulically downgradient from the relevant point of compliance as defined in §330.2 of this title (relating to Definitions) that will ensure detection of ground-water contamination of the uppermost aquifer.

(b) The executive director may approve a multi-unit ground-water monitoring system instead of separate ground-water monitoring systems for each MSWLF unit when the facility has several units, provided the multi-unit system meets the requirement of subsection (a) of this section and will be as protective of human health and the environment as individual monitoring systems for each MSWLF unit, based on the following factors:

(1) number, spacing, and orientation of the Municipal Solid Waste Landfills (MSWLF) units;

(2) hydrogeologic setting;

(3) site history;

(4) engineering design of the Municipal Solid Waste Landfills (MSWLF) units; and

(5) type of waste accepted at the MSWLF units.

(c) The executive director may approve an alternative design for a ground-water monitoring system that uses other means in conjunction with monitoring wells to ensure detection of ground-water contamination in the uppermost aquifer from a MSWLF unit. The alternative design shall be at least as protective of human health

and the environment as a monitoring-well system.

(d) Monitoring wells shall be constructed in accordance with the rules of the Commission and §330.242 of this title (relating to Monitor-Well Construction Specifications). Monitoring-well construction shall provide for maintenance of the integrity of the bore hole, collection of representative ground-water samples from the water-bearing zone(s) of concern, and prevention of migration of ground water and surface water within the bore hole.

(1) Within 30 days of the completion of a monitoring well or any other part of a monitoring system, details of its construction shall be submitted to the executive director and shall include, as appropriate, a detailed geologic log of the boring, a description of development procedures, a detailed location map drawn to scale showing the relationship of the well to the MSWLF unit and relevant point(s) of compliance, and any other data obtained during installation or construction of the well or system.

(2) All parts of a ground-water monitoring system shall be operated and maintained so that they perform at least to design specifications through the life of the ground-water monitoring program.

(e) A ground-water monitoring system, including the number, spacing, and depths of monitoring wells or other sampling points, shall be designed and certified by a qualified ground-water scientist. The plan for the monitoring system and all supporting data shall be submitted to the executive director for review and approval prior to construction.

(1) The design of a monitoring system shall be based on site-specific technical information that must include a thorough characterization of: aquifer thickness; ground-water flow rate; ground-water flow direction including seasonal and temporal fluctuations in flow; effect of site construction and operations on ground-water flow direction and rates; and thickness, stratigraphy, lithology, and hydraulic characteristics of saturated and unsaturated geologic units and fill materials overlying the uppermost aquifer, materials of the uppermost aquifer, and materials of the lower confining unit of the uppermost aquifer. A geologic unit is any distinct or definable native rock or soil stratum.

(2) Ground-water modeling may be used to determine the spacing of monitoring wells or other sampling points and shall consider site-specific characteristics of ground-water flow as well as dispersion and diffusion of possible contaminants in the materials of the uppermost aquifer. Any model used shall:

(A) have supporting documentation that establishes its ability to represent ground-water flow and contaminant transport, as needed;

(B) have a sound set of equations based on accepted theory representing ground-water movement and contaminant transport;

(C) have numerical solution methods that are based on sound mathematical principles and supported by verification and checking techniques;

(D) be calibrated against site-specific field data;

(E) have a sensitivity analysis to measure its response to changes in the values of major parameters, error tolerances, and other parameters;

(F) show mass-balance calculations, where necessary; and

(G) be based on actual field or laboratory measurements, or equivalent methods, that document the validity of chosen parameter values.

(3) the owner or operator of a MSWLF unit or facility shall promptly notify the executive director in writing of changes in site construction or operation or changes in adjacent property that affect or are likely to affect the direction and rate of ground-water flow and the potential for detecting ground-water contamination from a MSWLF unit and that may require the installation of additional monitoring wells or sampling points. Such additional wells or sampling points require a modification of the Site Development Plan.

§330.233. Ground-Water Sampling and Analysis Requirements.

(a) The ground-water monitoring program shall include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of ground-water quality at the background and downgradient wells, or other monitoring system, installed in compliance with §330.231(a)-(c) of this title (relating to Ground-Water Monitoring Systems).

(b) The owner or operator shall submit a ground-water sampling and analysis plan (GWSAP) to the executive director for review and approval prior to commencement of sampling and shall maintain a current copy in the operating record. The GWSAP shall be a part of the Site Operating Plan (SOP); if necessary, the owner or operator shall obtain a modification of the SOP to incorporate the GWSAP. The GWSAP shall:

(1) include procedures and techniques for sample collection, sample preservation and shipment, analytical procedures, chain of custody controls, and quality assurance and quality control;

(2) provide for measurement of ground-water elevations at each sampling point prior to bailing or purging; measurement at an event shall be accomplished over a period of time short enough to avoid temporal variations in water levels; sampling at each event shall proceed from the point with the highest water-level elevation to those with successively lower elevations unless contamination is known to be present, in which case wells not likely to be contaminated shall be sampled prior to those that are known to be contaminated; and

(3) include sampling and analytical methods that are appropriate for ground-water sampling and that accurately measure hazardous constituents and other monitoring parameters in ground-water samples. The number of samples to be collected to establish ground-water quality data shall be consistent with the appropriate statistical procedures determined pursuant to subsection (g) of this section. The sampling procedures shall be those specified under §330.234(b) of this title (relating to Detection Monitoring Program) for detection monitoring, §330.235(b)-(d) of this title (relating to Assessment Monitoring Program) for assessment monitoring, and §330.236(b) of this title (relating to Assessment of Corrective Measures) for corrective action.

(c) Ground-water samples shall not be field-filtered prior to laboratory analysis for organic constituents or for other constituents designated by the executive director. Field-filtering may be used on other samples if authorized in writing by the executive director.

(d) The sampling procedures and frequency shall be protective of human health and the environment.

(e) The owner or operator shall establish background ground-water quality in hydraulically upgradient or in background wells for each of the monitoring parameters or constituents required in the ground-water monitoring program for a MSWLF unit, as determined under §330.234(a) of this title (relating to Detection Monitoring Program) or §330.235(a) of this title (relating to Assessment Monitoring Program) and pursuant to §330.231(a)(1) of this title (relating to Ground-Water Monitoring Systems). Background ground-water data shall not be used to correct or otherwise reduce downgradient ground-water data.

(f) The owner or operator shall specify in the GWSAP one or more of the following statistical methods to be used in evaluating ground-water monitoring data for each parameter or constituent "tested constituent" analyzed as required under §330.234 of this title (relating to Detection Monitoring Program) and §330.235 of this title (relating to Assessment Monitoring Program). The statistical test(s) chosen shall be conducted separately for each tested constituent in each well or sampling point.

(1) A parametric analysis of variance (ANOVA) followed by multiple-comparisons procedures to identify statistically significant evidence of contamination. The method shall include estimation and testing of the contrasts between each downgradient well's mean and the background mean levels for each constituent.

(2) An analysis of variance (ANOVA) based on ranks followed by multiple-comparisons procedures to identify statistically significant evidence of contamination. The method shall include estimation and testing of the contrasts between each downgradient well's median and the background median levels for each constituent.

(3) A tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data and the level of each constituent in each downgradient well is compared to the upper tolerance or prediction limit.

(4) A control-chart approach that gives control limits for each constituent.

(5) Another statistical test method that meets the performance standards of subsection (g) of this section. The owner or operator shall submit to the executive director satisfactory justification for this alternative test.

(g) Any statistical method chosen under subsection (f)(5) of this section shall comply with the following performance standards, as appropriate.

(1) The statistical method used to evaluate ground-water monitoring data shall be appropriate for the distribution of tested constituents. If the distribution of a tested constituent is shown by the owner or operator to be inappropriate for a normal theory test, then the data should be transformed or a distribution-free theory test should be used. If the distributions for the constituents differ, more than one statistical method may be needed.

(2) If an individual well (or sampling point) comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a ground-water protection standard, the test shall be done at a Type I error level no less than 0.01 for each testing period. If a multiple-comparisons procedure is used, each testing period shall be no less than 0.05, but the Type I error of no less than 0.01 for individual well comparisons shall be maintained. This performance standard does not apply to tolerance intervals, prediction interval, or control charts.

(3) If a control-chart approach is used to evaluate ground-water monitoring data, the specific type of control chart and its associated parameter values shall be protective of human health and the environment. These parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(4) If a tolerance interval or a prediction interval is used to evaluate ground-water monitoring data, the levels of confidence, and for tolerance intervals the percentage of the population that the interval must contain, shall be protective of human health and the environment. These parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(5) The statistical method shall account for data below the limit of detection with one or more statistical procedures that are protective of human health and the environment. Any practical quantitation limit (pql or PQL) that is used in the statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.

(6) If necessary, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

(h) The owner or operator shall determine whether or not there is evidence of a statistically significant change from background values for each constituent required in the ground-water monitoring program for a Municipal Solid Waste Landfills (MSWLF) unit, as determined under §330.234(a) or §330.235(a) of this title (relating to Detection Monitoring Program or Assessment Monitoring Program). In determining if there is evidence of a statistically significant change from background, the owner or operator shall compare the ground-water quality of each tested constituent at each monitoring well or other sampling points designated pursuant to §330. 231(a)(2) of this title (relating to Ground-Water Monitoring Systems) to the background value of that constituent, according to the statistical procedures and performance standards specified under subsections (f) and (g) of this section.

§330.234. Detection Monitoring Program.

(a) Detection monitoring is required at MSWLF units from all ground-water monitoring wells defined under §330.231(a)(1)-(2) of this title (relating to Ground-Water Monitoring Systems). At a minimum, a detection monitoring program shall include the monitoring for the constituents listed in §330.241 of this title (relating to Constituents for Detection Monitoring).

(1) The executive director may delete any of the constituents listed in §330.241 of this title (relating to Constituents for Detection Monitoring) for a MSWLF unit if it can be documented that the removed constituents are not reasonably expected to be in or derived from the waste contained in the unit.

(2) The executive director may establish an alternative list of inorganic indicator constituents for a Municipal Solid Waste Landfills (MSWLF) unit in lieu of some or all of the heavy metals (constituents 1-15 in §330.241 of this title (relating to Constituents for Detection Monitoring)) if the alternative constituents provide a reliable indication of inorganic releases from the MSWLF unit to the ground water. The executive director may also add inorganic or organic constituents to those to be tested if they are reasonably expected to be in or derived from the waste contained in the unit or if they are likely to provide a useful indication of releases from the MSWLF unit to the ground water. In determining alternative or additional constituents, the executive director shall consider the following factors:

(A) the types, quantities, and persistence of waste constituents in wastes at the MSWLF unit;

(B) the mobility, stability, and persistence of waste constituents or their reaction products in the unsaturated and saturated zones adjacent to or beneath the MSWLF unit;

(C) the detectability of indicator constituents, waste constituents, and reaction products in the ground water; and

(D) the concentrations and coefficients of variation of monitoring parameters or constituents in the ground-water background.

(b) The monitoring frequency for all constituents listed in §330.241 of this title (relating to Constituents for Detection

Monitoring) , or in the alternative list established pursuant to subsection (a)(2) of this section, shall be at least semiannual during the active life of the facility and the closure and post-closure care period.

(1) A minimum of four statistically independent samples from each background and downgradient well shall be collected and analyzed for the constituents listed in §330.241 of this title (relating to Constituents for Detection Monitoring), or the alternative list established pursuant to subsection (a)(2) of this section, during the first semiannual sampling event. The independence of the four samples shall be achieved by bailing or purging at least three well volumes (or to dryness, if less) from each well before each of the four samples is collected. The executive director may authorize alternate procedures for slow-recharging monitoring wells. At least one sample from each background and downgradient well shall be collected and analyzed during each subsequent semiannual sampling event.

(2) The executive director may specify an appropriate alternative frequency for repeated sampling and analysis of the constituents listed in §330.241 of this title (relating to Constituents for Detection Monitoring), or in the alternative list established pursuant to subsection (a)(2) of this section, during the active life and the closure and post-closure care period. The alternative frequency shall be no less than annual and shall be based on factors such as lithology and hydraulic conductivity of the aquifer and unsaturated zone, ground-water flow rates, minimum distance of travel from waste to monitoring wells, and resource value of the uppermost aquifer.

(3) The executive director may agree to substitute analytical data acquired prior to the effective date of this title for all or part of the initial statistically independent samples required in this subsection.

(c) Not later than 45 days after each sampling event, the owner or operator shall submit to the executive director a report containing the results of the analyses.

(d) Not later than 60 days after each sampling event, the owner or operator shall notify the executive director in writing if there has been a statistically significant change from background of any tested constituent at any monitoring well.

(1) If a statistically significant change from background of any tested constituent at any monitoring well has occurred, the owner or operator shall immediately place a notice in the operating record describing the increase and shall establish an assessment monitoring program meeting the requirements of §330.235 of this title (relating to Assessment Monitoring Program) within 90 days of the date of the notice to the executive director required under subsection (d) of this section, except as provided for in paragraph (2) of this subsection.

(2) If a statistically significant change from background of any tested constituent at any monitoring well has occurred and the owner or operator has reasonable cause to think that a source other than a MSWLF unit caused the contamination or that the statistically significant change resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground-water quality, then the owner or operator may submit a report providing documentation to this effect. The report shall be prepared and certified by a qualified ground-water scientist and submitted to the executive director for review and approval not later than 45 days after submittal of the results of the analyses required under subsection (c) of this section and placed in the operating record. If no such demonstration satisfactory to the executive director has been made within 90 days of the sampling event, the owner or operator shall initiate an assessment monitoring program as required in paragraph (1) of this subsection.

§330.235. Assessment Monitoring Program.

(a) Assessment monitoring is required whenever a statistically significant change from background has been detected for one or more of the constituents listed in §330.241 of this title (relating to Constituents for Detection Monitoring), or in the alternative list established pursuant to §330.234(a)(2) of this title (relating to Detection Monitoring Program), and this constitutes triggering.

(b) Within 90 days of triggering an assessment monitoring program, and not less than semiannually thereafter, the owner or operator shall sample and analyze the ground-water monitoring system for all constituents identified in paragraph (1) of this subsection.

(1) The constituents to be analyzed in samples collected pursuant to subsection (b) of this section shall be those listed in Appendix II to 40 Code of Federal Regulation Part 258 and those in the alternative list established pursuant to §330.234(a)(2) of this title (relating to Detection Monitoring Program). All of these constituents are hereinafter referred as "assessment constituents." Appendix II to 40 Code of Federal Regulation Part 258, effective October 9, 1993, is herein adopted by reference.

(2) A minimum of one sample shall be collected from each well and analyzed for the assessment constituents during each sampling event. For any constituent(s) detected in the downgradient wells as a result of the analysis of the assessment constituents, a minimum of four statistically independent samples from each background and downgradient well shall be collected and analyzed to establish background levels for the constituent(s). The executive director may specify an appropriate subset of wells to be sampled and analyzed for the assessment constituents during assessment monitoring and may delete any of the assessment constituents for a Municipal Solid Waste Landfills (MSWLF) unit if it can be documented that the removed constituents are not reasonably expected to be in or derived from the waste contained in the unit or if the executive director approves previously obtained background levels.

(c) The executive director may specify an appropriate alternative frequency for repeated sampling and analysis for the assessment constituents required by subsection (b) of this section during the active life and the closure and post-closure care period of the unit. The alternative frequency shall be no less than annual and shall be based on factors such as lithology and hydraulic conductivity of the aquifer and unsaturated zone, ground-water flow rates, minimum distance of travel from the waste nearest to any downgradient monitoring well, resource value of the uppermost aquifer, and nature (fate and transport) of any constituents detected in response to this section.

(d) Not later than 45 days after each sampling event, the owner or operator shall submit to the executive director the results from the initial and subsequent sampling events required in subsection (b) of this section and also place them in the operating record. The owner or operator shall also:

(1) within 90 days of submittal of the results from a sampling event and on at least a semiannual basis thereafter, resample all wells specified by §330. 231(a) of this title (relating to Ground-Water Monitoring Systems) and conduct analyses for all constituents in §330.241 of this title (relating to Constituents for Detection Monitoring) or in the alternative list established pursuant to §330.234(a)(2) of this title (relating to Detection Monitoring Program) and for those constituents in Appendix II that are detected in response to subsection (b) of this section. The results shall be submitted to the executive director not later than 45 days after the sampling event and shall also be placed in the operating record. At least one sample shall be collected and analyzed from each background and downgradient well at each sampling event. The executive director may specify an alternative monitoring frequency during the active life and the closure and post-closure care period for the constituents referred to in this paragraph. The alternative frequency for constituents in §330.241 of this title (relating to Constituents for Detection Mon-

itoring), or the alternative list established pursuant to §330. 234(a)(2) of this title (relating to Detection Monitoring Program), during the active life and the closure and post-closure care period shall be not less than annual. The alternative frequency shall be based on consideration of the factors described in subsection (c) of this section;

(2) establish background concentrations for any constituents detected pursuant to subsection (b) of this section or paragraph (1) of this section;

(3) establish ground-water protection standards for all constituents detected pursuant to subsection (b) of this section or paragraph (1) of this subsection. The ground-water protection standards shall be established in accordance with subsection (h) or (i) of this section.

(e) If the concentrations of all assessment constituents are shown to be at or below background values, using the statistical procedures in §330.233(g) of this title (relating to Ground-Water Sampling and Analysis Requirements) for two consecutive sampling events, the owner or operator may notify the executive director in writing and return to detection monitoring if approved.

(f) If the concentrations of any assessment constituents are above background values, but all concentrations are below the ground-water protection standard established under subsection (h) or (i) of this section, using the statistical procedures in §330.233(g) of this title (relating to Ground-Water Sampling and Analysis Requirements), the owner or operator shall continue assessment monitoring in accordance with this section.

(g) If one or more assessment constituents are detected at statistically significant levels above the ground-water protection standard established under subsection (h) or (i) of this section in any sampling event, the owner or operator shall notify the executive director and appropriate local government officials in writing and place a notice in the operating record within 60 days of the sampling event identifying the assessment constituents that have exceeded the ground-water protection standard.

(1) The owner or operator shall also:

(A) characterize the nature and extent of the release by installing additional monitoring wells as necessary;

(B) install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well in accordance with §330.235(d)(1) of this title (relating to Assessment Monitoring Program);

(C) notify in writing all persons who own or occupy the land that directly overlies any part of the plume of contamination if contaminants have migrated off-site as indicated by sampling of wells in accordance with paragraph (d)(1) of this section; and

(D) initiate an assessment of corrective measures as required by §330.236 of this title (relating to Assessment of Corrective Measures) within 90 days.

(2) The owner or operator may demonstrate that a source other than a MSWLF unit caused the contamination or that the statistically significant change resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground-water quality. A report documenting this demonstration shall be prepared and certified by a qualified ground-water scientist and submitted to the executive director for review and approval, and shall be placed in the operating record. If a successful demonstration is made, the owner or operator shall continue monitoring in accordance with the assessment monitoring program pursuant to this section and may return to detection monitoring if the assessment constituents are at or below background as specified in subsection (e) of this section. Until a successful demonstration is made, the owner or operator shall comply with paragraph (1) of this subsection including initiating an assessment of corrective measures.

(h) The owner or operator shall establish a ground-water protection standard for each assessment constituent detected in the ground-water. The ground-water protection standard shall be:

(1) for constituents for which a maximum contaminant level (MCL) has been promulgated under section 1412 of the Safe Drinking Water Act (codified) under 40 Code of Federal Regulation Part 141, the MCL for that constituent;

(2) for constituents for which MCLs have not been promulgated, the background concentration for the constituent established from wells in accordance with §330.231(a)(1) of this title (relating to Ground-Monitoring Systems); or

(3) for constituents for which the background level is higher than the MCL identified under paragraph (1) of this subsection or health-based levels identified under subsection (i) of this section, the background concentration.

(i) The executive director may establish an alternative ground-water protection standard for assessment constituents for which MCLs have not been established. These ground-water protection standards shall be appropriate health-based levels that satisfy the following criteria:

(1) the level is derived in a manner consistent with Environmental Protection Agency guidelines for assessing the health risks of environmental pollutants (51 FR 33992, 34006, 34014, 34028, September 24, 1986);

(2) the level is based on scientifically valid studies conducted in accordance with the Toxic Substances Control Act Good Laboratory Practice Standards (40 Code of Federal Regulation Part 792) or equivalent;

(3) for carcinogens, the level represents a concentration associated with an excess lifetime cancer risk level (due to continuous lifetime exposure) with the 1x10[illegible] to 1x10[illegible] range; and

(4) for systemic toxicants, the level represents a concentration to which the human population (including sensitive subgroups) could be exposed to on a daily basis that is likely to be without appreciable risk of deleterious effects during a lifetime. For purposes of this subchapter, systemic toxicants include toxic chemicals that cause effects other than cancer or mutation.

(j) In establishing ground-water protection standards under subsection (i) of this section, the executive director may consider multiple contaminants in the ground water, exposure threats to sensitive environmental receptors, and other site-specific exposure or potential exposure to ground water.

§330.236. Assessment of Corrective Measures.

(a) Within 90 days of finding that any of the assessment constituents have been detected at a statistically significant level exceeding the ground-water protection standards defined under §330.235(h) or (i) of this title (relating to Assessment Monitoring Program), the owner or operator shall initiate an assessment of corrective measures. Such an assessment shall be completed within a reasonable period of time approved by the executive director.

(b) The owner or operator shall continue to monitor in accordance with the assessment monitoring program as specified in §330.235 of this title (relating to Assessment Monitoring Program).

(c) The assessment shall include an analysis of the effectiveness of potential corrective measures in meeting all of the requirements and objectives of the remedy as described under §330.237 of this title (relating to Selection of Remedy), addressing at least the following:

(1) performance, reliability, ease of implementation, and potential impacts of appropriate potential remedies, including safety impacts, cross-media impacts, and control of exposure to any residual contamination;

(2) time required to begin and complete the remedy;

(3) costs of remedy implementation; and

(4) institutional requirements such as state or local permit requirements or other environmental or public health requirements that may substantially affect implementation of the remedy or remedies.

(d) The owner or operator shall discuss the results of the corrective measures assessment, prior to the selection of a remedy, in a public meeting with interested and affected parties. The owner or operator shall arrange for the meeting and provide notice in accordance with the provisions of §305.107(c) of this title (relating to Public Meeting and Notification Requirements).

§330.237. Selection of Remedy.

(a) Based on the results of the corrective measures assessment conducted under §330.236 of this title (relating to Assessment of Corrective Measures), the owner or operator shall select a remedy that, at a minimum, meets the standards listed in subsection (b) of this section and is in accordance with rules of the Commission. Within 30 days of completing the assessment of corrective action described in §330. 236 of this title (relating to Assessment of Corrective Measures), the owner or operator shall submit a report to the executive director for review and approval and place it in the operating record. The report shall describe the remedy or remedies proposed for selection and the way it or they meet the standards in subsection (b) of this section.

(b) Remedies shall:

(1) be protective of human health and the environment;

(2) attain the ground-water protection standard as specified pursuant to §330.235(h) or (i) of this title (relating to Assessment Monitoring Program);

(3) control the source(s) of releases so as to reduce or eliminate, to the maximum extent practicable, further releases of assessment constituents into the environment that may pose a threat to human health or the environment; and

(4) comply with standards for management of wastes as specified in §330.238(d) of this title (relating to Implementation of the Corrective Action Program).

(c) In selecting a remedy that meets the standards of subsection (b) of this section, the owner or operator shall consider the following evaluation factors:

(1) long-and short-term effectiveness and protectiveness of the potential remedy, along with the degree of certainty that the remedy will prove successful based on consideration of:

(A) magnitude of reduction of existing risks;

(B) magnitude of residual risks in terms of likelihood of further releases due to waste remaining following implementation of a remedy;

(C) type and degree of long-term management required, including monitoring, operation, and maintenance;

(D) short-term risks that might be posed to the community, workers, or the environment during implementation of such a remedy, including potential threats to human health and the environment associated with excavation, transportation, redisposal, or containment;

(E) time until full protection is achieved;

(F) potential for exposure of humans and environmental receptors to remaining wastes, considering potential threats to human health and the environment associated with excavation, transportation, redisposal, or containment;

(G) long-term reliability of the engineering and institutional controls; and

(H) potential need for replacement of the remedy;

(2) effectiveness of the remedy in controlling the source to reduce further releases based on the extent to which containment practices will reduce further releases and the extent to which treatment technologies may be used;

(3) ease or difficulty of implementing a potential remedy based on consideration of:

(A) degree of difficulty associated with constructing the technology;

(B) expected operational reliability of the technologies;

(C) need to coordinate with and obtain necessary approvals and permits from other agencies and regulatory bodies;

(D) availability of necessary equipment and specialists; and

(E) available capacity and location of needed treatment, storage, and disposal services;

(4) practicable capability of the owner or operator, including a consideration of the technical and economic capability;

(5) degree to which community concerns are addressed by a potential remedy.

(d) The owner or operator shall specify as part of the selected remedy a schedule for initiating and completing remedial activities. The schedule shall require the initiation of remedial activities within a reasonable time approved by the executive director, taking into consideration the factors set forth in paragraphs (1)-(8) of this subsection. The owner or operator shall consider the following factors in determining the schedule:

(1) extent and nature of contamination;

(2) practical capabilities of remedial technologies in achieving compliance with ground-water protection standards established under §330.235(h) or (i) of this title (relating to Assessment Monitoring Program) and other objectives of the remedy;

(3) availability of treatment or disposal capacity for wastes managed during implementation of the remedy;

(4) desirability of utilizing technologies that are not currently available but which may offer significant advantages over available technologies in terms of effectiveness, reliability, safety, or ability to achieve remedial objectives;

(5) potential risks to human health and the environment from exposure to contamination prior to completion of the remedy;

(6) resource value of the aquifer including current and future uses; proximity and withdrawal rate of users; ground-water quantity and quality; potential damage to wildlife, crops, vegetation, and physical structures from exposure to waste constituents; hydrogeologic characteristics of the facility and adjacent land; ground-water removal and treatment costs; and cost and availability of alternative water supplies;

(7) practicable capability of the owner or operator; and

(8) other relevant factors.

(e) The executive director may determine that remediation of a release of an assessment constituent from a MSWLF unit is not necessary if the owner or operator demonstrates to the satisfaction of the executive director that:

(1) the ground-water is additionally contaminated by substances that have originated from a source other than a MSWLF unit and those substances are present in concentrations such that cleanup of the release from the MSWLF unit would provide no significant reduction in risk to actual or potential receptors; or

(2) the constituent is present in ground water that is not currently or reasonably expected to be a source of drinking water and is not hydraulically connected with waters to which the constituent is migrating or is likely to migrate in a concentration that would exceed the ground-water protection standards established under §330.235(h) or (i) of this title (relating to Assessment Monitoring Program); or

(3) remediation of the release is technically impracticable; or

(4) remediation of the release results in unacceptable cross-media impacts.

(f) A determination by the executive director pursuant to subsection (e) of this section shall not affect the authority of the state to require the owner or operator to undertake source-control measures or other measures that may be necessary to eliminate or minimize further releases to the ground water, to prevent exposure to the ground water, or to remediate the ground water to concentrations that are technically practicable and that significantly reduce threats to human health or the environment.

§330.238. Implementation of the Corrective Action Program.

(a) Based on the schedule established under §330.237(d) of this title (relating to Selection of Remedy) for initiation and completion of remedial activities, the owner or operator shall:

(1) establish and implement a corrective action ground-water monitoring program that:

(A) at least meets the requirements of an assessment monitoring program under §330. 235 of this title (relating to Assessment Monitoring Program);

(B) indicates the effectiveness of the corrective action remedy; and

(C) demonstrates compliance with ground-water protection standards pursuant to subsection (e) of this section;

(2) implement the corrective action remedy selected under ™330.237 of this title (relating to Selection of Remedy); and

(3) take any interim measures necessary to ensure the protection of human health and the environment. Interim measures should, to the greatest extent practicable, be consistent with the objectives of and contribute to the performance of any remedy that may be required pursuant to §330.237 of this title (relating to Selection of Remedy). The following factors shall be considered by an owner or operator in determining if interim measures are necessary:

(A) time required to develop and implement a final remedy;

(B) actual or potential exposure of nearby populations or environmental receptors to hazardous constituents;

(C) actual or potential contamination of drinking-water supplies or sensitive ecosystems;

(D) further degradation of the ground water that may occur if remedial action is not initiated expeditiously;

(E) weather conditions that may cause hazardous constituents to migrate or be released;

(F) risks of fire or explosion, or potential for exposure to hazardous constituents as a result of an accident or failure of a container or handling system; and

(G) other situations that may pose threats to human health and the environment.

(b) An owner or operator may determine, based on information developed after implementation of the remedy has begun or other information, that compliance with requirements of §330.237(b) of this title (relating to Selection of Remedy) are not being achieved through the remedy selected. In such cases, the owner or operator shall, with approval of the executive director, implement other methods or techniques that could practicably achieve compliance with the requirements unless the owner or operator makes the determination under subsection (c) of this section and if it is approved by the executive director.

(c) If the owner or operator determines that compliance with requirements under §330.237(b) of this title (relating to Selection of Remedy) cannot be practically achieved with any currently available methods, the owner or operator shall:

(1) present to the executive director certification by a qualified ground-water scientist that compliance with requirements under §330.237(b) of this title (relating to Selection of Remedy) cannot be practically achieved with any currently available methods;

(2) implement alternate measures, with the approval of the executive director, to control exposure of humans or the environment to residual contamination, as necessary to protect human health and the environment; and

(3) implement alternate measures, with the approval of the executive director, for control of the sources of contamination, or for removal or decontamination of equipment, units, devices, or structures that are technically practicable and consistent with the overall objective of the remedy.

(d) All solid wastes that are managed pursuant to a remedy required under §330.237 of this title (relating to Selection of Remedy), or an interim measure required under subsection (a)(3) of this section, shall be managed in a manner that is protective of human health and the environment and that complies with applicable RCRA requirements.

(e) Remedies selected pursuant to §330.237 of this title (relating to Selection of Remedy) shall be considered complete when:

(1) the owner or operator complies with the ground-water protection standards established under §330.235(h) or (i) of this title (relating to Assessment Monitoring Program) at all points within the plume of contamination that lie beyond the ground-water monitoring system established under §330.231(a) of this title (relating to Ground-Water Monitoring Systems);

(2) compliance with the ground-water protection standards established under §330.235(h) or (i) of this title (relating to Assessment Monitoring Program) has been achieved by demonstrating that concentrations of assessment constituents have not exceeded the ground-water protection standards for a period of three consecutive years, using the statistical procedures and performance standards in §330.233(g) and (h) of this title (relating to Ground-Water Sampling and Analysis Requirements). The executive director may specify an alternative length of time during which the owner or operator shall demonstrate that concentrations of assessment constituents have not exceeded the ground-water protection standards. The alternative length of time shall be based on:

(A) extent and concentration of the release;

(B) behavior characteristics of the hazardous constituents in the ground water;

(C) accuracy of monitoring or modeling techniques, including any seasonal, meteorological, or other environmental variabilities that may affect the accuracy; and

(D) characteristics of the ground water.

(3) All actions required to complete the remedy have been satisfied.

(f) Within 15 days of completion of the remedy, the owner or operator shall submit to the executive director and also place in the operating record a certification by a qualified ground-water scientist that the remedy has been completed in compliance with the requirements of subsection (e) of this section.

(g) Upon submittal of satisfactory certification of the completion of the corrective action remedy, the executive director may release the owner or operator from the requirements for financial assurance for corrective action under §330. 284 of this title (relating to Financial Assurance for Corrective Action).

§330.239. Ground-Water Monitoring at Type IV Landfills.

(a) The requirements in this section apply to existing and future Type IV sites, as defined in §330.41(e) of this title (relating to Types of Municipal Solid Waste Facilities), except as provided in §330.3(e) of this title (relating to Applicability) and in subsection (b) of this section.

(b) At the discretion of the executive director, Type IV sites may be required to install ground-water monitoring systems and to monitor on a regular basis the quality of ground water at the point of compliance.

(1) The factors to be considered by the executive director in determining the need for ground-water monitoring shall include: relationship of the site to drinking-water intakes (both surface and subsurface); hydrogeology of the shallow water-bearing zones in the site area; use of shallow ground water in the site area; type of waste being or to be taken; types of liner; likelihood of leakage of contaminants from the site; and protection of human health and the environment.

(2) A ground-water monitoring system shall be installed in accordance with §330.231 of this title (relating to Ground-Water Monitoring Systems).

(3) Ground-water sampling and analysis requirements shall be in accordance with §330.233(a)-(e) of this title (relating to Ground-Water Sampling and Analysis Requirements).

(4) Each monitoring well or other sampling point shall be sampled annually, or on some other schedule but not less frequently than annually as determined by the executive director, for the following constituents: chloride, iron (dissolved), manganese (dissolved), cadmium (dissolved), zinc (dissolved), total dissolved solids, specific conductance (field and laboratory measurements), pH (field and laboratory measurements), non-purgeable organic compounds, (analysis of three replicate samples).

(5) Not later than 45 days after each sampling event, the owner or operator shall submit to the executive director for review and approval a report containing the results of the analyses.

(6) The executive director may require additional sampling, analyses of additional constituents, installation of additional monitoring wells or other sampling points, and/or other hydrogeological investigations if the facility appears to be contaminating the shallow water-bearing zone(s).

(7) If the facility is found to have contaminated or be contaminating the shallow water-bearing zone(s), the executive director may order corrective action appropriate to protect human health and the environment up to and including that in §§330.236-330.238 of this title (relating to Ground-Water Monitoring and Corrective Action).

§330.240. Ground-Water Monitoring at Other Types of Landfills and Facilities. The executive director may establish ground-water monitoring requirements for landfills and facilities other than Type I or IV where site-specific conditions and operations have the potential for ground-water contamination.

§330.241. Constituents for Detection Monitoring. Table 1 of this section contains 47 volatile organic compounds (VOCs) for which possible analytical procedures provided in Environmental Protection Agency Report SW-846, "Test Methods for Evaluating Solid Waste," third edition, November 1986, as revised December 1987, include Method 8260, and 15 metals for which SW-846 provides either Method 6010 or a method from the 7000 series or methods. Common names of the VOCs are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many of them. The Chemical Abstracts Service registry number (CAS RN) is shown. Where "Total" is entered, all species in the ground water that contain the element are included.

TABLE 1.

Common Name	CAS RN
Inorganic constituents:	
(1) Antimony	(Total)
(2) Arsenic	(Total)
(3) Barium	(Total)
(4) Beryllium	(Total)
(5) Cadmium	(Total)
(6) Chromium	(Total)
(7) Cobalt	(Total)
(8) Copper	(Total)
(9) Lead	(Total)
(10) Nickel	(Total)
(11) Selenium	(Total)
(12) Silver	(Total)
(13) Thallium	(Total)
(14) Vanadium	(Total)
(15) Zinc	(Total)
Organic constituents:	
(16) Acetone	67-64-1
(17) Acrylonitrile	107-13-1
(18) Benzene	71-43-2
(19) Bromochloromethane	74-97-5
(20) Bromodichloromethane	75-27-4
(21) Bromoform (tribromomethane)	75-25-2
(22) Carbon disulfide	75-15-0
(23) Carbon tetrachloride	56-23-5
(24) Chlorobenzene	108-90-7
(25) Chloroethane (ethyl chloride)	75-00-3

(26) Chloroform (trichloromethane) 67-66-3

(27) Dibromochloromethane (chlorodibromomethane) 124-48-1

(28) 1,2-Dibromo-3-chloropropane (DBCP) 96-12-8

(29) 1,2-Dibromoethane (ethylene dibromide, EDB) 106-93-4

(30) o-Dichlorobenzene (1,2-dichlorobenzene) 95-50-1

(31) p-Dichlorobenzene (1,4-dichlorobenzene) 106-46-7

(32) trans-1,4-Dichloro-2-butene 110-57-6

(33) 1,1-Dichloroethane (ethylidene chloride) 75-34-3

(34) 1,2-Dichloroethane (ethylene dichloride) 107-06-2

(35) 1,1-Dichloroethylene (1,1-dichloroethene, vinylidene chloride) 75-35-4

(36) cis-1,2-Dichloroethylene (cis-1,2-dichloroethene) 156-59-2

(37) trans-1,2-Dichloroethylene (trans-1,2-dichloroethene 156-60-5

(38) 1,2-Dichloropropane (Propylene dichloride) 78-87-5

(39) cis-1,3-Dichloropropene 10061-01-5

(40) trans-1,3-Dichloropropene 10061-02-6

(41) Ethylbenzene 100-41-4

(42) 2-Hexanone (methyl butyl ketone) 591-78-6

(43) Methyl bromide (bromomethane) 74-83-9

(44) Methyl chloride (chloromethane) 74-87-3

(45) Methylene bromide (dibromomethane) 74-95-3

(46) Methylene chloride (dichloromethane) 75-09-2

(47) Methyl ethyl ketone (MEK, 2-butanone) 78-93-3

(48) Methyl iodide (iodomethane) 74-88-4

(49) 4-Methyl-2-pentanone (methyl isobutyl ketone) 108-10-1

(50) Styrene 100-42-5

(51)	1,1,1,2-Tetrachloroethane	630-20-6
(52)	1,1,2,2-Tetrachloroethane	79-34-5
(53)	Tetrachloroethylene (tetrachloroethene, perchloroethylene)	127-18-4
(54)	Toluene	108-88-3
(55)	1,1,1-Trichloroethane (methychloroform)	71-55-6
(56)	1,1,2-Trichloroethane	79-00-5
(57)	Trichloroethylene (trichloroethene)	79-01-6
(58)	Trichlorofluoromethane (CFC-11)	75-69-4
(59)	1,2,3-Trichloropropane	96-18-4
(60)	Vinyl acetate	108-05-4
(61)	Vinyl chloride	75-01-4
(62)	Xylenes	1330-20-7

§330.242. Monitor-Well Construction Specifications.

(a) The following specifications shall be used for the installation of ground-water monitoring wells at municipal solid-waste landfills. Equivalent alternatives to these specifications may be used if prior written approval is obtained in advance from the executive director.

(1) Drilling.

(A) Monitoring wells shall be drilled by a Texas-licensed driller who is qualified to drill and install monitoring wells. The installation and development must be supervised by a qualified geologist or engineer who is familiar with the geology of the area.

(B) The well shall be drilled by a method that will allow installation of the casing, screen, etc., and that will not introduce contaminants into the borehole or casing. Drilling techniques used for boring shall take into account the materials to be drilled, depth to ground water, total depth of the hole, adequate soil sampling, and other such factors that affect the selection of the drilling method. If any fluids are necessary in drilling or installation, then clean, treated city water shall be used; other fluids must be approved in writing by the executive director before use. If city water is used, a current chemical analysis of the city water shall be provided with the monitor-well report.

(C) The diameter of the boring shall be at least four inches larger than the diameter of the casing. When the boring is in hard rock, a smaller annulus may be approved by the executive director.

(D) During drilling of the monitoring well, a log of the boring shall be made by a qualified geologist or engineer who is familiar with the geology of the area.

(2) Casing, screen, filter pack, and seals.

(A) The well casing shall be: two to four inches in diameter; NSF-certified PVC schedule 40 or 80 pipe, flush-thread, screw joint (no glue or solvents); polytetrafluorethylene (PTFE, such as Teflon) tape or O-rings in the joints; no collar couplings. The top of the casing shall be at least two feet above ground level. Where high levels of volatile organic compounds or corrosive compounds are anticipated, stainless steel or PTFE casing and screen may be used, subject to approval by the executive director. Four-inch diameter casing is recommended because it allows larger volume samples to be obtained and provides easier access for development, pumps, and repairs. The casing shall be cleaned and packaged at the place of manufacture; the packaging shall include a PVC wrapping on each section of casing to keep it from being contaminated prior to installation. The casing shall be free of ink, labels, or other markings. The casing (and screen) shall be centered in the hole to allow installation of a good filter pack and annular seal, using appropriately placed centralizers. The top of the casing shall be protected by a threaded or slip-on top cap or by a sealing cap or screw-plug seal inserted into the top of the casing. The cap shall be vented to prevent buildup of methane or other gases.

(B) The screen shall be compatible with the casing and should generally be of the same material. The screen shall not involve the use of any glues or solvents for construction. A wire-wound screen is recommended to provide maximum inflow area. Field-cut slots are not permitted for well screen. Filter cloth shall not be used. A blank-pipe sediment trap, typically one to two feet, should be installed below the screen. A bottom cap is typically placed on the bottom of the sediment trap. The sediment trap shall not extend through the lower confining layer of the water-bearing zone being tested. Screen sterilization methods are the same as those for casing. Selection of the size of the screen opening should be done by a person experienced with such work and shall include consideration of the distribution of particle sizes both in the water-bearing zone and in the filter pack surrounding the screen. The screen opening shall not be larger than the smallest fraction of the filter pack.

(C) The filter pack, placed

between the screen and the well bore, shall consist of pre-packaged, inert, clean silica sand or glass beads; it shall extend from one to four feet above the top of the screen. Open stockpile sources of sand or gravel are not permitted. The filter pack usually has a 30% finer grain size that is about four to 10 times larger than the 30% finer grain size of the water-bearing zone; the filter pack should have a uniformity coefficient less than 2.5. The filter pack should be placed with a tremie pipe to ensure that the material completely surrounds the screen and casing without bridging. The tremie pipe shall be steam cleaned prior to the first well and before each subsequent well.

(D) The annular seal shall be placed on top of the filter pack and shall be at least two feet thick. It should be placed in the zone of saturation to maintain hydration. The seal should be composed of, in order of preference, coarse-grain sodium bentonite, coarse-grit sodium bentonite, or bentonite grout. Special care should be taken to ensure that fine material or grout does not plug the underlying filter pack. Placement of a few inches of pre-packaged clean fine sand on top of the filter pack will help to prevent migration of the annular seal material into the filter pack. The seal should be placed on top of the filter pack with a steam-cleaned tremie pipe to ensure good distribution and should be tamped with a steam-cleaned rod to determine that the seal is thick enough. The bentonite shall be hydrated with clean water prior to any further activities on the well and left to stand until hydration is complete (eight to 12 hours, depending on the grain size of the bentonite). If a bentonite-grout (without cement) casing seal is used in the well bore, then it may replace the annular seal described above.

(E) A casing seal shall be placed on top of the annular seal to prevent fluids and contaminants from entering the borehole from the surface. The casing seal shall consist of a commercial bentonite grout or a cement-bentonite mixture. Drilling spoil, cuttings, or other native materials are not permitted for use as a casing seal. Quick-setting cements are not permitted for use because contaminants may leach from them into the ground water. The top of the casing seal shall be between five and two feet from the surface.

(3) Concrete Pad. High-quality structural-type concrete shall be placed from the top of the casing seal (two to five feet below the surface) continuously to the top of the ground to form a pad at the surface. This formed surface pad shall be at least six inches thick and not less than four (preferably six) feet square or five (preferably six) feet in diameter. The pad shall contain sufficient reinforcing steel to ensure its structural integrity in the event that soil support is lost. The top of the pad shall slope away from the well bore to the edges to prevent ponding of water around the casing or collar.

(4) Protective Collar. A steel protective pipe collar shall be placed around the casing "stickup" to protect it from damage and unwanted entry. The collar shall be set at least one foot into the surface pad during its construction and should extend at least three inches above the top of the well casing (and top cap, if present). The top of the collar shall have a lockable hinged top flap or cover. A sturdy lock shall be installed, maintained in working order, and kept locked when the well is not being bailed/purged or sampled. The well number or other designation shall be marked permanently on the protective steel collar; it is useful to mark the total depth of the well and its elevation on the collar.

(5) Protective Barrier. Where monitoring wells are likely to be damaged by moving equipment or are located in heavily traveled areas, a protective barrier shall be installed. A typical barrier is three or four six-to 12-inch diameter pipes set in concrete just off the protective pad. The pipes can be joined by pipes welded between them, but consideration must be given to well access for sampling and other activities. Separation of such a pipe barrier from the pad means that the barrier can be damaged without risk to the pad and well. Other types of barriers may be approved by the executive director.

(b) Unusual Conditions. Where monitoring wells are installed in unusual conditions, all aspects of the installation shall be approved in writing in advance by the executive director. Such aspects include, for example, the use of cellar-type enclosures for the top-well equipment or multiple completions in a single hole.

(c) Development. After a monitoring well is installed, it shall be developed to remove artifacts of drilling (clay films, bentonite pellets in the casing, etc.) and to open the water-bearing zone for maximum flow into the well. Development should continue until all of the water used or affected during drilling activities has been removed and field measurements of pH, specific conductance, and temperature have stabilized. Failure to develop a well properly may mean that it is not properly monitoring the water-bearing zone or may not yield adequate water for sampling even though the water-bearing zone is prolific.

(d) Location and Elevation. Upon completion of a monitoring well, the location of the well and all appropriate elevations associated with the top-well equipment shall be surveyed by a registered professional surveyor. The elevation shall be surveyed to the nearest 0.01 foot above mean sea level (with year of the sea-level datum shown). The point on the well casing for which the elevation was determined shall be permanently marked on the casing. The location shall be given in terms of the latitude and longitude at least to the nearest tenth of a second or shall be accurately located with respect to the landfill grid system described in §330.55(a)(10)(F) of this title (relating to Site Development Plan).

(e) Reporting. Monitoring well installation and construction details shall be submitted on forms available from the Commission and shall be completed and submitted within 30 days of well completion. A copy of the detailed geologic log of the boring, any particle size or other sample data from the well, and a site map drawn to scale showing the location of all monitoring wells shall be submitted to the executive director at the same time. The licensed driller should be familiar with the forms required by other agencies; a copy of those forms shall also be submitted to the Commission.

(f) Damaged Wells. Any monitoring well that is damaged to the extent that it is no longer suitable for sampling shall be reported to the executive director who may make a determination about whether to repair or replace the well.

(g) Plugging and Abandonment. Any monitoring well that is no longer used shall be properly abandoned and plugged in accordance with the rules of the Commission. No abandonment shall take place without prior authorization in writing by the executive director.

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

Issued in Austin, Texas, on March 2, 1993.

TRD-9319713 Mary Ruth Holder
Director, Legal Division
Texas Water Commission

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

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Subchapter I. Variances

• 31 TAC §330.231

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

The repeal is proposed under the Texas Health and Safety Code, Chapter 361, which gives the commission all powers necessary

and convenient under that chapter to carry out its responsibilities concerning the regulation and management of municipal solid waste.

§330.231. Granting of Variances.

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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TRD-9319701 Mary Ruth Holder
Director, Legal Division
Texas Water Commission

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

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Subchapter J. County Governments With Licensing Authority

• 31 TAC §§330.241-330.243

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

The repeals are proposed under the Texas Health and Safety Code, Chapter 361, which gives the commission all powers necessary and convenient under that chapter to carry out its responsibilities concerning the regulation and management of municipal solid waste.

§330.241. Licensing Procedures.

§330.242. Duration of License.

§330.243. Licensee's Responsibilities.

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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Director, Legal Division
Texas Water Commission

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Subchapter J. Closure and Post-Closure

• 31 TAC §§330.250-330.256

The new sections are proposed under the Texas Health and Safety Code, Chapter 361, which gives the commission all powers necessary and convenient under that chapter to carry out its responsibilities concerning the regulation and management of municipal solid waste.

§330.250. Applicability.

(a) The requirements in this subchapter apply to all MSWLF units or facilities as defined in §330.41 of this title (relating to Types of Municipal Solid Waste Facilities), except as provided in §330.3(e) of this title (relating to Applicability), in §330. 251 of this title (relating to Closure Requirements for MSWLF Units or Facilities That Stop Receiving Waste prior to October 9, 1991), in §330.252 of this title (relating to Closure Requirements for MSWLF Units or Facilities That Receive Waste on or after October 9, 1991, But Stop Receiving Waste prior to October 9, 1993), and in subsection (b) of this section.

(b) The owner or operator of all existing MSWLF units or lateral expansions at a facility shall submit to the executive director for review and approval a certification of compliance with §330.300 of this title (relating to Airport Safety), §330.301 of this title (relating to Floodplains), or §330.305 of this title (relating to Unstable Areas), as applicable; the owner or operator who is unable to comply with any one of these sections shall complete final closure of the unit or facility by October 9, 1996, and conduct post-closure activities in accordance with all provisions of this subchapter. This certification shall be signed by the owner or operator of the unit or facility and an independent registered professional engineer and submitted to the executive director no later than the effective date of this title. All applicable documentation for this certification shall be included in the submittal.

(c) The deadline for closure required by subsection (b) of this section may be extended up to two years if the owner or operator of the MSWLF unit or facility submits to the executive director for review and approval a request for an extension of the closure deadline that demonstrates to the satisfaction of the executive director that there is no alternative disposal capacity and there is no immediate threat to human health and the environment from the unclosed MSWLF unit or facility.

§330.251. Closure Requirements for MSWLF Units or Facilities That Stop Receiving Waste Prior to October 9, 1991.

(a) The final cover system shall be composed of no less than two feet of soil. The first 18 inches or more of cover shall be of clayey soil, classification SC or CL as defined in the "Unified Soils Classification System" developed by the United States Army Corps of Engineers, compacted in layers of no more than six inches to minimize the potential for water infiltration. A CH soil may be used; however, this soil may experience excessive cracking and shall therefore be covered by a minimum of 12 inches of topsoil to retain moisture. Other types of soil may be used with prior written approval from the executive director.

(b) The final six inches of cover shall be of suitable topsoil that is capable of sustaining native plant growth and shall be seeded or sodded immediately following the application of the final cover in order to minimize erosion.

(c) Side slopes of the final cover for all above-ground disposal areas (aerial fills) shall not exceed a 25% grade (four feet horizontal to one foot vertical). Side slopes for the final cover in excess of 25% may be authorized by the executive director provided that controlled drainage such as flumes, diversion terraces, spillways, or other acceptable methods are incorporated into the final cover system design in the Site Development Plan and submitted to the executive director for review and approval. The final cover for the topmost portion of a unit or facility shall have a gradient of not less than 2. 0% and not greater than 6.0%, and shall possess a sufficient minimum grade to preclude ponding of surface water when total fill height and expected subsidence are taken into consideration.

(d) No later than 60 days prior to the initiation of closure activities, the owner or operator shall submit the design and specifications for the closure of these MSWLF units or facilities to the executive director for review and approval. The final cover shall be installed no later than the effective date of this title.

(e) The owner or operator of these MSWLF units or facilities shall comply with the post-closure care maintenance requirements for this final cover, as detailed in §330.254(a) of this title (relating to Post-Closure Care Maintenance Requirements) for the duration of the post-closure period for these units or facilities.

§330.252. Closure Requirements for MSWLF Units or Facilities That Receive Waste on or after October 9, 1991, But Stop Receiving Waste prior to October 9, 1993.

(a) The owner or operator of these units or facilities shall comply with all final cover design requirements as specified in §330.253 of this title (relating to Closure Requirements for MSWLF Units or Facilities That Receive Waste on or after October 9, 1993).

(b) The owner or operator of these MSWLF units or facilities shall comply

with all post-closure care maintenance requirements for the final cover of these units or facilities as specified in §330.254(a) of this title (relating to Post-Closure Care Maintenance Requirements).

(c) The final cover shall be completed within 180 days of the last receipt of wastes or by the effective date of this title, whichever is later. Owners or operators of MSWLF units or facilities that fail to complete final cover installation within this 180-day period will be subject to all requirements of §330.254(b) of this title (relating to Post-Closure Care Maintenance Requirements) unless otherwise specified.

§330.253. Closure Requirements for MSWLF Units or Facilities That Receive Waste on or after October 9, 1993.

(a) The owner or operator of these units or facilities shall comply with all requirements of this subchapter unless otherwise specified.

(b) Within 180 days of the last receipt of wastes for a MSWLF unit or facility, the owner or operator shall complete the installation of a final cover system for that unit that is designed and constructed to minimize infiltration and erosion. The final cover system shall be composed of no less than two feet of soil and consist of an infiltration layer overlain by an erosion layer as follows.

(1) For MSWLF units with a synthetic bottom liner, the infiltration layer shall consist of a minimum of 18 inches of earthen material with a coefficient of permeability no greater than 1x10-[illegible] cm/sec overlain by a synthetic membrane that has a permeability less than or equal to the permeability of any bottom liner system. The minimum thickness of the synthetic membrane shall be 20 mils, or 60 mils in the case of high density polyethylene (HDPE), in order to ensure proper seaming of the synthetic membrane.

(2) For MSWLF units with no synthetic bottom liner, the infiltration layer shall consist of a minimum of 18 inches of earthen material with a coefficient of permeability less than or equal to the permeability of any constructed bottom liner or natural subsoil present. The coefficient of permeability of the infiltration layer shall in no case exceed 1x10-$_{5}$ cm/sec, even though the coefficient of permeability of the constructed bottom liner or natural subsoil is greater than 1x10-[illegible] or no data exist for the value(s) of the coefficient of permeability of the constructed bottom liner or natural subsoil; and

(3) For all MSWLF units, the erosion layer shall consist of a minimum of six inches of earthen material that is capable of sustaining native plant growth and shall be seeded or sodded immediately following the application of the final cover in order to minimize erosion.

(c) The executive director may approve an alternative final cover design that includes:

(1) an infiltration layer that achieves an equivalent reduction in infiltration as the infiltration layer specified in subsection (b)(1) or (2) of this section; and

(2) an erosion layer that provides equivalent protection from wind and water erosion as the erosion layer specified in subsection (b)(3) of this section.

(d) The owner or operator of all MSWLF units or lateral expansions at a facility shall prepare a written final closure plan for submittal to the executive director for review and approval that describes the steps necessary to close all MSWLF units or the facility at any point during the active life of the unit or facility in accordance with §330.254(a) or (b) of this title (relating to Post-Closure Care Maintenance Requirements), as applicable. The final closure plan, at a minimum, shall include the following information:

(1) a description of the final cover design and methods and procedures to be used to install the cover;

(2) an estimate of the largest area of the MSWLF unit or facility ever requiring a final cover at any time during the active life of the unit or facility;

(3) an estimate of the maximum inventory of wastes ever on-site over the active life of the unit or facility;

(4) a schedule for completing all activities necessary to satisfy the closure criteria; and

(5) a final contour map depicting the proposed final contours, establishing top slopes and side slopes, proposed surface drainage features, and protection of any 100-year floodplain;

(6) a detailed written estimate, in current dollars, of the cost of hiring a third party to close the largest area of all MSWLF unit ever requiring a final cover at any time during the active life when the extent and manner of its operation would make closure most expensive, as indicated by the closure plan. During the active life of the MSWLF unit, the owner or operator shall annually adjust the closure cost estimate and the amount of financial assurance for inflation. The revised closure cost estimate shall be submitted to the executive director. Evidence of any additional financial assurance shall be provided to the executive director within 30 days after the annual anniversary date.

(e) Implementation of the Final Closure Plan is as follows.

(1) The owner or operator of all existing MSWLF units and lateral expansions at a facility shall submit to the executive director for review and approval the final closure plan required by subsection (d) of this section and place a copy of the approved final closure plan in the operating record no later than the effective date of this title or by the initial receipt of waste, whichever is later. For all new MSWLF units or facilities; the final closure plan shall be submitted to the executive director for review and approval in conjunction with the Site Development Plan.

(2) No later than 45 days prior to the initiation of closure activities for a MSWLF unit or facility, the owner or operator of the unit or facility shall provide written notification to the executive director of the intent to close the unit or facility and place this notice of intent in the operating record.

(3) No later than 90 days prior to the initiation of a final facility closure, the owner or operator shall, through a public notice in the newspaper(s) of largest circulation in the vicinity of the facility, provide public notice for final facility closure. This notice shall provide the name, address, and physical location of the facility, the permit number, and the last date of intended receipt of waste. The owner or operator shall also make available an adequate number of copies of the approved final closure and post-closure plans for public access and review.

(4) The owner or operator of all MSWLF units at a facility shall begin final closure activities for each unit or facility no later than 30 days after the date on which the unit or facility receives the known final receipt of wastes or, if the unit or facility has remaining capacity and there is a reasonable likelihood that the unit or facility will receive additional wastes, no later than one year after the most recent receipt of wastes. A request for an extension beyond the one-year deadline for the initiation of final closure may be submitted to the executive director for review and approval and shall include all applicable documentation necessary to demonstrate that the unit or facility has the capacity to receive additional waste and that the owner or operator has taken and will continue to take all steps necessary to prevent threats to human health and the environment from the unclosed MSWLF unit or facility.

(5) The owner or operator of a MSWLF unit or facility shall complete final closure activities for the unit or facility in accordance with the approved final closure plan within 180 days following the initiation of final closure activities as specified in paragraph (7) of this subsection. A request

for an extension for the completion of final closure activities may be submitted to the executive director for review and approval and shall include all applicable documentation necessary to demonstrate that final closure will, of necessity, take longer than 180 days and all steps have been taken and will continue to be taken to prevent threats to human health and the environment from the unclosed MSWLF unit.

(6) Following final closure of the MSWLF unit or facility, the owner or operator shall submit to the executive director for review and approval a documented certification, signed by an independent registered professional engineer, verifying that final closure has been completed in accordance with the approved final closure plan. The submittal to the executive director shall include all applicable documentation necessary for certification of final closure. Once approved, this certification shall be placed in the operating record.

(7) Upon notification to the executive director as specified in paragraph (2) of this subsection, the owner or operator of a MSWLF unit or facility shall post a minimum of one sign at the main entrance and all other frequently used points of access for the facility notifying all persons who may utilize the facility of the date of closing for specific unit(s) or the entire facility and the prohibition against further receipt of waste materials after the stated date. Further, suitable barriers shall be installed at all gates or access points to adequately prevent the unauthorized dumping of solid waste at the closed unit(s) or facility.

(8) Within 10 days after completion of final closure of a MSWLF unit or facility, the owner or operator shall submit to the executive director a certified copy of an "Affidavit to the Public" in accordance with the requirements of §330.7 of this title (relating to Deed Recordation) and place a copy of the affidavit in the operating record. In addition, the owner or operator of the closed unit or facility shall record a certified notation on the deed to the unit or facility property, or on some other instrument that is normally examined during title search, that will in perpetuity notify any potential purchaser of the property that the land has been used as a landfill facility and use of the land is restricted according to the provisions specified in §330.255 of this title (relating to Post-Closure Land Use). The owner or operator shall submit a certified copy of the modified deed to the executive director and place a copy of the modified deed in the operating record within the timeframe specified in this paragraph.

(9) The owner or operator of a MSWLF unit or facility may request permission from the executive director to remove the notation from the deed if all wastes are removed from the facility in accordance with §330. 4(a) of this title (relating to Permit Required).

(10) Following receipt of the required final closure documents, as applicable, and an inspection report from the commission's district office verifying proper closure of the MSWLF unit or facility according to the approved final closure plan, the executive director may acknowledge the termination of operation and closure of the unit or facility and deem it properly closed. Post-closure care maintenance shall begin immediately upon the date of final closure as approved by the executive director.

(f) Quality control testing documentation is as follows. Each owner or operator responsible for placing and compacting clay soils for the final cover infiltration layer shall test the 18 inches of compacted material for its coefficient of permeability at a frequency of no less than one test per surface acre of final cover. Permeability data shall be submitted to the executive director in a format stipulated in technical guidelines furnished by the executive director.

§330.254. Post-Closure Care Maintenance Requirements.

(a) Post-Closure Care Maintenance Requirements for MSWLF Units Closing Prior to October 9, 1993.

(1) For a minimum of the first five years after the completion of final closure, the owner or operator shall retain the right of entry to and maintain all rights-of-way of a closed MSWLF unit or facility in order to conduct periodic inspections of the closed unit or facility. The owner or operator shall correct, as needed, erosion of cover material, lack of vegetative growth, leachate or methane migration, and subsidence or ponding of water on the unit or facility. If any of these problems occur after the end of the five-year post closure maintenance period or persist for longer than the first five years of post-closure care maintenance, the owner or operator shall be responsible for their correction until the executive director determines that all problems have been adequately resolved.

(2) Any monitoring programs (ground-water monitoring, resistivity surveys, methane monitoring, etc.) in effect during the life of the MSWLF unit or facility shall be continued during the post-closure care maintenance period.

(b) Post-Closure Care Maintenance Requirements for MSWLF Units Closing On or After October 9, 1993.

(1) Immediately upon completion of final closure requirements for a MSWLF unit or facility as approved by the executive director, the owner or operator shall conduct post-closure care maintenance for the unit or facility for 30 years, except as specified by paragraph (2)(A) or (B) of this subsection. Post-closure care maintenance shall consist, at a minimum, of the following.

(A) The owner or operator shall retain the right of entry to the closed unit or facility and shall maintain all rights-of-way and conduct maintenance and/or remediation activities, as needed, in order to maintain the integrity and effectiveness of all final cover, site vegetation, and drainage control system(s), to correct any effects of settlement, subsidence, ponded water, erosion, or other events or failures detrimental to the integrity of the closed unit or facility, and to prevent any surface run-on and run-off from eroding or otherwise damaging the final cover system.

(B) The owner or operator shall maintain and operate the leachate collection system in accordance with the requirements in §330. 200 and §330.201 of this title (relating to Design Criteria and Leachate Collection System, respectively). The executive director may allow the owner or operator to stop managing leachate if the owner or operator demonstrates to the approval of the executive director that leachate no longer poses a threat to human health and the environment.

(C) The owner or operator shall monitor ground water in accordance with the requirements of §§330.230-330. 242 of this title (relating to Ground-Water Monitoring and Corrective Action) and maintain the ground-water monitoring system, if applicable.

(D) The owner or operator shall maintain and operate the gas monitoring system in accordance with the requirements of §330.54 of this title (relating to Technical Requirements of Part III of the Application).

(E) The owner or operator shall continue earth electrical resistivity surveys at the frequency stated in the approved Site Development Plan.

(2) The length of the post-closure care maintenance period may be:

(A) decreased by the executive director if the owner or operator submits to the executive director for review and approval a documented certification, signed by an independent registered professional engineer and including all applicable documentation necessary to support the certifica-

tion, that demonstrates that the reduced period is sufficient to protect human health and the environment; or

(B) increased by the executive director if it is determined that the lengthened period is necessary to protect human health and the environment.

(3) The owner or operator of all existing MSWLF units or lateral expansions at a facility shall submit a post-closure plan to the executive director for review and approval and place a copy of the approved post-closure plan in the operating record no later than the effective date of this title or by the initial receipt of waste, whichever is later. For all new MSWLF units or facilities, the post-closure plan shall be submitted to the executive director for review and approval in conjunction with the Site Development Plan. The post-closure plan shall include, at a minimum, the following information:

(A) a description of the monitoring and maintenance activities required in paragraph (1) of this subsection for each unit or facility, and the frequency at which these activities will be performed;

(B) the name, address, and telephone number of the office or person responsible for overseeing and/or conducting the post-closure care maintenance activities at the closed unit or facility during the post-closure period; and

(C) a description of the planned uses of any portion of the closed unit or facility property during the post-closure period in accordance with §330.255 of this title (relating to Post-Closure Land Use);

(D) a detailed written estimate, in current dollars, of the cost of post-closure care maintenance and any corrective action as described in the post-closure care plan or required by the commission. The owner or operator shall annually adjust the this estimate and the amount of financial assurance for inflation. The revised estimate shall be submitted to the executive director. Evidence of any additional financial assurance shall be provided to the executive director within 30 days after the annual anniversary date.

§330.255. Post-Closure Land Use.

(a) The owner or operator shall submit any plans for proposed construction activities or structural improvements located on closed MSWLF units or facilities and not associated with approved solid waste disposal activities, with supporting documentation in accordance with subsection (b) of this section, to the executive director for review and approval.

(b) The owner or operator of the closed MSWLF unit or facility shall submit to the executive director for review and approval a documented certification, signed by an independent professional registered engineer and including all applicable documentation necessary to support the certification, that demonstrates that:

(1) any proposed construction activities or structural improvements on the closed MSWLF unit or facility shall not disturb the integrity and function of the final cover, any liner(s), all components of the containment system(s), and any monitoring system(s);

(2) the post-closure activities or improvements shall not increase or serve to create any potential threat to human health and the environment or that the proposed activities or improvements are necessary to reduce a potential threat to human health and the environment; and

(3) any proposed modification or replacement of existing construction activities or structural improvements on any closed MSWLF unit or facility that may disturb the integrity and function of any portion of the final cover, any liner(s), any components of the containment system(s), or any monitoring system(s) shall not increase nor serve to create any potential threat to human health and the environment.

(c) Any construction activities or structural improvements on any portion of a closed MSWLF unit or facility during the post-closure period shall, at a minimum, meet the following conditions.

(1) Automatic methane gas sensors designed to trigger an audible alarm when methane concentrations greater than 1.0% volume in air are detected shall be installed in all buildings and structures constructed on a closed MSWLF unit or facility.

(2) Enclosed subgrade construction is prohibited.

(3) All buildings and structures shall be constructed to mitigate the effects of gas accumulation and may include an active gas collection or vent system.

(4) Unauthorized pilings in or through the final cover or any liner are prohibited.

(5) Unauthorized borings or other penetrations of the final cover or any liner are prohibited.

(d) The executive director may approve other disturbances of a closed MSWLF unit or facility if the owner or operator submits to the executive director for review and approval a certification that demonstrates that the disturbance, including the removal of any waste, shall not cause harm to the integrity and function of the final cover, any liner(s), any components of the containment system(s), or any monitoring system(s) and shall not increase nor serve to create any potential threat to human health or the environment. This certification shall be signed by the owner or operator of the unit or facility and an independent registered professional engineer and shall include all applicable documentation necessary for the certification.

(e) The executive director may require that additional soil layers or building pads be placed on the final cover prior to the initiation of any construction activity or structural improvements in order to protect the integrity and function of the final cover, any liner(s), any components of the containment system(s), or any monitoring system(s).

(f) Any on-site permanent enclosed structures built within 1,000 feet of any waste-holding area for a closed MSWLF unit or facility shall, at a minimum, be designed and constructed in accordance with the following criteria in order to prevent gas migration into buildings and other structures.

(1) A geomembrane or equivalent system with very low gas permeability shall be installed between the slab and subgrade.

(2) A permeable layer of a minimum thickness of 12 inches, composed of an open-graded, clean aggregate material, shall be installed between the geomembrane and the slab or subgrade.

(3) A geotextile filter shall be utilized to prevent the introduction of fine soil or other particulate matter into the permeable layer.

(4) Perforated venting pipes shall be installed within the permeable layer and shall be designed to operate without clogging.

(5) The venting pipes shall be constructed to allow connection to an induced-draft exhaust system; and

(6) Automatic methane gas sensors shall be installed within the venting pipe and/or permeable gas layer and inside the building or any other structure in order to trigger an audible alarm when methane gas concentrations greater than 25% of the lower explosive limit are detected.

§330.256. Completion of Post-Closure Care Maintenance. Following completion of the post-closure care maintenance period for each MSWLF unit or facility, the owner or operator shall submit to the executive direc-

tor for review and approval a documented certification, signed by an independent registered professional engineer, verifying that post-closure care maintenance has been completed in accordance with the approved post-closure plan. The submittal to the executive director shall include all applicable documentation necessary for the certification of completion of post-closure care maintenance. Once approved, this certification shall be placed in the operating record.

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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Subchapter L. Hazardous Households Waste

• 31 TAC §§330.271-330.282

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

The repeals are proposed under the Texas Health and Safety Code, Chapter 361, which gives the commission all powers necessary and convenient under that chapter to carry out its responsibilities concerning the regulation and management of municipal solid waste.

§330.271. Purpose.

§330.272. Definitions.

§330.273. Authority.

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§330.279. General Shipping, Manifesting, Record-Keeping, and Reporting Requirements.

§330.280. Reuse of Collected Material.

§330.281. General Requirements for Transporters.

§330.282. General Requirements for Processing, Storage or Disposal Facilities.

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 March 2, 1993.

TRD-9319703 Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: April 9, 1993

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

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Subchapter K. Financial Assurance

• 31 TAC §§330.280-330.286

The new sections are proposed under the Texas Health and Safety Code, Chapter 361, which gives the commission all powers necessary and convenient under that chapter to carry out its responsibilities concerning the regulation and management of municipal solid waste.

§330.280. Applicability. The requirements of this section apply to owners and operators of any municipal solid waste facility permitted under this chapter, except for owners and operators who are State or Federal government entities whose debts and liabilities are the debts and liabilities of a State or the United States. The requirements of this section become effective April 9, 1994.

§330.281. Financial Assurance for Closure of Landfills.

(a) A detailed written cost estimate, in current dollars, showing the cost of hiring a third party to close the largest area of the landfill ever requiring a final closure at any time during the active life of the facility in accordance with the final closure plan shall be provided. For any landfill this means the completion of the final cover requirements. The cost estimate for financial assurance shall be submitted with any new permit application, with any application for a permit transfer, and as a modification for all existing municipal solid waste permits that remain in effect after October 9, 1993.

(1) The cost estimate shall equal the cost of closing the largest area of all landfill units ever requiring a final cover at any time during the active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan.

(2) During the active life of the facility, the owner or operator shall annually adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s). The adjustment may be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the United States Department of Commerce in its Survey of Current Business. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year. The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate. Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.

(3) An increase in the closure cost estimate and the amount of financial assurance provided under subsection (b) of this section shall be made if changes to the final closure plan or the landfill conditions increase the maximum cost of closure at any time during the remaining active life of the facility.

(4) A reduction in the closure cost estimate and the amount of financial assurance provided under subsection (b) of this section may be approved if the cost estimate exceeds the maximum cost of closure at any time during the remaining life of the facility and the owner or operator has provided written notice to the executive director of the situation that includes a detailed justification for the reduction of the closure cost estimate and the amount of financial assurance. A reduction in the cost estimate and the financial assurance shall be considered a permit modification and shall be handled as such. After approval of the permit modification, a request to reduce the cost estimate and the financial assurance amount will be submitted within 60 days prior to the anniversary date for the annual review and shall include the documentation necessary for the annual review.

(b) The owner or operator of any municipal solid waste facility shall establish financial assurance for closure of the facility in accordance with §330.285 of this title (relating to Financial Assurance Mechanisms). Continuous financial assurance coverage for closure shall be provided until the site is officially placed under the post-closure maintenance period and all requirements of the final closure plan have been approved as evidenced in writing by the executive director.

§330.282. Financial Assurance for Closure of Process Facilities.

(a) A detailed written cost estimate, in current dollars, showing the cost of hiring a third party to close the process facility by cleaning up the litter and debris from the site and the equipment, hauling the litter and debris to an approved landfill, and to render the facility closed by dismantling vital operational parts and locking up the facility shall be provided. The cost estimate for financial assurance shall be submitted with any new permit application, with any application for a permit transfer, and as a modification for all existing municipal solid waste process facilities that remain in operation after October 9, 1993.

(1) The cost estimate shall equal the cost of closing the facility at any time during the active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan.

(2) During the active life of the facility, the owner or operator shall annually adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s). The adjustment may be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the United States Department of Commerce in its Survey of Current Business. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year. The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate. Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.

(3) An increase in the closure cost estimate and the amount of financial assurance provided under subsection (b) of this section shall be made if changes to the closure plan or the facility conditions increase the maximum cost of closure at any time during the remaining active life of the facility.

(4) A reduction in the closure cost estimate and the amount of financial assurance provided under subsection (b) of this section may be approved if the cost estimate exceeds the maximum cost of closure at any time during the remaining life of the facility and the owner or operator has provided written notice to the executive director of the detailed justification for the reduction of the closure cost estimate and the amount of financial assurance. A reduction in the cost estimate and the financial assurance shall be considered a permit modification and shall be handled as such. After approval of the permit modification, a request to reduce the cost estimate and the financial assurance amount will be submitted 60 days prior to the anniversary date for the annual review required under paragraph (2) of this subsection and shall include the documentation necessary for the annual review.

(b) The owner or operator of any municipal solid waste process facility shall establish financial assurance for closure of the facility in accordance with §330.285 of this title (relating to Financial Assurance Mechanisms). Continuous financial assurance coverage for closure shall be provided until all requirements of the final closure plan have been completed and the site is determined to be officially closed in writing by the executive director.

§330.283. Financial Assurance for Post-Closure Care of Landfills.

(a) A detailed written cost estimate, in current dollars, of the cost of hiring a third party to conduct post-closure care activities for the municipal solid waste facility, in accordance with the post-closure care plan, shall be provided. The post-closure care cost estimate used to demonstrate financial assurance in subsection (b) of this section shall account for the total costs of conducting post-closure care including annual and periodic costs as described in the post-closure care plan over the entire post-closure care period. The cost estimate for financial assurance shall be submitted with any new permit application, with any application for a permit transfer, and as a modification for all existing municipal solid waste permits that remain in effect after October 9, 1993.

(1) The cost estimate for post-closure care shall be based on the most expensive costs of post-closure care during the post-closure care period.

(2) During the active life of the facility, the owner or operator shall annually adjust the post-closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s). The adjustment may be made by recalculating the maximum costs of post-closure in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the United States Department of commerce in its Survey of Current Business. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year. The first adjustment is made by multiplying the post-closure cost estimate by the inflation factor. The result is the adjusted post-closure cost estimate. Subsequent adjustments are made by multiplying the latest adjusted post-closure cost estimate by the latest inflation factor.

(3) An increase in the post-closure care cost estimate and the amount of financial assurance provided under subsection (b) of this section shall be made if changes in the post-closure care plan or the facility conditions increase the maximum costs of post-closure care.

(4) A reduction in the post-closure care cost estimate and the amount of financial assurance provided under subsection (b) of this section may be allowed if the cost estimate exceeds the maximum costs of post-closure care remaining over the post-closure care period and the owner or operator has provided written notice to the executive director of the detailed justification for the reduction of the post-closure cost estimate and the amount of financial assurance. A reduction in the cost estimate and the financial assurance shall be considered a permit modification and shall be handled as such. After approval of the permit modification, a request to reduce the cost estimate and the financial assurance amount will be submitted 60 days prior to the anniversary date for the annual review required under paragraph (2) of this subsection and shall include the documentation necessary for the annual review.

(b) The owner or operator of any municipal solid waste landfill facility shall establish financial assurance for the costs of post-closure care of the facility in accordance with §330.285 of this title (relating to Financial Assurance Mechanisms). Continuous financial assurance coverage for post-closure care shall be provided until the site is officially released in writing by the executive director from the post-closure care period in accordance with all requirements of the post-closure care plan.

§330.284. Financial Assurance for Corrective Action.

(a) A municipal solid waste landfill facility required to undertake a corrective action program under §330.238 of this title (relating to Implementation of the Corrective Action Program) shall prepare a detailed written cost estimate, in current dollars, of the cost of hiring a third party to perform the corrective action program. The corrective action cost estimate shall account for the total costs of corrective action activities as described in the corrective action plan for the entire corrective action period. The cost estimate for financial assurance shall be submitted with the corrective action plan and the financial assurance instrument shall be submitted within 30 days after the executive director's approval of the plan and prior to the initiation of the corrective action program. Financial assurance shall be

required for each separate corrective action program established for a municipal solid waste facility, whether permitted under this chapter, previous regulations, or not permitted at all.

(1) During the active life of the facility, the owner or operator shall annually adjust the cost estimate for the corrective action plan for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s). The adjustment may be made by recalculating the maximum costs of corrective action in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the United States Department of Commerce in its Survey of Current Business. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year. The first adjustment is made by multiplying the corrective action cost estimate by the inflation factor. The result is the adjusted corrective action cost estimate. Subsequent adjustments are made by multiplying the latest adjusted corrective action cost estimate by the latest inflation factor.

(2) The corrective action cost estimate and the amount of financial assurance provided under subsection (b) of this section shall be increased if changes in the corrective action program or facility conditions increase the maximum costs of corrective action.

(3) A reduction in the cost estimate and the amount of financial assurance for corrective action provided under subsection (b) of this section may be approved if the cost estimate exceeds the maximum remaining costs of corrective action at any time during the remaining corrective action period and the owner or operator has provided written notice to the executive director that includes a detailed justification for the reduction of the corrective action cost estimate and the amount of financial assurance. A reduction in the cost estimate and the financial assurance shall be considered a modification to the corrective action plan. After this agency's approval of the modification, a request to reduce the cost estimate and the financial assurance amount will be submitted 60 days prior to the anniversary date for the annual review required under paragraph (1) of this subsection and shall include the documentation necessary for the annual review.

(b) The owner or operator of any municipal solid waste landfill facility required to undertake a corrective action program established under §330.238 of this title (relating to Implementation of the Corrective Action Program) shall establish financial assurance for the costs of the most recent corrective action program in accordance with §330.285 of this title (relating to Financial Assurance Mechanisms). Continuous financial assurance coverage for each corrective action program shall be provided until the site is officially released in writing by the executive director from all requirements of the corrective action program after completion of all work specified in the corrective action plan.

§330.285. Financial Assurance Mechanisms.

(a) The mechanisms used to demonstrate financial assurance under this subchapter shall ensure that the funds necessary to meet the costs of closure, post-closure care, and corrective action for known releases shall be available whenever they are needed. Owners and operators shall choose a mechanism from the options specified in subsections (b)-(g) of this section.

(b) Trust Fund.

(1) An owner or operator may demonstrate financial assurance for closure or post-closure care by establishing a trust fund that conforms to the requirements of this subsection and submitting an originally-signed duplicate of the trust agreement to the executive director at least 60 days before the date on which waste is first received. An owner or operator may demonstrate financial assurance for corrective action by establishing a trust fund that conforms to the requirements of this subsection and submitting an originally signed duplicate of the trust agreement to the executive director no later than 120 days after the corrective action remedy has been selected. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency. The wording of the trust agreement shall be identical to the wording specified in §330.286(a)(1) of this title (relating to Wording of the Instruments), and the trust agreement shall be accompanied by a formal certification of acknowledgement (for example, see §330.286(a)(2) of this title (relating to Wording of the Instruments)). Schedule A of the trust agreement shall be updated within 60 days after any change in the amount of the current cost estimate covered by the agreement.

(2) Payments into the trust fund shall be made annually by the owner or operator over the term of the initial permit or over the remaining life of the facility, whichever is shorter, in the case of a trust fund for closure or post-closure care, or over one-half of the estimated length of the corrective action program in the case of corrective action for known releases. This period is referred to as the pay-in period.

(3) For a trust fund used to demonstrate financial assurance for closure and post-closure care, the first payment into the fund shall be at least equal to the current cost estimate for closure or post-closure care, except as provided in subsection (h) of this section, divided by the number of years in the pay-in period as defined in subsection (a)(2) of this section. The amount of subsequent payments shall be determined by the following formula:

$$\text{Next Payment} = \frac{CE-CV}{Y}$$

where CE is the current cost estimate for closure or post-closure care (updated for inflation or other changes), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(4) For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund shall be at least equal to one-half of the current cost estimate for corrective action, except as provided in subsection (h) of this section, divided by the number of years in the corrective action pay-in period as defined in subsection (a)(2) of this section. The amount of subsequent payments shall be determined by the following formula:

$$\text{Next Payment} = \frac{RB-CV}{Y}$$

where RB is the most recent estimate of the required trust fund balance for corrective action (i.e., the total costs that shall be incurred during the second half of the corrective action period), CV is the current value of the trust fund, and Y is the number of years remaining on the pay-in period.

(5) The initial payment into the trust fund shall be made 60 days before the initial receipt of waste in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of the corrective action plan. Subsequent payments shall be made no later than 30 days after each annual anniversary date of the first payment.

(6) If a trust fund is established after having used one or more of the alternate mechanisms specified in this section, the initial payment into the trust fund shall be at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to the specifications of this subsection, as applicable.

(7) The owner, operator, or other person authorized to conduct closure, post-closure care, or corrective action activities may request reimbursement by submitting itemized bills to the executive director. The owner or operator may submit a written request to the executive director for a reimbursements from the trust fund for partial closure, post-closure, or corrective action, only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. The request shall include an explanation of the expenses and all applicable itemized bills. The executive director shall instruct the trustee to make reimbursements in those amounts as the executive director specifies in writing, if the executive director determines that the expenditures are in accordance with the approved plan, or otherwise justified.

(8) The trust fund may be terminated by the owner or operator only if an alternate financial assurance mechanism has been substituted as specified in this section or if he is no longer required to demonstrate financial responsibility in accordance with the requirements of §330.281(b) of this title (relating to Financial Assurance for Closure of Landfills), §330.282(b) of this title (relating to Financial Assurance for Closure of Process Facilities), §330.283(b) of this title (relating to Financial Assurance for Post-Closure Care of Landfills), or §330.284(b) of this title (relating to Financial Assurance for Corrective Action).

(c) Surety Bond Guaranteeing Payment or Performance.

(1) An owner or operator may demonstrate financial assurance for closure or post-closure care by obtaining a payment or performance surety bond that conforms to the requirements of this subsection and submitting the bond to the executive director at least 60 days before the date on which waste is first received. An owner or operator may demonstrate financial assurance for corrective action by obtaining a payment or performance surety bond that conforms to the requirements of this paragraph and submitting the bond to the executive director no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of the corrective action plan. The wording of a payment bond shall be identical to the wording specified in §330.286(b) of this title (relating to Wording of the Instruments). The wording of a performance bond shall be identical to the wording specified in §330.286(c) of this title (relating to Wording of the Instruments). The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the United States Department of the Treasury.

(2) The penal sum of the bond shall be in an amount at least equal to the current closure, post-closure care, or corrective action cost estimate, whichever is applicable, except as provided in §330.285(h) of this title (relating to Financial Assurance Mechanisms).

(3) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(4) The owner or operator shall establish a standby trust fund. The standby trust fund shall meet the requirements of

§330.285(b) of this title (relating to Financial Assurance Mechanisms) except the requirements for initial payment and subsequent annual payments specified in §330.285(b)(2), (3), (4), and (5) of this title (relating to Financial Assurance Mechanisms).

(5) Payments made under the terms of the bond shall be deposited by the surety directly into the standby trust fund. Payments from the trust fund shall be approved by the trustee and the executive director.

(6) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner and operator and to the executive director 120 days in advance of cancellation. If the surety cancels the bond, the owner or operator shall obtain alternate financial assurance as specified in this section.

(7) A payment bond shall guarantee that the owner or operator shall:

(A) fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility; or

(B) fund the standby trust fund in an amount equal to the penal sum within 15 days after an administrative order to begin final closure issued by the executive director becomes final, or within 15 days after an order to begin final closure is issued by a United States district court or other court of competent jurisdiction; or

(C) provide alternate financial assurance as specified in this section, and obtain the executive director's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the executive director of a notice of cancellation of the bond from the surety.

(8) Under the terms of the payment bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(9) The performance bond shall guarantee that the owner or operator shall:

(A) perform final closure in accordance with the closure plan and other requirements of the permit for the facility whenever required to do so; or

(B) provide alternate financial assurance as specified in this section, and obtain the executive director's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the executive director of a notice of cancellation of the bond from the surety.

(10) Under the terms of the performance bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final administrative determination that the owner or operator has failed to perform final closure in accordance with the approved closure plan and other permit requirements when required to do so, under the terms of the bond the surety shall perform final closure as guaranteed by the bond or shall deposit the amount of the penal sum into the standby trust fund.

(11) The owner or operator may cancel the bond only if alternate financial assurance is substituted as specified in this section or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with §330.281(b) of this title (relating to Financial Assurance for Closure of Landfills), §330.282(b) of this title (relating to Financial Assurance for Closure of Process Facilities), §330.283(b) of this title (relating to Financial Assurance for Post-Closure Care of Landfills), or §330.284(b) of this title (relating to Financial Assurance for Corrective Action).

(d) Letter of Credit.

(1) An owner or operator may demonstrate financial assurance for closure, post-closure, or corrective action activities by obtaining an irrevocable standby letter of credit that conforms to the requirements of this subsection and submitting the letter to the executive director. An owner or operator of a new facility shall submit the letter of credit to the executive director at least 60 days before the date on which waste is first received. The letter of credit shall be effective at least 60 days before the initial receipt of waste in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of the corrective action plan. The issuing institution shall be an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a Federal or State agency. The wording of the letter of credit shall be identical to the wording specified in §330.286(d) of this title (relating to Wording of the Instruments).

(2) The owner or operator who uses a letter of credit to satisfy the requirements of this section shall also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the executive director shall be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the executive director. This standby trust fund shall meet the requirements of the trust fund specified in §330.285(b) of this title (relating to Financial Assurance Mechanisms) except the requirements for initial payment and subsequent annual payments specified in §330.285(b)(2), (3), (4), and (5) of this title.

(3) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: name, and address of the facility, permit number, and the amount of funds assured, shall be included with the letter of credit.

(4) The letter of credit shall be irrevocable and issued for a period of at least one year in an amount at least equal to the current cost estimate for closure, post-closure care, or corrective action, whichever is applicable. The letter of credit shall provide that the expiration date shall be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and to the executive director 120 days in advance of cancellation. If the owner or operator does not establish alternate financial assurance as specified in this section and obtain written approval of such alternate assurance from the executive director within 90 days after receipt by both the owner or operator and the executive director of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the executive director shall draw on the letter of credit. The executive director may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the executive director shall draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this section and obtain written approval of such assurance from the executive director.

(5) The owner or operator may cancel the letter of credit only if alternate financial assurance is substituted as specified in this section or if the owner or operator is released from the requirements of this section in accordance with §330.281(b) of this title (relating to Financial Assurance for Closure of Landfills), §330.282(b) of this title (relating to Financial Assurance for Closure of Process Facilities), §330.283(b) of this title (relating to Financial Assurance for Post-Closure Care of Landfills), or §330.284(b) of this title (relating to Financial Assurance for Corrective Action).

(e) Insurance.

(1) An owner or operator may demonstrate financial assurance for closure, post-closure and corrective action by ob-

taining insurance that conforms to the requirements of this subsection and submitting a certificate of such insurance to the executive director. An owner or operator of a new facility shall submit the certificate of insurance to the executive director at least 60 days before the date on which waste is first received. The certificate of insurance shall be effective at least 60 days before the initial receipt of waste in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of the corrective action plan. At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in Texas. The wording of the certificate of insurance shall be identical to the wording specified in §330.286(e) of this title (relating to Wording of the Instruments).

(2) The closure, post-closure, or corrective action insurance policy shall guarantee that funds shall be available to close the facility whenever final closure occurs or to provide post-closure care for the facility whenever the post-closure care period begins or to provide funds for corrective action activities, whichever is applicable. The policy shall also guarantee that once closure, post-closure care, or corrective action begins, the insurer shall be responsible for the paying out of funds up to an amount equal to the face amount of the policy, excluding legal fees, upon direction of the executive director, to such party or parties as the executive director specifies.

(3) The insurance policy shall be issued for a face amount at least equal to the current cost estimate for closure, post-closure care, or corrective action, whichever is applicable. The term "face amount" means the total amount the insurer is obligated to pay under the policy, excluding legal defense costs. Actual payments by the insurer shall not change the face amount, although the insurer's future liability shall be lowered by the amount of the payments.

(4) After beginning partial or final closure an owner or operator, or any other person authorized to conduct closure, post-closure care, or corrective action, may request reimbursements for expenditures, by submitting itemized bills to the executive director. Requests for reimbursement may be granted if the remaining value of the policy is sufficient to cover the remaining costs of closure, post-closure care, or corrective action, and if justification and documentation of the cost is approved by the executive director.

(5) The owner or operator shall maintain the policy in full force and effect until the executive director consents to termination of the policy by the owner or operator. Failure to pay the premium, without substitution of alternate financial assurance as specified in this section, shall constitute a significant violation of these regulations, warranting such remedy as the executive director deems necessary. Such violation shall be deemed to begin upon receipt by the executive director of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

(6) Each policy shall contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided that such consent is not unreasonably refused and upon approval by the executive director.

(7) The insurance policy shall provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner and operator and to the executive director. Cancellation, termination, or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the executive director and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy shall remain in full force and effect in the event that on or before the date of expiration:

(A) the executive director deems the facility abandoned; or

(B) the permit is terminated or revoked or a new permit is denied; or

(C) closure is ordered by the executive director or a United States District court or other court of competent jurisdiction; or

(D) the owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code; or

(E) the premium due is paid. If the insurer cancels the policy, the owner or operator shall obtain alternate financial assurance as specified in this section.

(8) For insurance policies providing coverage for post-closure care, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer shall thereafter annually increase the face amount of the policy. Such increase shall be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85% of the most recent investment rate or of the equivalent coupon-issue yield announced by the United States Treasury for 26-week Treasury securities.

(9) The owner or operator may cancel the insurance policy only if alternate financial assurance is substituted as specified in this section or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with the requirements of §330.281(b) of this title (relating to Financial Assurance for Closure of Landfills), §330.282(b) of this title (relating to Financial Assurance for Closure of Process Facilities), §330.283(b) of this title (relating to Financial Assurance for Post-Closure Care of Landfills), or §330.284(b) of this title (relating to Financial Assurance for Corrective Action).

(f) Financial test and corporate guarantee.

(1) An owner or operator may demonstrate financial assurance for closure, post-closure or corrective action by satisfying the requirements of this section. The owner or operator must demonstrate that he passes a financial test as specified in this subparagraph. To pass this test the owner or operator must meet the criteria of either subparagraphs (A) or (B) of this section:

(A) The owner or operator must have:

(i) two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

(ii) net working capital and tangible net worth each at least six times the sum of the current closure, post-closure and corrective action cost estimates;

(iii) tangible net worth of at least $10 million; and

(iv) assets located in the United States amounting to at least 90% of total assets or at least six times the sum of the current closure, post-closure, corrective action cost estimates.

(B) The owner or operator must have:

(i) a current rating for his most recent bond issuance of Aaa, Aa, A, or Baa as issued by Moody's or AAA, AA, A, or BBB as issued by Standard and Poor's; and

(ii) tangible net worth at least six times the sum of the current closure and post-closure, and corrective action cost estimates; and

(iii) tangible net worth of at least $10 million; and

(iv) assets located in the United States amounting to at least 90% of total assets or at least six times the sum of the current closure, post-closure, and corrective action cost estimates.

(2) The phrase "current closure, post-closure, and corrective action cost estimates" as used in paragraph (1) of this subsection refers to the cost estimates required to be shown in paragraphs (1)-(3) of the letter from the owner's or operator's chief financial officer (§330.286(f) of this title).

(3) To demonstrate that he meets this test, the owner or operator must submit the following items to the executive director:

(A) a letter signed by the owner's or operator's chief financial officer and worded as specified in §330.286(f); and

(B) a copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(C) a special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(i) he has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(ii) in connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(4) In the case of closure and post-closure care, these items must be submitted to the executive director 60 days prior to the initial receipt of waste or on April 9, 1994, the effective date of the financial responsibility requirements, whichever is later. In the case of corrective action these items must be submitted to the executive director no later than 120 days following selection of a corrective action remedy.

(5) After the initial submission of items specified in paragraph (3) of this subsection, the owner or operator must send updated information to the executive director within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in paragraph (3) of this subsection.

(6) If the owner or operator no longer meets the requirements of paragraph (1) of this subsection, he must send notice to the executive director of intent to establish alternate financial assurance as specified in this section. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator must provide the alternate financial assurance within 120 days after the end of such fiscal year.

(7) The executive director may, based on a reasonable belief that the owner or operator may no longer meet the requirements of paragraph (1) of this subsection, require reports of financial condition at any time from the owner or operator in addition to those specified in paragraph (3) of this subsection. If the executive director finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of paragraph (1) of this subsection, the owner or operator must provide alternate financial assurance as specified in this section within 30 days after notification of such a finding.

(8) The executive director may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements (see paragraph (3)(B) of this subsection). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The executive director will evaluate other qualifications on an individual basis. The owner or operator must provide alternate financial assurance as specified in this section within 30 days after notification of the disallowance.

(9) The owner or operator is no longer required to submit the items specified in paragraph (3) of this subsection when:

(A) an owner or operator substitutes alternate financial assurance as specified in this section; or

(B) an owner or operator is released from the requirements of this section in accordance with §330.281(b) of this title (relating to Financial Assurance for Closure of Landfills), 330.282(b) of this title (relating to Financial Assurance for Closure of Process Facilities), 330.283(b) of this title (relating to Financial Assurance for Post-Closure Care of Landfills), or 330.284(b) of this title (relating to Financial Assurance for Corrective Action).

(10) An owner or operator may meet the requirements of this section by obtaining a written guarantee, hereafter referred to as "corporate guarantee." The guarantor must be the parent corporation of the owner or operator. The guarantor must meet the requirements for owners or operators in paragraphs (1) -(8) of this subsection and must comply with the terms of the corporate guarantee. The wording of the corporate guarantee must be identical to the wording specified in §330.286(g). The corporate guarantee must accompany the items sent to the executive director as specified in paragraph (3) of this subsection. The terms of the corporate guarantee must provide the following.

(A) If the owner or operator fails to perform closure, post-closure, or corrective action of a facility covered by the corporate guarantee in accordance with the applicable plan and other permit requirements whenever required to do so, the guarantor will do so or establish a trust fund as specified in §330.285(b) in the name of the owner or operator.

(B) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the executive director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the executive director, as evidenced by the return receipts.

(C) If the owner or operator fails to provide alternate financial assurance as specified in this section and obtain the written approval of such alternate assurance from the executive director within 90 days after receipt by both the owner or operator and the executive director of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the owner or operator.

(g) Local Government Financial Test and Government Guarantee.

(1) A local government may demonstrate financial assurance for closure, post-closure, or corrective action by satisfying the requirements of this section. The local government must demonstrate that it passes the local government financial test as specified in this subparagraph. In order to continue using the local government financial test, the test must be passed on an annual basis. (Unless otherwise defined in this subpart, financial terms used in this subsection are to be interpreted consistently with generally accepted accounting principles for local governments.) This test consists of a financial component, a public notice component, and a recordkeeping and reporting component. A local government must satisfy each of the three components

to pass the test. The criteria for each component is discussed below.

(A) Financial Component. In order to satisfy the financial component of the test, a local government must meet the criteria of either clause (i) or (ii) of this subparagraph and in addition must meet certain general conditions outlined in clause (iii) of this subparagraph.

(i) The local government must have:

(I) a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05; and

(II) a ratio of annual debt service to total expenditures less than or equal to 0.20; and

(III) a ratio of long-term debt issued and outstanding to capital expenditures less than or equal to 2.00; and

(IV) a ratio of the current cost estimates for closure, post-closure, corrective action, or the sum of the combination of such costs to be covered, and any other environmental obligations assured by a financial test, to total revenue less than or equal to 0.43.

(ii) The local government must have:

(I) a current bond rating of Aaa, Aa, A, or Baa, issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard and Poor's on its outstanding general obligation bonds; and

(II) a ratio of the current cost estimates for closure, post-closure, corrective action, or the sum of the combination of such costs to be covered, and any other environmental obligations assured by a financial test, to total revenue less than or equal to 0.43.

(iii) In addition to meeting one of the criteria previously listed, the following general conditions must be met:

(I) the local government's financial statements shall be prepared in accordance with Generally Accepted Accounting Principals for local governments; and

(II) a local government must not have operated at a deficit equal to five percent or more of total annual revenue in either of the past two fiscal years; and

(III) it must not currently be in default on any outstanding general obligation bonds; and

(IV) it must not have any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's.

(B) Public Notice Component. In order to satisfy the Public Notice Component of the test, a local government must in each year that the test or guarantee is used, identify the financial assurance costs in either its budget or its comprehensive annual financial report. The specific facility covered, the categories of expenditures (e.g., closure, post-closure care, corrective action), the corresponding cost estimate, and the anticipated year of the required activity must be recorded. If the financial assurance obligation is to be included in the budget, it should either be listed as an approved budgeted line item (if the obligation will arise during the budget period) or in an appropriate supplementary data section (if the obligation will not arise during the budget period). If the information is to be included in the comprehensive annual financial report, it is to be included in the financial section as a footnote to the annual financial statements.

(C) Recordkeeping and Reporting Component. To demonstrate that the local government meets the requirements of this test, the following three items must be submitted to the Executive Director in accordance with the deadlines of subparagraph (D) of this paragraph:

(i) a letter signed by the local government's chief financial officer (CFO) and worded as specified in §330.286(h) that:

(I) lists all the current cost estimates covered by a financial test;

(II) provides evidence and certifies that the local government meets the conditions of either subparagraphs (A)(i) or (ii) of this paragraph; and

(III) certifies that the local government meets the conditions of subparagraph (A)(iii) of this paragraph;

(ii) a copy of the local government's independently audited year-end financial statements for the latest fiscal year, including the "unqualified opinion" of the auditor. The auditor must be an independent, certified public accountant or an appropriate state agency that conducts equivalent comprehensive audits;

(iii) a special report from the independent certified public accountant or state agency to the local government stating that:

(I) the certified public accountant or state agency has compared the data in the chief financial officer's letter with the local government's independently audited, year-end financial statements for the latest fiscal year; and

(II) in connection with that examination, no matters came to his attention which caused him to believe that the data in the chief financial officer's letter should be adjusted.

(D) In the case of closure and post-closure care, these items must be submitted to the Executive Director 60 days prior to the initial receipt of waste or on April 9, 1994, the effective date of the financial responsibility requirements, whichever is later. In the case of corrective action these items must be submitted to the Executive Director no later than 120 days following selection of a corrective action remedy.

(E) Annual updates of the financial test documentation must be submitted to the Executive Director within 90 days after the close of each succeeding fiscal year. This information must consist of all the items as specified above.

(F) If the local government no longer meets the requirements of subparagraphs (A), (B), and (C) of this section, the local government must send notice to the executive director of intent to establish alternate financial assurance. This notice must be sent within 90 days after the end of the fiscal year for which the year-end financial data show that the local government no longer meets the requirements. The local government must provide alternate financial assurance within 120 days after the end of such fiscal year.

(G) The local government is no longer required to comply with the requirements of this section if alternate financial assurance is substituted as specified in this section or if the local government is no longer required to demonstrate financial responsibility in accordance with the requirements of §330.281(b) of this title (relating to Financial Assurance for Closure of Landfills), §330.282(b) of this title (relating to Financial Assurance for Closure of Process Facilities), §330.283(b) of this title (relating to Financial Assurance for Post-Closure Care of Landfills), or §330.284(b) of this title (relating to Financial Assurance for

Corrective Action).

(2) A local government may meet the requirements of this section by obtaining a written guarantee, hereafter referred to as "local government guarantee". The local government guarantor must meet all of the requirements outlined for the local government financial test in paragraphs (1)-(6) of this subsection and must comply with the terms of the local government guarantee. The wording of the guarantee must be identical to the wording specified in §330[illegible](i). The guarantee must accompany the items sent to the Executive Director as specified in paragraph (1)(C) of this subsection and must be updated annually in accordance with the requirements of the local government financial test. The terms of the guarantee must provide the following.

(A) If the owner or operator fails to perform closure, post-closure care, or corrective action of a municipal solid waste facility covered by the guarantee in accordance with the applicable plan and other permit requirements whenever required to do so, the guarantor will do so or establish a trust fund as specified in §330.285(b) in the name of the owner or operator.

(B) The guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Executive Director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Executive Director, as evidenced by the return receipts.

(C) If the local government guarantor no longer meets the requirements of the financial test, the owner or operator must, within 90 days following the close of the guarantor's fiscal year, obtain alternative financial assurance.

(D) If the owner or operator fails to provide alternate financial assurance as specified in this section and obtain the written approval of such alternate assurance from the Executive Director within 90 days after receipt by both the owner or operator and the Executive Director of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the owner or operator and submit evidence of the alternate assurance to the Executive Director.

(h) Use of Multiple Mechanisms. An owner or operator may satisfy the requirements of this section by establishing more than one financial mechanism per facility, except that mechanisms guaranteeing performance, rather than payment, may not be combined with other instruments. The mechanisms must be as specified in this section, except that financial assurance for an amount at least equal to the current cost estimate for closure, post-closure, and/or corrective action may be provided by a combination of mechanisms, rather than a single mechanism.

(i) State Assumption of Responsibility. If the executive director either assumes legal responsibility for an owner's or operator's compliance with the closure, post-closure care, and/or corrective action requirements of this chapter, or assures that the funds shall be available from State sources to cover the requirements, the owner or operator shall be in compliance with the requirements of this section. Any State assumption of responsibility shall meet the criteria specified in §330.285(j) of this title (relating to Financial Assurance Mechanisms).

(j) The language of the mechanisms listed in subsections (b), (c), (d), (e), (f), and (g) of this section shall ensure that the instruments satisfy the following criteria:

(1) the financial assurance mechanisms shall ensure that the amount of funds assured is sufficient to cover the costs of closure, post-closure care, and corrective action for known releases when needed;

(2) the financial assurance mechanisms shall ensure that funds shall be available in a timely fashion when needed;

(3) the financial assurance mechanisms shall be obtained by the owner or operator at least 60 days prior to the initial receipt of solid waste, in the case of closure and post-closure care, and no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of the corrective action plan, until the owner or operator is released from the financial assurance requirements under §330.281(b) of this title (relating to Financial Assurance for Closure of Landfills), §330.282(b) of this title (relating to Financial Assurance for Closure of Process Facilities), §330.283(b) of this title (relating to Financial Assurance for Post-Closure Care of Landfills), or §330.284(b) of this title (relating to Financial Assurance for Corrective Action);

(4) the financial assurance mechanisms shall be legally valid, binding, and enforceable under State and Federal law.

§330.286. Wording of the instruments.

(a) A trust agreement for a trust fund, as specified in §330.285(b) of this title (relating to Financial Assurance Mechanisms), shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

TRUST AGREEMENT

TRUST AGREEMENT, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "incorporated in the State of ______" or "a national bank"], the "Trustee."

Whereas, the Texas Water Commission, "TWC," an agency of the State of Texas, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a landfill or process facility shall provide assurance that funds shall be available when needed for closure, post-closure or corrective action,

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facility(ies) identified herein,

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) Facility or activity means any "landfill or process facility" or any other facility or activity that is subject to regulation under the Municipal Solid Waste Program.

Section 2. Identification of Facilities and Cost Estimates. This Agreement pertains to the facilities and cost estimates identified on attached Schedule A [on Schedule A, for each facility list the permit or registration identification number, name, address, and the closure, post-closure and corrective action cost estimate, or portions thereof, for which financial assurance is demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of TWC. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant

to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by TWC.

Section 4. Payment for Closure, Post-Closure and/or Corrective Action. The Trustee shall make payments from the Fund as the executive director shall direct, in writing, to provide for the payment of the costs of closure, post-closure and/or corrective action of the landfills or process facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the executive director from the Fund for expenditures in such amounts as the executive director shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the executive director specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S. C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the appropriate executive director a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the executive director shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement of any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the executive director, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designers as the Grantor may designate by amend-

ment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the executive director to the Trustee shall be in writing, signed by his designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or TWC hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or TWC, except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee shall notify in writing the Grantor and the appropriate executive director, by certified mail within 10 days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the appropriate executive director, or by the Trustee and the appropriate executive director if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the executive director, or by the Trustee and the executive director if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the executive director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Texas.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 31 Texas Administrative Code §330.286(a)(1) as such regulations were constituted on the date first above written.

[Signature of Grantor]

By [Title]

Attest:

[Title]

[Seal}

[Signature of Trustee]

By

Attest:

[Title}

[Seal]

(b) The following is an example of the certification of acknowledgment that shall accompany the trust agreement for a trust fund as specified in §330.285(b) of this title (relating to Financial Assurance Mechanisms).

State requirements may differ on the proper content of this acknowledgment.

State of________________

County of________________

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order to the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[signature of Notary Public]

(c) A surety bond guaranteeing payment into a trust fund, as specified in §330.285(c) of this title (relating to Financial Assurance Mechanisms) shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

FINANCIAL GUARANTEE BOND

Date bond executed:________________

Effective date:________________

Principal: [legal name and business address of owner or operator].

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"].

State of incorporation:________________

Surety(ies): [name(s) and business address(es)].

Permit number, name, address, and closure, post-closure and corrective action amount(s) for each facility guaranteed by this bond [indicate closure, post-closure and/or corrective action amounts separately]:________

Total penal sum of bond: $____________

Surety's bond number:____________

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the Texas Water Commission (hereinafter called TWC), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the Municipal Solid Waste, to have a permit or comply with requirements to operate under rule in order to own or operate each landfill or process facility identified above, and

Whereas said Principal is required to provide financial assurance for closure, post-closure and corrective action as a condition of the permit or provisions to operate under rule, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the condition of the obligation are such that if the Principal shall faithfully, before the beginning of closure, post-

closure and corrective action of each landfill or process facility identified above, fund the standby trust fund in the amount(s) identified above for the landfill or process facility,

Or if the Principal shall fund the standby trust fund in such amount(s) within 15 days after an order to begin closure, post-closure and corrective action is issued by an executive director or a United States district court or other court of competent jurisdiction,

Or if the Principal shall provide alternate financial assurance, as specified in Subchapter K of 31 Texas Administrative Code Chapter §330.285, as applicable, and obtain the executive director's written approval of such assurance, within 90 days after the date of notice of cancellation is received by both the Principal and the executive director from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by an executive director that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the landfill and process facility into the standby trust funds as directed by the executive director.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the executive director, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the executive director, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the executive director in which the bonded facility(ies) is (are) located.

[The following paragraph is an optional rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure, post-closure and corrective action amount, provided that the penal sum does not increase by more than 20% in any one year, and no decrease in the penal sum takes place without the written permission of the executive director.

In Witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The person whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 31 Texas Administrative Code §330.286(b) as such regulations were constituted on the date this bond was executed.

Principal

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

Corporate Surety(ies)

[Name and address]

State of incorporation: ______________.

Liability limit: $________________.

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: $________________.

(d) A surety bond guaranteeing performance, as specified in 31 Texas Administrative Code §330. 285(c) of this title (relating to Financial Assurance Mechanisms), shall be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

PERFORMANCE BOND

Date bond executed: ______________.

Effective date: ________________.

Principal: [legal name and business address of owner or operator].

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation'].

State of incorporation: ______________.

Surety(ies): [name(s) and business address(es)]

____

____

Permit number, name, address, and closure, post-closure and corrective action amounts(s) for each landfill and process facility guaranteed by this bond [indicate closure, post-closure and corrective action amounts for each landfill and process facility]:

____

____

Total penal sum of bond: $______________.

Surety's bond number: ______________.

Know All Persons By These Presents.

That We, the Principal and Surety(ies) hereto are firmly bound to the Texas Water Commission [hereinafter called TWC], in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the Municipal Solid Waste Regulations, as amended, to have a permit or comply with provisions to operate under rule for each landfill and process facility identified above, and

Whereas said Principal is required to provide financial assurance for closure, post-closure and corrective action as a condition of the permit or approval to operate under rule, and

Whereas said Principal shall establish a standby trust fund as required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of this obligation are such that if the Principal shall faithfully perform closure, post-closure and corrective action, whenever required to do so, of each landfill and process facility for which this bond guarantees closure, post-closure and corrective action, in accordance with the closure, post-closure and corrective action plan and other requirements of the permit or provisions for operating under rule and other requirements of the permit or provisions for operating under rule as may be amended, pursuant to all applicable laws, statutes, rules and regulations, as such laws, statutes, rules, and regulations may be

amended,

Or if the Principal shall provide alternate financial assurance as specified in Subchapter K of 31 Texas Administrative Code Chapter §330.285, and obtain the executive director's written approval of such assurance, within 90 days after the date of notice of cancellation is received by both the Principal and the executive director from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by an executive director that the Principal has been found in violation of the closure, post-closure, and corrective action requirements of Subchapter K of 31 Texas Administrative Code Chapter §330. 285, for a landfill and process facility which this bond guarantees performances of closure, post-closure and corrective action, the Surety(ies) shall either perform closure, post-closure and corrective action in accordance with the closure, post-closure and corrective action plan and other permit requirements or provisions for operating under rule and other requirements or place the amount for closure, post-closure and corrective action into a standby trust fund as directed by the executive director.

Upon notification by an executive director that the Principal has failed to provide alternate financial assurance as specified in Subchapter K of 31 Texas Administrative Code Chapter §330.285, and obtain written approval of such assurance from the executive director during the 90 days following receipt by both the Principal and the executive director of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the municipal solid waste facility(ies) into the standby trust fund as directed by the executive director.

The Surety(ies) hereby waive(s) notification of amendments to closure, post-closure and corrective action plans, permits, applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice by certified mail to the owner and operator and to the executive director provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the executive director, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the executive director.

[The following paragraph is an optional rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure, post-closure and corrective action amount, provided that the penal sum does not increase by more than 20% in any one year, and no decrease in the penal sum takes place without the written permission of the executive director.

In Witness Whereof, the Principal and Surety(ies) have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording on this surety bond is identical to the wording specified in 31 Texas Administrative Code §330.286(c) as such regulation was constituted on the date this bond was executed.

Principal.

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

[Corporate Surety(ies)]

[Name and address]

State of incorporation: __________________________

Liability limit: $ _________.

[Signature(s)]

[name(s) and title(s)]

Corporate seal:

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: $ ____________.

(e) A letter of credit, as specified in §330.285(d) of this title (relating to Financial Assurance Mechanisms), shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

IRREVOCABLE STANDBY LETTER OF CREDIT

Executive Director

Texas Water Commission

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. _____ in your favor, at the request and for the account of [owner's or operator's name and address, identification or permit number] up to the aggregate amount of [in words] U.S. dollars $____________, available upon presentation of

(1) Your sight draft, bearing reference to this letter of credit No. _________, and

(2) Your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the Resource Conservation and Recovery Act of 1976 as amended."

This letter of credit is effective as of [date] and shall expire on [date at least 1 year later], but such expiration date shall be automatically extended for a period of [at least 1 year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify in writing both you and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both you and [owner's or operator's name], as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner's or operator's name] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in 31 Texas Administrative Code §330.286(d) as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]

[Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code"].

(f) A certificate of insurance, as specified in 31 Texas Administrative Code §330. 285(e) of this chapter, shall be worded as follows, except that instructions

in brackets are to be replaced with the relevant information and the brackets deleted:

CERTIFICATE OF INSURANCE FOR CLOSURE, POST-CLOSURE AND CORRECTIVE ACTION

Name and Address of Insurer (herein called the "insurer"):

____

____

Name and Address of Insurer (herein called the "insurer"):

____

____

Landfills and process facilities covered: [list for each: The identification and/or permit number, name, address, and the amount of insurance for closure, post-closure and corrective action (these amounts for all landfills and process facilities covered shall total the face amount shown below).]

Face Amount:

____

Policy Number:

____

Effective Date:

____

The insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for [closure or post-closure and corrective action] for the landfills and process facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of 31 Texas Administrative Code §330. 285(e), as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the executive director of the Texas Water Commission ("TWC"), the Insurer agrees to furnish to the executive director a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in 31 Texas Administrative Code §330.286(e) as such regulations were constituted on the date shown immediately below.

[Authorized signature of Insurer]

[Name of person signing]

[Title of person signing]

[Signature of witness or notary:]

____

[Date]

(g) A letter from the chief financial officer, as specified in §330.285(f) of this title (relating to Financial Assurance Mechanisms) shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

Executive Director

Texas Water Commission

Dear Sir:

I am the chief financial officer of [name and address of firm.] This letter is in support of this firm's use of the financial test to demonstrate financial assurance, as specified in Subchapter K of 31 Texas Administrative Code, Chapter 330.285(f). [Fill out the following three paragraphs regarding municipal solid waste facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its TWC permit number, name, address, and current closure, post-closure care and corrective action.]

1. This firm is the owner or operator of the following facilities for which financial assurance for closure, post-closure or corrective action care is being demonstrated through the financial test specified in Subchapter K of 31 Texas Administrative Code, Chapter 330.285(f). The current closure, post-closure, and/or corrective action cost estimates covered by the test are shown for each facility: --------.

2. This firm guarantees, through the corporate guarantee specified in Subchapter K of 31 Texas Administrative Code Chapter 330.285(f), closure, post-closure or corrective action care of the following facilities owned or operated by subsidiaries of this firm: --------.

3. In states where EPA is not administering the financial requirements, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure, post-closure, or corrective action care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test. The current closure, post-closure or corrective action cost estimates covered by such a test are shown for each facility:--------.

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day, year]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in Alternative I if the criteria of paragraph (f)(1)(i) of §330.285 of this title are used. Fill in Alternative II if the criteria of paragraph (f) (1)(ii) of §330.285 of this title are used.]

ALTERNATIVE 1

1. Sum of current closure, post-closure cost estimates and corrective action [total of all cost estimates shown in the three paragraphs above] $..... .....

2. Total liabilities [if any portion of the closure, post-closure cost or corrective action cost estimate is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4] $..........

*3. Tangible net worth $..........

*4. Net Worth $..........

5. Current assets $..........

*6. Current liabilities $..........

*7. Net working capital [line 5 minus line 6] $..........

*8. The sum of net income plus depreciation, depletion and amortization $... ....

*9. Total assets in U. S. (required only if less than 90% of firm's assets are located in U.S.) $..........

Circle either "yes" or "no" to the following questions.

10. Is line 3 at least $10 million? yes/no

11. Is line 3 at least 6 times line 1? yes/no

12. Is line 7 at least 6 times line 1? yes/no

*13. Are at least 90% of firm's assets located in the U.S.? yes/no

If not, complete line 14

14. Is line 9 at least 6 times line 1? yes/no

15. Is line 2 divided by line 4 less than 2.0? yes/no

16. Is line 8 divided by line 2 greater than 0.1? yes/no

17. Is line 5 divided by line 6 greater than 1.5? yes/no

ALTERNATIVE II

1. Sum of current closure, post-closure and corrective action cost estimates [total of all cost estimates shown in the three paragraphs above] $.. ....

2. Current bond rating of most recent issuance of this firm and name of rating service $..........

3. Date of issuance of bond $..........

4. Date of maturity of bond $..........

*5. Tangible net worth [if any portion of the current cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line] $.........

*6. Total assets in U.S. (required only if less than 90% of firm's assets are located in U.S.) $.........

Circle either "yes" or "no" to the following questions.

7. Is line 5 at least $10 million? yes/no

8. Is line 5 at least 6 times line 1? yes/no

9. Are at least 90% of the firm's assets located in the U.S.? yes/no

If not, complete line 10.

10. Is line 6 at least 6 times line 1? yes/no

I hereby certify that the wording of this letter is identical to the wording specified in 31 Texas Administrative Code §330.286(f) as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

(h) A corporate guarantee as specified in 31 Texas Administrative Code §330.285(f) of this chapter shall be worded as follows except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CORPORATE GUARANTEE FOR CLOSURE, POST-CLOSURE CARE AND CORRECTIVE ACTION

Guarantee made this _____ day of ____________________, 19____, by [name of guaranteeing entity], a business corporation organized under the laws of the State [insert name of State], herein referred to as guarantor, to the Texas Water Commission (TWC), obligee, on behalf of our subsidiary [owner or operator] of [business address].

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in 31 Texas Administrative Code §330.285(f).

2. [Owner or operator] owns or operates the following municipal solid waste facility(ies) covered by this guarantee: [List for each facility: TWC permit number, name, and address. Indicate for each whether guarantee is for closure, post-closure care or corrective action.]

3. "Closure plans", "Post-Closure Plans" and "Corrective Action Plans" as used below refers to the plans maintained as required by 31 Texas Administrative Code Chapter 330 for the closure and post-closure care facilities as identified above.

4. For value received from [owner or operator], guarantor guarantees to TWC that in the event that [owner or operator] fails to perform [insert "closure", "post-closure care", "corrective action" or "closure, post-closure care and corrective action"] of the above facility(ies) in accordance with the applicable plan and other permit or interim status requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in 31 Texas Administrative Code §330.285(b) in the name of [owner or operator] in the amount of the current cost estimates.

5. Guarantor agrees that, if at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the Executive Director and to [owner or operator] that he intends to provide alternate financial assurance. Within 120 days after the end of such fiscal year, the guarantor will establish such financial assurance unless [owner or operator] has done so.

6. The guarantor agrees to notify the Executive Director, by certified mail, of a voluntary or involuntary proceeding under Title 11, U.S. Code, naming guarantor as debtor, within 10 days after its commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by the Executive Director of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure, post-closure care and corrective action, he shall establish alternate financial assurance, in the name of [owner or operator] unless [owner or operator] has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the applicable plan, the amendment or modification of the permit, the extension or reduction of the time of performance of closure, post-closure and corrective action, any other modification or alteration of an obligation of owner or operator pursuant to 31 Texas Administrative Code Chapter 330.

9. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] shall comply with the applicable financial assurance requirements of 31 Texas Administrative Code Chapter 330 for the above-listed facilities, except that guarantor may cancel this guarantee by sending notice by certified mail, to the Executive Director and to [owner or operator], such cancellation to become effective no earlier than 120 days after actual receipt of such notice by both TWC and [owner or operator] as evidenced by the return receipts.

10. Guarantor agrees that if [owner or operator] fails to provide alternate financial assurance and obtain written approval of such assurance from the Executive Director within 90 days after a notice of cancellation by the guarantor is received by both the Executive Director from guarantor, guarantor shall provide such alternate financial assurance in the name of the [owner or operator].

11. Guarantor expressly waives notice of acceptance of this guarantee by the Texas Water Commission or by [owner or operator]. Guarantor also expressly waives notice of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording specified in 31 Texas Administrative Code §330.286(g).

Effective date:____________________________.

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:____________________________

(i) A letter from the Chief Financial Officer, as specified in 330.285(g) of this title (relating to Financial Assurance Mechanisms), must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

Executive Director

Texas Water Commission

Dear Sir:

I am the chief financial officer of [name and address of local government]. This letter is in support of this local government's use of the financial test to demonstrate financial assurance, as specified in Subchapter K of 31 Texas Administrative Code, Chapter 330.285(g).

[Fill out the following three paragraphs regarding the municipal solid waste facilities and associated cost estimates. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its permit number, name, address and current closure, post-closure, or corrective action cost estimates. Identify each cost estimate as to whether it is for closure, post-closure care, or corrective action.]

1. This local government is the owner or operator of the following facilities for

which financial assurance for closure, post-closure, or corrective action is demonstrated through the financial test specified in Subchapter K of 31 Texas Administrative Code, Chapter 330.285(g). The current closure, post closure, or corrective action cost estimates covered by the test are shown for each facility:--------.

2. This local government guarantees, through the guarantee specified in 31 Texas Administrative Code Chapter 330.285(g), the closure, post-closure or corrective action care of the following facilities owned or operated by [insert owner's name or operator's name]. The current cost estimates for the closure, post-closure or corrective action care so guaranteed are shown for each facility:-------.

The fiscal year of this local government ends on [month, day, year]. The figures for the following items marked with an asterisk are derived from this local government's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in the Ratio Indicators of Financial Strength section if the criteria of paragraph (g)(1)(i) of 330.285 of this chapter are used. Fill in Bond Rating Indicator of Financial Strength section if the criteria of paragraph (g) (1)(ii) of 330.285 of this chapter are used.]

RATIO INDICATORS OF FINANCIAL STRENGTH

1. Sum of current closure, post-closure and corrective action cost estimates [total of all cost estimates shown in the paragraphs above] $........

*2. Sum of cash and marketable securities $........

*3. Total expenditures $........

*4. Annual debt service $........

*5. Long-term debt service $........

*6. Capital expenditures $........

7. Assured environmental costs to demonstrate financial responsibility in the following amounts under TWC regulations: MSWLF under 31 TAC Part 330 $..... ....

Hazardous waste treatment, storage and disposal facilities under 31 TAC Part 335 ....

Petroleum underground storage tanks under 31 TAC Part 334 ....

Underground Injection Control System facilities under 31 TAC Part 331 ....

PCB commercial storage facilities under 40 CFR Part 761 ....

Total assured environmental costs $........

*8. Total Annual Revenue $........

Circle either "yes" or "no" to the following questions.

9. Is line 2 divided by line 3 greater than or equal to 0.05? yes/no

10. Is line 4 divided by line 3 less than or equal to 0.20? yes/no

11. Is line 5 divided by line 6 less than or equal to 2.00? yes/no

12. Is line 7 divided by line 8 less than or equal to 0.43? yes/no

BOND RATING INDICATOR OF FINANCIAL STRENGTH

1. Sum of current closure, post-closure and corrective action cost estimates [total of all cost estimates shown in the paragraphs above] $........ .

2. Current bond rating of most recent issuance and name of rating service $. ....

3. Date of issuance bond $.........

4. Date of maturity of bond $.........

5. Assured environmental costs to demonstrate financial responsibility in the following amounts under commission regulations: MSWLF under 31 TAC Part 330 $.........

Hazardous waste treatment, storage and disposal facilities under 31 TAC Part 335 $.........

Petroleum underground storage tanks under 31 TAC Part 334 $.........

Underground Injection Control System facilities under 31 TAC Part 331 $..... ....

PCB commercial storage facilities under 40 CFR Part 761 ....

Total assured environmental costs $........

*6. Total Annual Revenue $........

Circle either "yes" or "no" to the following question.

7. Is line 5 divided by line 6 less than or equal to 0.43? yes/no

I hereby certify that the wording of this letter is identical to the wording specified in 31 Texas Administrative Code 330.286(h) as such regulations were constituted on the date shown immediately below. I further certify the following: (1) that the local government's financial statements are prepared in conformity with GAAP for governments, (2) that the local government has not operated at a deficit equal to five percent or more of total annual revenue in either of the past two fiscal years, (3) that the local government is not in default on any outstanding general obligations bonds and, (4) does not have outstanding general obligations rated less than investment grade.

[Signature]

[Name]

[Title]

[Date]

(j) A corporate guarantee as specified in §330.285(g) of this title (relating to Financial Assurance Mechanisms) shall be worded as follows except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

LOCAL GOVERNMENT GUARANTEE FOR CLOSURE, POST-CLOSURE CARE AND CORRECTIVE ACTION

Guarantee made this _____ day of _____________________, 19____, by [name of guaranteeing entity], herein referred to as guarantor, to the Texas Water Commission (TWC), obligee, on behalf of the following [owner or operator] of [business address].

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in 31 Texas Administrative Code §330.285(g).

2. [Owner or operator] owns or operates the following municipal solid waste facility(ies) covered by this guarantee: [List for each facility: TWC permit number, name, and address. Indicate for each whether guarantee is for closure, post-closure care, or for corrective action.]

3. "Closure plans", "Post-Closure Plans" and "Corrective Action Plans" as used below refers to the plans maintained as required by 31 Texas Administrative Code Chapter 330 for the closure, post-closure care and corrective action of facilities as identified above.

4. For value received from [owner or operator], guarantor guarantees to TWC that in the event that [owner or operator] fails to perform [insert "closure", "post-closure care" or "corrective action"] of the above facility(ies) in accordance with the applicable plans and other permit requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in 31 Texas Administrative Code §330.285(b) in the name of [owner or operator] in the amount of the current closure, post-closure or corrective action cost estimates.

5. Guarantor agrees that, if at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the Executive Director and to [owner or operator] that he intends to provide alternate financial assurance. Within 120 days after the end of such fiscal year, the guarantor will establish such financial assurance unless

[owner or operator] has done so.

6. The guarantor agrees to notify the Executive Director, by certified mail, of a voluntary or involuntary proceeding under Title 11, U.S. Code, naming guarantor as debtor, within 10 days after its commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by the Executive Director of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure, post-closure care or corrective action, he shall establish alternate financial assurance, in the name of [owner or operator] unless [owner or operator] has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the applicable plan, amendment or modification of the permit, the extension or reduction of the time of performance of closure, post-closure or corrective action, any other modification or alteration of an obligation of owner or operator pursuant to 31 Texas Administrative Code Chapter 330.

9. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] shall comply with the applicable financial assurance requirements of 31 Texas Administrative Code Chapter 330 for the above-listed facilities, except that guarantor may cancel this guarantee by sending notice by certified mail, to the Executive Director and to [owner or operator], such cancellation to become effective no earlier than 120 days after actual receipt of such notice by both TWC and [owner or operator] as evidenced by the return receipts.

10. Guarantor agrees that if [owner or operator] fails to provide alternate financial assurance and obtain written approval of such assurance from the Executive Director within 90 days after a notice of cancellation by the guarantor is received by both the Executive Director from guarantor, guarantor shall provide such alternate financial assurance in the name of the [owner or operator].

11. Guarantor expressly waives notice of acceptance of this guarantee by the Texas Water Commission or by [owner or operator]. Guarantor also expressly waives notice of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording specified in 31 Texas Administrative Code §330.286(g).

Effective date:________________________

—.

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or

notary:________________________

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 March 2, 1993.

TRD-9319715 Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: April 9, 1993

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

♦ ♦ ♦

Subchapter L. Location Restrictions

• 31 TAC §§330.300-330.305

The new sections are proposed under the Texas Health and Safety Code, Chapter 361, which gives the commission all powers necessary and convenient under that chapter to carry out its responsibilities concerning the regulation and management of municipal solid waste.

§330.300. Airport Safety.

(a) Owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions that are located within 10,000 feet of any airport runway end used by turbojet aircraft or within 5,000 feet of any airport runway end used by only piston-type aircraft shall demonstrate that the units are designed and operated so that the MSWLF unit does not pose a bird hazard to aircraft.

(b) Owners or operators proposing to site new MSWLF units and lateral expansions located within a five-mile radius of any airport runway end used by turbojet or piston-type aircraft shall notify the affected airport and the Federal Aviation Administration (FAA).

(c) The owner or operator shall submit the demonstration in subsection (a) of this section with a permit application, a permit amendment application or a permit transfer request. The demonstration will be considered a part of the operating record once approved.

(d) Sites disposing of putrescible waste shall not be located in areas where the attraction of birds can cause a significant bird hazard to low-flying aircraft. Guidelines regarding location of landfills near airports can be found in Federal Aviation Administration Order 5200.5(A), 1/31/90. All landfill sites within four miles of an airport shall be critically evaluated to determine if an incompatibility exists.

§330.301. Floodplains. Owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions located in 100-year floodplains shall demonstrate that the unit will not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human health and the environment. The owner or operator shall submit the demonstration with a permit application, a permit amendment application, or a permit transfer request. The demonstration shall become part of the operating record once approved.

§330.302. Wetlands. New MSWLF units and lateral expansions shall not be located in wetlands, unless the owner or operator makes each of the demonstrations identified in paragraphs (1)-(5) of this section to the executive director. The owner or operator shall submit the demonstrations with a permit application. The demonstration shall become part of the operating record once approved.

(1) Where applicable under the Clean Water Act, §404 or applicable State wetlands laws, the presumption that a practicable alternative to the proposed landfill is available that does not involve wetlands shall be clearly rebutted.

(2) The construction and operation of the MSWLF unit shall not:

(A) cause or contribute to violations of any applicable State water quality standard;

(B) violate any applicable toxic effluent standard or prohibition under of the Clean Water Act, §307;

(C) jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Endangered Species Act of 1973; and

(D) violate any requirement under the Marine Protection, Research, and Sanctuaries Act of 1972 for the protection of a marine sanctuary.

(3) The MSWLF unit shall not cause or contribute to significant degradation of wetlands. The owner/operator shall demonstrate the integrity of the MSWLF unit and its ability to protect ecological resources by addressing the following factors:

(A) erosion, stability, and

migration potential of native wetland soils, muds, and deposits used to support the MSWLF unit;

(B) erosion, stability, and migration potential of dredged and fill materials used to support the MSWLF unit;

(C) the volume and chemical nature of the waste managed in the MSWLF unit;

(D) impacts on fish, wildlife, and other aquatic resources and their habitat from release of the solid waste;

(E) the potential effects of catastrophic release of waste to the wetland and the resulting impacts on the environment; and

(F) any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected.

(4) To the extent required under the Clean Water Act, §404 or applicable State wetlands laws, steps have been taken to attempt to achieve no net loss of wetlands (as defined by acreage and function) by first avoiding impacts to wetlands to the maximum extent practicable as required by paragraph (1) of this section, then minimizing unavoidable impacts to the maximum extent practicable, and finally offsetting remaining unavoidable wetland impacts through all appropriate and practicable compensatory mitigation actions (e.g., restoration of existing degraded wetlands or creation of mad-made wetlands).

(5) Sufficient information shall be made available to the executive director to make a reasonable determination with respect to these demonstrations.

§330.303. Fault Areas.

(a) New MSWLF units and lateral expansions shall not be located within 200 feet of a fault that has had displacement in Holocene time unless the owner or operator demonstrates to the executive director that an alternative setback distance of less than 200 feet will prevent damage to the structural integrity of the MSWLF unit and will be protective of human health and the environment. The owner or operator shall submit the demonstration with a permit application, a permit amendment application, or a permit transfer request.

(b) Applications submitted for the operation of sites located within areas that may be subject to differential subsidence or active geological faulting shall include detailed fault studies. When an active fault is known to exist within one-half mile of the site, the site shall be investigated for unknown faults. Areas experiencing withdrawal of crude oil, natural gas, sulfur, etc., or significant amounts of groundwater shall be investigated in detail for the possibility of differential subsidence or faulting that could adversely affect the integrity of landfill liners. Such studies shall be conducted under the direct supervision of a professional engineer experienced in geotechnical engineering or a geologist qualified to evaluate such conditions. The studies shall establish the limits (both upthrown and downthrown) of the zones of influence of all active faulted areas within the site vicinity. Unless the applicant can provide substantial evidence that the zone of influence will not affect the site, no solid waste disposal shall be accomplished within a zone of influence of active geological faulting or differential subsidence because active faulting results in slippage along failure planes, thus creating preferred seepage paths for liquids. The studies shall include information or data on the items in paragraphs (1)-(12) of this subsection, as applicable:

(1) structural damage to constructed facilities (roadways, railways, and buildings);

(2) scarps in natural ground;

(3) presence of surface depressions (sag ponds and ponded water);

(4) lineations noted on aerial maps and topographic sheets;

(5) structural control of natural streams;

(6) vegetation changes;

(7) crude oil and natural gas accumulations;

(8) electrical spontaneous potential and resistivity logs (correlation of subsurface strata to check for stratigraphic offsets);

(9) earth electrical resistivity surveys (indications of anomalies that may represent fault planes);

(10) open trench excavations (visual examinations to detect changes in subsoil texturing and/or weathering indicating stratigraphic offsets);

(11) changes in elevations of established benchmarks; and

(12) references to published geological literature pertaining to area conditions.

§330.304. Seismic Impact Zones. For the purposes of this section, a seismic impact zone is defined as an area with a 10% or greater probability that the maximum horizontal acceleration in rock, expressed as a percentage of the earth's gravitational pull, will exceed 0.10g in 250 years. Maximum horizontal acceleration is defined as the maximum expected horizontal acceleration depicted on a seismic hazard map, with a 90% or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment. New MSWLF units and lateral expansions shall not be located in seismic impact zones, unless the owner or operator demonstrates to the executive director that all containment structures, including liners, leachate collection systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site. The owner or operator shall submit the demonstration with a permit application, a permit amendment application, or a permit transfer. The demonstration shall become part of the operating record once approved.

§330.305. Unstable Areas. For the purposes of this section, an unstable area is defined to be a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of a landfill's structural components responsible for preventing releases from the landfill; unstable areas can include poor foundation conditions, areas susceptible to mass movement, and karst terranes. Owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions located in an unstable area shall demonstrate that engineering measures have been incorporated into the MSWLF unit's design to ensure that the integrity of the structural components of the MSWLF unit will not be disrupted. The owner or operator shall submit the demonstration with a permit application, a permit amendment application, or a permit transfer. The demonstration shall become part of the operating record once approved. The owner or operator shall consider the following factors, at a minimum, when determining whether an area is unstable:

(1) on-site or local soil conditions that may result in significant differential settling;

(2) on-site or local geologic or geomorphologic features; and

(3) on-site or local human-made features or events (both surface and subsurface).

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 March 2, 1993.

TRD-9319716 Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: April 9, 1993

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

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Subchapter X. Forms and Documents

• 31 TAC §§330.900-330.909, 330.911-330.918

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

The repeals are proposed under the Texas Health and Safety Code, Chapter 361, which gives the commission all powers necessary and convenient under that chapter to carry out its responsibilities concerning the regulation and management of municipal solid waste.

§330.900. Instructions for Filing Part A (General Data) and Part B (Technical Data) of an Application for a Permit/Registration to Operate a Municipal Solid Waste Site.

§330.901. Appendix A-Application for a Permit/Registration to Operate a Municipal Solid Waste Site Part A (General Data).

§330.902. Appendix B-Application for a Permit/Registration to Operate a Municipal Solid Waste Site-Part B (Technical Data).

§330.903. Appendix C: Notice of Appointment.

§330.904. Appendix D: Affidavit to the Public.

§330.905. Appendix E: Form for Property Owner Affidavit.

§330.906. Appendix F: Form for Vacuum Truck Manifest.

§330.907. Appendix G: Notification.

§330.908. Appendix H: Registration Form for Transporters of Sludges and Similar Wastes.

§330.909. Appendix I: Annual Summary Report Form for Sludges and Similar Wastes.

§330.911. Notice of Intent to File a Permit Application.

§330.912. Special Permit Application for Stationary Compactors.

§330.913. Special Permit Application for Transporter Route.

§330.914. Special Permit Application for Municipal Route.

§330.915. Establishment Data Sheet.

§330.916. Transporter Trip Ticket.

§330.917. Hauler Trip Ticket Municipal Transporter Route.

§330.918. Hauler Trip Ticket Stationary Compactors.

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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Director, Legal Director
Texas Water Commission

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 85. Admission and Placement

Commitment and Reception

• 37 TAC §85.1

The Texas Youth Commission (TYC) proposes an amendment to §85.1, concerning legal requirements for admission. The amendment adds detention orders to the list of documents which must accompany youth committed to the Texas Youth Commission. These documents must be supplied by the committing court. Also, Commitment Summary, TYC form CCF-001, is deleted from this list.

John Franks, Director of Fiscal Affairs, 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. Franks also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a more efficient verification process upon commitment. 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 Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

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

§85.1. Legal Requirements for Admission. Policy.

(1) Each youth committed to the Texas Youth Commission (TYC) must be accompanied by legal and supporting documents supplied by the committing court. Upon admission, the following documents are required of the committing court:

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

(C) [either] Common Application, CCF-002 [(TYC form CCF-002) or Commitment Summary (TYC Form CCF-001)];

(D) detention order(s) (initial and subsequent) for offense(s) which resulted in commitment to TYC;

[(D) the judgment which followed adjudication;]

(E) petition which prompted the commitment hearing;

(F) the judgment which followed adjudication;

(G)[(F)] birth certificate for all youth;

(H)[(G)] social history;

(I)[(H)] education records;

(J)[(I)] medical and dental records;

(K)[(J)] any existing psychological and psychiatric reports; and

(L)[(K)] pretrial detention time creditable to the youth's sentence.

(2) The TYC intake staff review the commitment document to determine if, on its face, it meets all requirements of a valid court order before receiving the youth. TYC does not look beyond the document itself for determining its validity. Questions regarding verification of validity should be directed to the legal services department.

(3) No youth, under any circumstance, is admitted to TYC without a certified copy of the Order of Commitment, immunization records (except for undocumented aliens), and either the Common Application or the TYC Commitment Summary. All other documents may be re-

ceived subsequent to admission.

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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TRD-9319744 Ron Jackson
Executive Director
Texas Youth Commission

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For further information, please call: (512) 483-5244

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Placement Planning

• 37 TAC §§85.25, 85.27, 85.29, 85.41, 85.43

The Texas Youth Commission (TYC) proposes amendments to §585.25, concerning minimum length of stay requirements; §85.27, concerning program restriction levels; §85.29, concerning program completion and movement; §85.41, concerning referral/admission to Corsicana Residential Treatment Center; and 85.43, concerning interstate compact for TYC youth. The amendments will clarify the process by which youth may be assigned a minimum length of stay and the level of restriction of placement.

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 a more efficient system of placing youth appropriately in TYC programs. 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 Boulevard, P.O. Box 4260, Austin, Texas 78765.

The amendments are proposed under the 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.

§85.25. Minimum Length of Stay.

(a) Policy. The Texas Youth Commission (TYC) establishes minimum length of stay requirements 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 [in an administrative Level I hearing].

(b) (No change.)

§85.27. Program Restriction Levels.

(a) (No change.)

(b) Rules.

(1) (No change.)

(2) Levels.

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

(C) Medium restriction–Any self-contained program which provides routine unsupervised access to the community, or any facility not self-contained which provides services primarily for youth who are a medium level risk to self or others. For example:

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

(iv) any nonresidential program which provides treatment or training[, or supervising contact] at least **eight hours per day, five times per week.**

(D) Minimum restriction–[Any primary foster care program which provides care and supervision services in the community or] Any nonresidential program which provides treatment or training [or supervision] less than **eight hours per day, five times a week but with at least one contact per day or monitoring daily. For example:**

***(i)* intensive supervision;**

***(ii)* electronic monitoring.**

(E) Home–The home of the parent, other relative or **individual** acting in the role of parent, managing conservator, or guardian, or an independent living arrangement, **in which there is treatment or training less than eight hours per day, five times a week, and there is not daily staff contact or monitoring.** For example:

(i) home or **home substitute;**

(ii) independent living in any approved location. [;]

[(iii) foster care independent living.]

§85.29. Program Completion and Movement.

(a) Policy. The Texas Youth Commission (TYC) uses specific objective criteria to determine when a youth has completed a program and is eligible to be released home or to another program. Progress toward successful completion of criteria is evaluated at specific regular intervals. When criteria are substantially completed, the youth attains parole status and is moved to his or her home. When certain criteria are met but completion of required criteria is not possible or is not desirable in the current placement program, the youth is moved to a follow-up placement where completion is possible. TYC does not accept the presence of a detainer as an automatic bar to earned release. The agency releases a youth to authorities pursuant to a warrant. Additional procedures and restrictions are applied prior to the release on parole from TYC facilities for all sentenced offender youth. See General Operating Policy (GOP).47.15, §85.35 of this title (relating to Sentenced Offender Disposition). Youth may be moved to a placement of equal or more restriction as a disciplinary consequence. Each of these and other types of placement changes are subject to policies in this chapter and in the Disciplinary Practices chapter, GOP.63.

(b) Rules.

(1)-(9) (No change.)

(10) Release Exceptions to Control Population. When necessary to control population and/or manage available funds concerning youth in residential placement, the deputy executive director may approve one or more of following options. Youth, except Type A violent offenders, may be:

(A) (No change.)

(B) released early without meeting completion criteria when population is at or above established capacity. Youth who have completed the minimum length of stay and are low risk are released first. In general, youth who are closest to completing criteria may be released next; however, Type B violent, chronic serious, [and] controlled substance dealer, **firearms and general offenders with a minimum length of stay** must meet the following criteria:

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

(11) (No change.)

§85.41. Referral/Admission to Corsicana Residential Treatment Center.

(a) (No change.)

(b) Rules.

(1) (No change.)

(2) Referral Process.

(A) The referring facility prepares and sends to the centralized placement unit:

(i) **Treatment Needs Assessment/Reassessment, CCF-005, for initial placements and a request for placement (E-form) for all subsequent placements;** [referral summary;]

(ii) Common Application, CCF-002 and appropriate attachments; and

(iii) request for placement waiver for any youth under 13 years old for **subsequent placements and a placement waiver for new commitments.**

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

(3) Waiting List.

(A) (No change.)

(B) A new commitment at the reception center who has been placed on the Corsicana waiting list may remain in reception center for up to a total of six weeks **(from the date of arrival at SRC)** prior to placement in a TYC institution or contract care.

(C)-(E) (No change.)

(4) Arrangements.

(A) **The Centralized Placement Unit** [referring facility] arranges transportation **for all new commitments; the Centralized Placement Unit notifies the referring facility of the approval; and the referring facility arranges transportation.**

(B) (No change.)

(5) Conditional Placements. A youth accepted as a conditional placement is assessed by the Corsicana staff for a period of 30 days immediately following admission. Youth not able to benefit from the program or who cannot function in the residential treatment center open setting are returned to the sending facility. **If the youth is an initial placement, a contingency alternative placement will be agreed upon in advance to allow for direct transfer from Corsicana to the placement in the event the youth is deemed inappropriate to remain.**

§85.43. Interstate Compact for TYC Youth.

(a) (No change.)

(b) Rules.

(1) Article VII–Courtesy Supervision–Other States Supervising TYC Youth.

(A) All requests for courtesy supervision must be submitted to the ICJ office in triplicate. A referral consists of:

(i)-(xi) (No change.)

***(xii)* Youth's Consent for Disclosure to Persons Other Than Parents or Juvenile Court Officials, LS-24.**

(B)-(J) (No change.)

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

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

Issued in Austin, Texas, on March 1, 1993.

TRD-9319743 Ron Jackson
Executive Director
Texas Youth Commission

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For further information, please call: (512) 483-5244

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Chapter 87. Treatment Program Planning

• 37 TAC §§87.15, 87.17, 87.19

The Texas Youth Commission (TYC) proposes amendments to §87.15, concerning the involvement of families of youth committed to TYC; §87.17, concerning commitment to mental health facilities; and §87.19, concerning commitment to the Vernon Drug Treatment Center. The amendments are made to add restrictions to release of information practices in compliance with Federal Rule 42 Code of Federal Regulations, Part 2.

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 allow TYC to comply with Federal Rule Code of Federal Regulations, Part 2. 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 Boulevard, P.O. Box 4260, Austin, Texas 78765.

The amendments are proposed under the Human Resources Code, §61.076, which provides the Texas Youth Commission with the authority to provide any psychiatric treatment that is necessary as a means of correcting the socially harmful tendencies of a child committed to the agency.

§87.15. Family Involvement.

(a) Policy. The Texas Youth Commission (TYC) provides for and encourages the involvement of youth's families.

(b) Rules.

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

(5) Families are provided copies of the Individual Case Plan following quarterly staffings. **Youth's consent is required for disclosure of alcohol and drug abuse information. See Youth's Consent For Disclosures Upon Initial Admission, LS-23.**

(6)-(11) (No change.)

§87.17. Commitment to Mental Health Facilities.

(a) Policy. The Texas Youth Commission (TYC) shall seek admission to the Texas Department of Mental Health and Mental Retardation (TDMHMR) for TYC youth who are in need of mental health treatment.

(b) Rules.

(1) (No change.)

(2) General commitment procedures.

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

(I) The **primary service worker** [casemanager or (parole officer)] assigned to the **youth prior to commitment** [region in which the TDMHMR facility is located] continues to update the youth's Individual Case Plan quarterly, prior to release, and recommends a placement to the centralized placement unit **if the youth does not return to the prior placement.**

§87.19. Commitment to Vernon Drug Treatment Center.

(a) Policy. The Texas Youth Commission (TYC) may seek admission to the Vernon Drug Treatment Center (VDTC) operated by the Texas Department of Mental Health and Mental Retardation (TDMHMR) for TYC youth who are in need of substance abuse treatment.

(b) Rules.

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

(3) In order to make a referral to VDTC, centralized placement:

(A) completes the commitment process by:

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

***(iii)* obtaining Youth's Consent for Disclosure to Persons Other Than Parents or Court, LS-24, and for Disclosure to TYC by the Placement, LS-25;**

(B) (No change.)

(4)-(7) (No change.)

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

Issued in Austin, Texas, on March 1, 1993.

TRD-9319745 Ron Jackson
Executive Director
Texas Youth Commission

Proposed date of adoption: April 9, 1993

For further information, please call: (512)

483-5244

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Education Programs

• 37 TAC §87.37

The Texas Youth Commission (TYC) proposes an amendment to §87.37, concerning financial assistance for youth in TYC custody to attend college or technical institute. The amendment will extend financial assistance to eligible orphans. It also involves regional directors in the procedures.

John Franks, Director of Fiscal Affairs, 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. Franks also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a more efficient use of financial assistance for college and technical institutes. 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 Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

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

§87.37. College/Technical Institute Financial Assistance.

(a) Policy. The Texas Youth Commission (TYC) financially assists youth in TYC custody who are qualified and wish to attend public or private institutions of higher education, or technical institutes in Texas. Qualified youth financially unable to attend are afforded an opportunity to apply for TYC college or technical institute financial assistance.

(b) Rules.

(1) Restrictions.

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

(F) The regional director [College Assistance Review Committee] evaluates and approves [for approval all] applications for his/her respective region.

(G) The regional director submits TYC Student College Financial Assistance Report to the College Assistance Review Committee on a FY quarterly basis.

(H)[(G)] Members of the College Assistance Review Committee and the chairperson are appointed by the executive director or designee and includes one representative from each of the following areas:

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

(I)[(H)] Any exceptions to the stated restrictions must be approved by the College Assistance Review Committee.

(2) Acceptance Criteria.

(A) (No change.)

(B) A copy of the ICP is attached to the application prior to submission.

(C)[(B)] Applications must be received by the regional director [College Assistance Review Committee] no later than 45 days prior to the college or technical institute enrollment date. **All applications must be retained by the regional director for periodic review by College Assistance Review Committee members during on-site visits.**

(D)[(C)] Applications will remain active for six months. If a youth has not enrolled in college or technical institute during this time a new application is required to request financial assistance.

(3) Orphan Eligibility.

(A) Youth who are orphan eligible and meet the acceptance criteria noted in paragraph (2) of this subsection are eligible to receive financial assistance from the Wende or Parrie Haynes Trust.

(B) Youth are considered orphan eligible when they meet the following criteria:

***(i)* parental rights are terminated;**

***(ii)* one or both parents are deceased;**

***(iii)* there is no knowledge or record of parents whereabouts.**

(C) Applications for financial assistance for orphan eligible youth are to be submitted directly to the College Assistance Committee.

(4)[(3)] Acceptance Process.

(A) The PSW is responsible for counseling and assisting the youth to complete and submit the Application for College/Technical Institute Financial Assistance form to the **regional director.**

(B) The **regional director** [College Assistance Review Committee] chairperson is responsible for informing the PSW of the [committee's] decision within 10 days of receiving the Application for College/Technical Institute Financial Assistance.

(C) The PSW is responsible for informing the youth of the decisions made by the **regional director** [College Assistance Review Committee].

(D) The PSW is responsible for submitting grade slips to the **regional director** [Review Committee] for approval of continued financial assistance.

(5)[(4)] Supervision.

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

(6)[(5)] Discharge Exception for Services.

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

(C) The youth must continue to be approved for financial assistance by the **regional director** [College Assistance Review Committee].

(D) Agreement to this discharge exception may be canceled at any time by the **regional director** [youth, the primary service worker or the College Assistance Review Committee] should the youth become ineligible for college/technical institute admission.

(E) (No change.)

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

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Executive Director
Texas Youth Commission

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For further information, please call: (512) 483-5244

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Other Programs

• 37 TAC §87.55

The Texas Youth Commission (TYC) proposes an amendment to §87.55, concerning youth orientation. The amendment states that at orientation, youth will be provided information on the confidentiality of alcohol and drug abuse records in compliance with Federal Rule 42 Code of Federal Regulations Part 2.

John Franks, Director of Fiscal Affairs, 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. Franks 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 in compliance with Federal Rule 42. 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 Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.073, which provides the Texas Youth Commission with the authority to maintain written records.

§87.55. Youth Orientation.

(a) Policy. The Texas Youth Commission (TYC) provides program orientation to all youth. Youth are also provided a Youth Handbook.

(b) Rules.

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

(3) Orientation includes, but is not limited to, the following topics on which both oral and written information is provided:

(i)-(xi) (No change.)

(xii) TYC liability for youth personal items; [and]

(xiii) emergency evacuation procedure information; **and** [.]

***(xiv)* notice of confidentiality of alcohol and drug abuse records, Notice to Youth, LS-21.**

(4) (No change.)

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

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Executive Director
Texas Youth Commission

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For further information, please call: (512) 483-5244

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• 37 TAC §87.57

The Texas Youth Commission (TYC) proposes an amendment to §87.57, concerning youth employment and work. The amendment states that youth employed in the community may not be paid less than the Federal minimum wage. Other changes are in the interest of clarity.

John Franks, Director of Fiscal Affairs, 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. Franks also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a more efficient youth employment program. 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 Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to place youth in a treatment program deemed appropriate.

§87.57. Youth Employment and Work.

(a) Policy. The Texas Youth Commission (TYC) provides opportunities for compensated and uncompensated work in order to allow [the] youth in residential facilities to experience the responsibilities and rewards of constructive work [as part of the discipline program, or as a part of rehabilitation and training or as a part of the regular personal hygiene or environmental maintenance programs]. Youth are not permitted to perform any work prohibited by state **or** [and] federal regulations **or** [and] statutes pertaining to child labor.

(b) Rules.

(1) (No change.)

(2) Compensated Work.

(A) (No change.)

[(B) Work assignments are assigned as a part of an overall plan.]

(B)[(C)] TYC staff ensures fair treatment of youth who work in the community.

(i) Youth employed in the community in positions normally occupied by private citizens are compensated at the prevailing rate, **which must be not less than the federal minimum wage.**

(ii) (No change.)

(C)[(D)] Some youth are paid for work performed for the facility.

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

(3) Uncompensated Work. TYC facilities may require a youth to work without being paid if [the work]:

(A) **the work consists of** [is either] academic school **assignments;** [work; or]

(B) **the work** [is not academic school work but is work which] does not conflict with academic assignments; and

(i) is reasonably related to the youth's personal **hygiene** [hygienic] needs; [or]

***(ii)* is housekeeping chores which are equitably shared by other youth in the program;** [or]

(iii)[(ii)] is part of an approved **vocational** [vocationally oriented] or training program; or

(iv)[(iii)] is **assigned pursuant to a** [in furtherance of the maintenance of the facility and/or as] restitution **agreement** in accordance with General Operating Policy (GOP).63.13, §91.13, relating to On-Site Disciplinary Consequences; **or** [and]

(C) **the work is necessary for the youth to complete** [is in fulfillment of] a treatment objective and **both the objective and the need for the work program to fulfill it are clearly** [is thoroughly] documented in the youth's Individual Case Plan.

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 March 1, 1993.

TRD-9319748 Ron Jackson
Executive Director
Texas Youth Commission

Earliest possible date of adoption: April 9, 1993

For further information, please call: (512) 483-5244

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Chapter 87. Treatment

Volunteer Services

• 37 TAC §87.141

The Texas Youth Commission (TYC) proposes an amendment to §87.141, concerning volunteer services. The amendment specifies that volunteers agree in writing to abide by federal, state, and agency laws, policies and rules of confidentiality.

John Franks, Director of Fiscal Affairs, 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. Franks 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 more thorough confidentiality procedures. 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 Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin,

Texas 78765.

The amendment is proposed under the Human Resources Code, §61.073, which provides the Texas Youth Commission with the authority to maintain written records.

§87.141. Volunteer Services.

(a) Policy. The Texas Youth Commission (TYC) establishes a volunteer program to expand youth opportunities for educational and recreational experiences and to provide youth with increased social interactions. Volunteer programs are administered by the chief of volunteer services.

(b) Rules.

(1) (No change.)

(2) Volunteer Program.

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

(E) Volunteers agree in writing to abide by **federal, state,** [facility] and agency laws, policies and rules of confidentiality.

(F)-(G) (No change.)

(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 March 1, 1993.

TRD-9319738 Ron Jackson
Executive Director
Texas Youth Commission

Earliest possible date of adoption: April 9, 1993

For further information, please call: (512) 483-5244

Chapter 89. Youth Rights and Remedies

• 37 TAC §89.1

The Texas Youth Commission (TYC) proposes an amendment to §89.1, concerning basis youth rights. The amendment adds a reference to General Operating Policy (GOP).75.08, §93.58 of this title (relating to Confidentiality Regarding Youth Alcohol and Drug Abuse).

John Franks, Director of Fiscal Affairs, 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. Franks 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 more complete cross references. 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 Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

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

§89.1. Basic Youth Rights.

(a) (No change.)

(b) Rights.

(1)-(12) (No change.)

(13) Confidentiality of Records.

(A) (No change.)

(B) Discussion. Confidentiality of records is an important concept in juvenile law. Any information which could, directly or indirectly, identify an individual as a TYC youth, should be disclosed only to authorized persons or agencies. See General Operating Policy (GOP).75.07, §93.57 of **this title** (relating to Access to Youth Records) **and GOP.75.08, §93.58 of this title (relating to Confidentiality Regarding Youth Alcohol and Drug Abuse).**

(14) (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 March 1, 1993.

TRD-9319739 Ron Jackson
Executive Director
Texas Youth Commission

Proposed date of adoption: April 9, 1993

For further information, please call: (512) 483-5244

Chapter 91. Discipline and Control

Disciplinary Practices

• 37 TAC §91.9, §91.11

The Texas Youth Commission (TYC) proposes amendments to §91.9 concerning parole revocation; and §91.11 concerning criteria for assigning youth to a program of greater restriction than the one he or she was assigned. The amendment to §91.9 eliminates the requirement in one of the criteria for parole revocation to assess high risk independently of the felony offense which meets the criterion. The amendment to §91.11 will allow the commission to move a youth to a program of more restriction when he or she has previously been classified for a high risk offense.

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 increased protection of the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

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

The amendments are proposed under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to permit the liberty or confinement of a youth in TYC custody.

§91.9. Parole Revocation Consequence.

(a) (No change.)

(b) Rules.

(1) (No change.)

(2) Criteria and Classification.

(A) Parole is revoked when it is shown in a Level I hearing that a youth has:

(i) committed a high risk offense;

(ii) committed a felony [offense and is a high risk according to a current risk assessment];

(iii)-(iv) (No change.)

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

(3) (No change.)

§91.11. Disciplinary Transfer/Assigned Minimum Length of Stay Consequence.

(a) (No change.)

(b) Rules.

(1) (No change.)

(2) Criteria. A youth may be transferred or assigned a minimum length of stay if it is found at a Level II hearing that the youth has committed:

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

(C) Any major rule violation and has previously been classified for a high risk offense;

(D)[(C)] any major rule violation causing substantial bodily injury;

(E)[(D)] the sum of two or more major rule violations within 30 days at

the most recent permanent placement and any subsequent temporary placement; or

(F)[(E)] the sum of three or more major rule violations at the most recent permanent placement and any subsequent temporary placement.

(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 March 1, 1993.

TRD-9319742 Ron Jackson
Executive Director
Texas Youth Commission

Proposed date of adoption: April 9, 1993

For further information, please call: (512) 483-5244

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Due Process Hearings Procedures

• 37 TAC §91.31

The Texas Youth Commission (TYC) proposes amendment to §91.31, concerning Level I hearing procedure. The amendment states that the Level I hearing procedure is appropriate due process in the case of a transfer to a more restrictive placement with an assigned minimum length of stay.

John Franks, Director of Fiscal Affairs, 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. Franks also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a more complete use of the Level I hearing procedure. 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 Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.081, which provides Texas Youth Commission with the authority to resume care and custody of any youth released under supervision.

§91.31. Level I Hearing Procedure.

(a) Policy. The Level I hearing procedure is appropriate due process in the following instances:

(1) parole revocation;

(2) reclassification;

(3) simultaneous transfer to a more restrictive placement and assignment of a minimum length of stay. See GOP.65.02, §91.32 of this title (relating to Level I Hearing by Telephone) for circumstances in which the hearing may be conducted by telephone.

(b) Rules.

(1)-(41) (No change.)

(42) Immediately following the close of the hearing, the hearings examiner shall give youth a copy of the Hearing Examiner's Report of a Level I Hearing, CCF-160 [(CCF-160)].

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 March 1, 1993.

TRD-9319746 Ron Jackson
Executive Director
Texas Youth Commission

Earliest possible date of adoption: April 9, 1993

For further information, please call: (512) 483-5244

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Chapter 93. General Provisions

Records, Reports, Forms

• 37 TAC §93.57

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

The Texas Youth Commission (TYC) proposes the repeal of §93.57, concerning access to youth records. The section is being repealed in order to adopt a new policy.

John Franks, Director of Fiscal Affairs, 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. Franks 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 more efficient procedures for limiting access to youth 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 Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The repeal is proposed under the Human Resources Code, §61.073, which provides the Texas Youth Commission with the authority to keep written records on each child.

§93.57. Access to Youth Records.

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 March 1, 1993.

TRD-9319740 Ron Jackson
Executive Director
Texas Youth Commission

Earliest possible date of adoption: April 9, 1993

For further information, please call: (512) 483-5244

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• 37 TAC §§93.57, 93.58, 93.59

The Texas Youth Commission (TYC) proposes new §93.57, concerning access to youth records; and new §93.58, concerning confidentiality regarding youth alcohol and drug abuse; and amendments to §93.59, concerning youth masterfile records. New §93.57 provides procedures for limiting access to youth records. New §93.58 provides procedures for ensuring the privacy of youth who are identified as alcohol or drug abusers. The amendments to §93. 59 add a reference to another section, and state that masterfiles may be located in residential contract placements if TYC staff is permanently located at the facility. Also, an amendment sets procedures for inventory of records.

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 more efficient procedures for limiting access to youth records, confidentiality regarding youth alcohol and drug abuse, and for inventory of youth 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 Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The new sections and amendments are proposed under the Human Resources Code, §61.073, which provides Texas Youth Commission with the authority to keep written records on each child.

§93.57. Access to Youth Records.

(a) Policy. Texas Youth Commission (TYC) complies with state and federal laws and regulations which limit access to all youth records. Youth files are marked "confidential" and kept in locked facilities.

(b) Rules.

(1) General Restrictions.

(A) Access to youth records which contain certain information identifying the youth as chemically dependent or as a substance abuser is limited in accordance with General Operating Policy (GOP).75.08, §93.58 of this title, relating to

Confidentiality Regarding Youth Alcohol and Drug Abuse and Federal Rule 42 Code of Federal Regulations Part 2. Confidentiality requirements of such information are more restrictive than requirements set forth in other regulations. Without appropriate release forms, information regarding alcohol and drug abuse released under any section of this policy/section shall be deleted prior to release. See GOP.75.08 for additional information.

(B) The management information systems department is responsible for implementing security measures for archiving automated records. The records custodian is responsible for implementing security measures for archiving manual records.

(C) The program administrator is responsible for maintaining a record in each file of people other than TYC staff who see information from a youth file, items seen or copied by each, and a copy of the authorization for access.

(D) Requests for information on discharged youth should be referred to the records custodian in central office.

(E) The records custodian is responsible for responding to requests in accordance with current laws and TYC policies regarding confidentiality of such records.

(F) If a record has been sealed by court order the records custodian states that TYC has no record of the youth.

(2) Subpoena Received.

(A) On receipt of subpoena for a youth's file, the records custodian should be contacted.

(B) If the file has not been purged at the time of receipt of the subpoena, it shall not be purged until the case has been settled.

(C) If a consent form signed by the youth to release information regarding alcohol and drug use is not received, the file must be edited so that such confidential information is not released. Some information may be flagged with a stamped statement identifying it as confidential.

(D) Original information is never sent to the courts for copying.

(E) The staff served the subpoena shall prepare the copies requested, then certify that the records are true and correct copies, in the form of a notarized certificate or affidavit.

(3) Prosecuting Attorney. A prosecuting attorney may obtain a copy of a youth's adjudication for a felony-grade offense pursuant to the Human Resources Code, §61.095. Requests under this paragraph are directed to the custodian of records.

(4) General Access.

(A) Each program administrator is responsible for ensuring that files or records on individual youth are open to inspection only by those given access under Texas Family Code, Title 3 and Federal Rule 42 Code of Federal Regulations Part 2 as interpreted by TYC.

(i) Files are open to the professional staff or consultants of the agency or the institution who are considered, for purposes of this policy, TYC staff.

(I) This includes, on a need to know basis, residential contract programs and programs providing nonresidential and special services. Discretion to make available the information needed by non-TYC professional staff is granted to the employee securing the services.

(II) Electronically encoded information about TYC population is appropriately viewed only by authorized TYC staff. Approval of supervisor and department head constitute authorization. The management information systems department is responsible for implementing security measures, and for the archiving of records. Access to sealed records is available for the purposes of research, and only after personal identification information (name, social security number, and address) has been removed.

(ii) Files are open to the judge, probation officers, and professional staff or consultants of the juvenile court. This means that only the juvenile court that committed the youth to TYC and its probation officers, professional staff or consultants have access to a youth's records. Once a juvenile court certifies a youth for trial, a subpoena is required from the criminal court for access to the youth's records.

(iii) Files are open to an attorney for the youth. The youth's attorney may view the original file under supervision of a TYC employee and may copy the information at the attorney's expense but may not take possession of any original material on file.

(iv) Files are open, with leave of the juvenile court, to any other person, agency, or institution having a legitimate interest in the work of the agency or institution. TYC will provide the name of the committing court judge to those not granted access by statute. Authorization must be in the form of a signed letter specifying the information to be released; phone calls do not constitute authorization.

(v) Files are open to the Texas Department of Corrections (TDC) to the extent provided in the Family Code, §51.14(b). All requests from TDC are forwarded to TYC's records custodian.

(B) Requests for records under subparagraph (A)(ii), (iii), or (v) of this subsection shall be required to be in writing with the request sufficiently identifying the requester as a party permitted access thereunder.

(5) Educational Information.

(A) With the exception of school transcripts, GED scores and medical records under conditions specified in paragraphs (4) and (5) of this subsection, a youth has no right of access to any confidential files, even on becoming an adult. Likewise, a youth has no authority to grant access to another party.

(B) Transcripts and GED scores are considered partially confidential and may be released as follows:

(i) to the youth or the youth's parents or guardian upon their request.

(ii) to others under the following circumstances:

(I) without consent of the youth, the youth's parents or guardian for achieving TYC determined program goals for the youth, e.g., TYC's enrolling the youth in a local school;

(II) with written consent of the youth, if age 18 or older, or the youth's parents or guardian if the youth is under age 18 for any purpose.

(6) Medical Records. Medical records are considered confidential (Texas Civil Statutes, Article 4495b, §5.08) and may only be released upon receipt of a written consent to release of medical records form which specifies the following:

(A) the medical records to be covered by the release;

(B) the reasons or purposes of the release;

(C) the person to whom the information is to be released; and

(D) that the release is authorized by the youth or the youth's parent or guardian, if the youth is under 18 years of age.

§93.58. Confidentiality Regarding Youth Alcohol and Drug Abuse.

(a) Policy. The Texas Youth Commission protects the privacy of youth in compliance with Federal Rule 42 Code of Federal Regulations Part 2. Restrictions on disclosure apply to any information, whether or not recorded, which:

(1) would identify a youth as an alcohol or drug abuser (directly or through verification); and

(2) is drug abuse or alcohol abuse information obtained for the purpose of treating alcohol or drug abuse, making a diagnosis for that treatment, or making a referral for that treatment.

(b) Rules.

(1) Restrictions.

(A) None of the information subject to restrictions on disclosure may be used to initiate or substantiate any criminal charges against a youth or to conduct any criminal investigation of a youth except as authorized by court order.

(B) Restrictions on disclosure apply whether or not it is believed that the person requesting the information already has the information, has other means of obtaining it, is a law enforcement officer or other official, has obtained a subpoena, or asserts any other justification not permitted by these regulations.

(C) The presence of a youth in a facility or component of a facility which is publicly identified as a place where only alcohol or drug abuse services are provided may be acknowledged only with the youth's consent or with court authorization.

(D) Records must be maintained in a secure room, locked file cabinet, safe or other similar container when not in use. Written procedures will regulate access and use.

(E) An inquiring party may not be told that these regulations prevent the disclosure of the records of an identified youth (but the party may be told that these regulations restrict the disclosure of alcohol and drug abuse patient records).

(2) Notice to Youth. At the time of admission, youth diagnosed as alcohol or drug abusers must be informed that Federal laws protect the confidentiality of their alcohol and drug abuse records and be given a written copy of the summary of the Federal law and regulations, LS-21 Notice to Youth.

(3) Exceptions and Authorized Disclosures without Youth's Consent.

(A) The restrictions on disclosure do not apply to communications between or among personnel within TYC having a need for the information in connection with their duties that arise out of the provision of diagnosis, treatment, or referral for treatment of alcohol or drug abuse. The restrictions on disclosure do not apply to disclosures to those in direct administrative control who need the information to facilitate the provision of alcohol- or drug-related services.

(B) The restrictions on disclosure do not apply to communications made in order to receive necessary professional services (legal, medical, accounting, data processing, lab analysis, and the like) or services to prevent or treat child abuse or neglect including training on nutrition and child care and individual and group therapy. Such service providers must agree in writing on LS-26, TYC Employees, that they are bound by these Federal regulations and, if necessary, will resist in judicial proceedings any efforts to obtain access to information relating to a youth.

(C) The restrictions on disclosure and use do not apply to reports to law enforcement officers of crimes on the premises or against staff or threats to commit such crimes.

(D) The restrictions on disclosure and use do not apply to suspected child abuse and neglect reports but do apply to civil or criminal proceedings which may arise out of such reports.

(E) If the program director approves and signs LS-28, Scientific Research Activity, records may be disclosed to qualified researchers who agree to maintain the security of the information and to disclose identifying information only to the participating program and not in a written research report.

(F) Records may be disclosed to persons performing audit and evaluation activities who agree in writing on LS-29, Outside Auditors and Evaluators, to comply with redisclosure and use limitations. If such persons copy records containing identifying information they must agree in writing to maintain their security, destroy them after use, and comply with limitations on disclosure and use.

(G) Records may be disclosed without youth consent to medical personnel for the purpose of treating a condition which poses an immediate threat to the health of any individual and which requires immediate medical intervention. A notation in the records must be made that the disclosure occurred, to whom, when, and for what purpose on LS-27, Disclosure in Medical Emergency.

(H) If a court order to disclose confidential information is received, TYC staff shall contact the central office legal department. Records and confidential communications made by a youth in the course of diagnosis, treatment, or referral for treatment may be disclosed by order of a court of competent jurisdiction only if:

(i) it is necessary to protect against an existing threat to life or of serious bodily injury, including circumstances which constitute suspected child abuse and neglect and verbal threats against third parties;

(ii) it is necessary in connection with investigation or prosecution of an extremely serious crime, such as one which directly threatens loss of life or serious bodily injury (homicide, rape, kidnapping, armed robbery, assault with a deadly weapon, or child abuse or neglect);

(iii) it is in connection with litigation or an administrative proceeding in which the youth offers testimony or other evidence pertaining to the content of the confidential communications; or

(iv) it is in connection with a criminal or administrative investigation or prosecution of the program or persons holding the records.

(4) Disclosures with Youth's Consent.

(A) With a youth's written consent, on LS-24, Youth's Consent for Disclosure to Persons Other Than Parents or Juvenile Court Officials, (specifically identifying the inquiring party, the information to be disclosed and the purpose), and the date, event or condition upon which the consent expires, records may be disclosed to any individual or organization (with some limitations regarding central registries and criminal justice referrals).

(i) Such disclosures must be accompanied by a statement provided by TYC staff, LS-22, Notice Upon Disclosure of Federally Protected Information to Persons Outside of Texas Youth Commission, that Federal rules prevent further disclosures unless expressly permitted by the youth's consent.

(ii) The youth may revoke this consent at any time except to the extent that action has been taken in reliance on it.

(B) Since Texas does not require parental consent for a minor to obtain alcohol or drug treatment services, the youth's consent on LS-23, Youth's Consent for Disclosure Upon Initial Assessment, is required for disclosure of alcohol and drug

treatment information to the youth's parents or guardian.

(i) The youth's consent is not necessary if the program director decides that the youth lacks the capacity because of extreme youth or mental or physical condition to make a rational decision on consent and the youth's situation poses a substantial threat to the life or physical well being of the youth or another which may be reduced by communicating relevant facts to the parent or guardian.

(ii) The youth may revoke this consent at any time except to the extent that action has been taken in reliance on it.

(iii) This consent expires automatically upon the youth's discharge from TYC.

(C) With a youth's written consent on LS-23, records may be disclosed to the judge, probation officers, and professional staff or consultants of the juvenile court which sentenced or committed the youth to TYC.

(i) A sentenced offender cannot revoke this consent until after the juvenile court makes a final determination in his/her case at the release hearing.

(ii) All other committed youth may revoke this consent at any time except to the extent that action has been taken in reliance on it.

(5) Penalty for Violation. Not more than $500 for first offense; not more than $5,000 for subsequent offenses.

§93.59. Youth Masterfile Records.

(a) Policy. Texas Youth Commission (TYC) staff maintain a masterfile for each youth containing accurate and complete records of commitment documents, assessment reports, and significant decisions and events regarding the youth. Files are stored and transported in a manner that ensures security and confidentiality. Youth masterfiles shall remain in the custody and control of authorized personnel at all times and follow the youth as specified in the rules of this section. Authorized personnel are TYC staff or probation staff under contract with TYC to provide parole services. The masterfile is the official set of records maintained for each youth. It physically consists of two separate file folders called the casework subfile, and medical subfile. All staff as specified on Child Care Forms (CCF) or form instructions are responsible for completing, dating, signing and filing all required documentation. See General Operating Policy (GOP).75.07, §93.57 of this title (relating to Access to Youth Records). **See GOP.75.09, §93.58 of this title (relating to Confidentiality Regarding Youth Alcohol and Drug Abuse).** See GOP.75.13, §93.63 of this title (relating to Youth Record Disposition).

(b) Rules.

(1) Location.

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

(C) Masterfiles may not be located in residential contract placements **unless TYC staff is permanently located at the facility.**

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

(4) Inventory of Records.

(A) The administrator/supervisory staff at each TYC location ensures that a semi-annual inventory of all masterfile records, and a summary report of findings is transmitted to director of community services, director of institution, and custodian of records within 15 days of the inventory.

(B) The inventory is conducted in conjunction with the semi-annual inventory conducted on numbered items and equipment.

(C) The administrator/supervisor ensures every record deficiency is corrected within 10 working days of the inventory report.

(D) A file is maintained for all inventory reports and corrective actions.

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 March 1, 1993.

TRD-9319741 Ron Jackson
Executive Director
Texas Youth Commission

Earliest possible date of adoption: April 9, 1993

For further information, please call: (512) 483-5244

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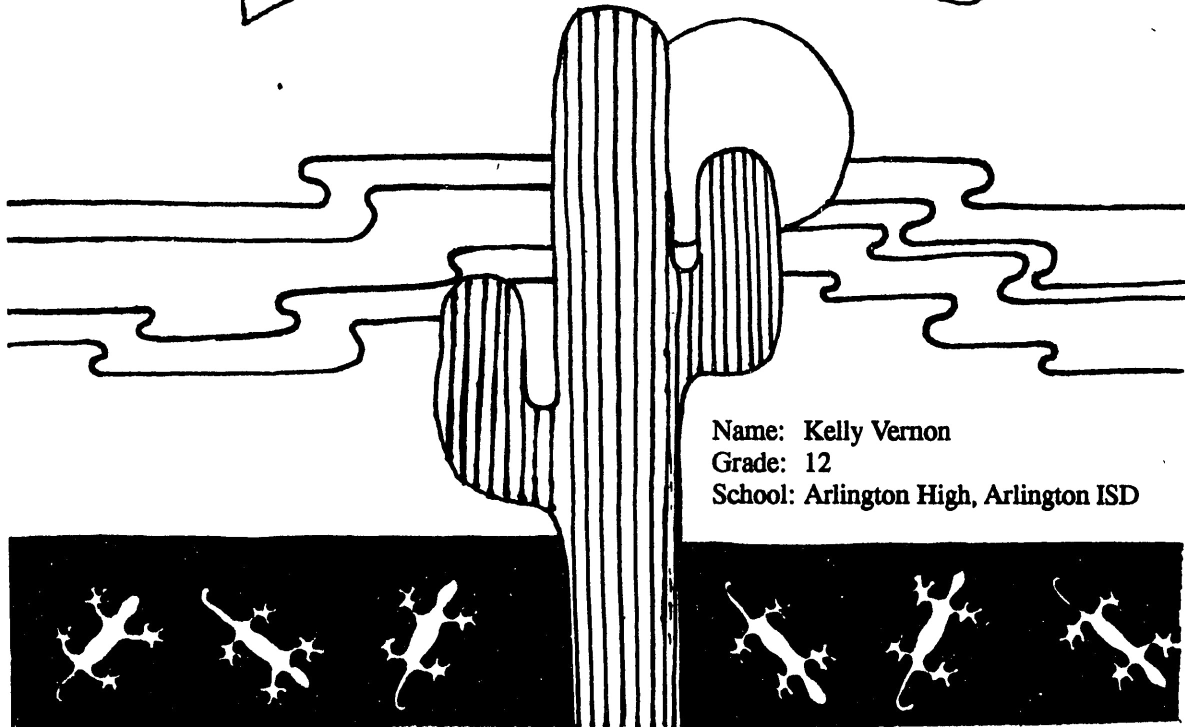
TEXAS



Adopted Sections

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

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

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 5. Transportation Division

Subchapter B. Operating Certificates Permits and Licenses

• 16 TAC §5.28

The Railroad Commission of Texas adopts an amendment to §5.28, concerning Specialized Motor Carriers of Petroleum Products, without changes to the version published in the January 1, 1993, issue of the *Texas Register* (18 TexReg 17).

Acid chlorides and chloroformates are derivatives of the petroleum refining process, and are thus appropriately included with the group of other like commodities.

The amendment, published pursuant to the petition of PPG Industries, Inc., will add acid chlorides and chloroformates to the list of products that are liquid derivatives of hydrocarbons and which may be transported by motor carriers authorized to transport petroleum products.

Two comments regarding the proposed amendment were received. Comments in support of the proposed amendments argue that the substances proposed for addition have similar characteristics to the substances in the current list and should be transported as petroleum products. Comments in opposition of the amendment state that inclusion of "drip oil," a product already in the current list, will hinder the unregulated transportation provided by oilfield service companies.

No groups or associations commented on the proposed rule.

The commission disagrees with the comments regarding "drip oil." "Drip oil" is already on the list of petroleum products. The proposed amendment only changes the definition of "petroleum products, but does not affect the regulatory status of any commodity.

The amendment is adopted under the Texas Motor Carrier Act, Texas Civil Statutes, Article 911b, §4(a)(1), which authorizes the commission to prescribe all rules and regulations necessary for the governing of public service rendered by motor carriers.

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

Issued in Austin, Texas, on March 1, 1993.

TRD-9319692 Mary Ross McDonald
Assistant Director, Legal Division-Gas Utilities/LP Gas
Railroad Commission of Texas

Effective date: March 23, 1993

Proposal publication date: January 1, 1993

For further information, please call: (512) 463-7096

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Subchapter K. Safety Regulations

• 16 TAC §§5.171, 5.173

The Railroad Commission of Texas adopts amendments to §5.171 and §5.173 concerning Safety Regulations of the Department of Transportation Adopted and Driver's Daily Log, without changes to the proposed text as published in the *Texas Register* (17 TexReg 8373).

The amendments are adopted at the request of the Department of Public Safety (DPS), in an effort to begin enforcement of the safety regulations of the United States Department of Transportation through the administrative penalty process.

Through adoption of the amendments, the Department of Public Safety will bring administrative penalty complaints against motor carriers (including private carriers) at the Railroad Commission of Texas. Instead of bringing actions before a justice of the peace, DPS will seek administrative penalties to be imposed by the commission.

Comments were received regarding the proposed amendments. Two commenters sought clarification of the requirement to make log entries and the duty to maintain the log entries at the place of business. Neither commenter was opposed to the adoptions. The third comment requested that the records retention requirement regarding daily logs be amended to be consistent with the federal rules. The federal rules require logs to be held for six months, while §5.173 requires logs to be held for 24 months.

No groups or associations commented regarding the proposed amendments.

The commission disagrees with the comment received. Daily logs serve not only as a safety requirement, but as an auditing record. Commission audits, which often do not occur annually, use the logs to verify the accuracy of other billing records.

The amendments are adopted pursuant to the Texas Motor Bus Act, Texas Civil Statutes, Article 911a, and the Texas Motor Carrier Act, Texas Civil Statutes, Article 911b, which authorize the commission to regulate motor bus companies and motor carriers, respectively, in all matters.

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

Issued in Austin, Texas, on March 1, 1993.

TRD-9319691 Mary Ross McDonald
Assistant Director, Legal Division-Gas Utilities/LP Gas
Railroad Commission of Texas

Effective date: March 23, 1993

Proposal publication date: December 4, 1992

For further information, please call: (512) 463-7096

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Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules

Certification

• 16 TAC §23.33

The Public Utility Commission of Texas adopts an amendment to §23.33 concerning telephone solicitation, without changes to the proposed text as published in the November 20, 1992, issue of the *Texas Register* (17 TexReg 8129).

The purpose of the amendment is to amend the annual notice that each local exchange company must provide to its customers so that it more accurately reflects the obligations of telephone solicitors.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 1446c, §16(a) , which provide the Public Utility Commission of Texas with the authority to make and enforce the rules reasonably required in the exercise of its powers and jurisdiction.

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

Issued in Austin, Texas, on February 26, 1993.

TRD-9319657 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Effective date: March 22, 1993

Proposal publication date: November 20, 1992

For further information, please call: (512) 458-0100

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TITLE 22. EXAMINING BOARDS

Part XXVII. Board of Tax Professional Examiners

Chapter 623. Registration and Certification

• 22 TAC §623.5

The Board of Tax Professional Examiners adopts an amendment to §623.5, concerning use of titles, without changes to the proposed text as published in the January 26, 1993, issue of the *Texas Register* (18 TexReg 458).

The amendment clarifies policy on the use of titles as to when a registrant with the board may use a classification or its acronym if and when he is no longer active in that classification.

The amendment will function as a complimentary or clarifying part of the general rules on the use of certification titles assigned by the board.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 8885, §7, which provide the Board of Tax Professional Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

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

Issued in Austin, Texas, on February 26, 1993.

TRD-9319647 Sam H. Smith
Executive Director
Board of Tax Professional Examiners

Effective date: March 22, 1993

Proposal publication date: January 26, 1993

For further information, please call: (512) 329-7981

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part IX. Texas Water Commission

Chapter 305. Consolidated Permits

Subchapter H. Additional Conditions for Injection Well Permits

• 31 TAC §305.153

The Texas Water Commission adopts the repeal of §305.153, concerning financial requirements for underground injection control wells, without changes to the proposed text as published in the October 27, 1993, issue of the *Texas Register* (17 TexReg 7578).

The TWC has adopted new Chapter 331, Subchapter I which delineates the financial responsibility requirements for owners and operators of under ground injection control wells. The newly adopted §§331.141-331.147 of Subchapter I are intended to replace §305.153. Subchapter I is patterned after rules promulgated by the Environmental Protection Agency pursuant to its authority under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA). The repeal of §305.153 and the adoption of §§331.141-331.147 will provide consistency with existing Texas Administrative Code regulations and clarification of TWC's regulatory intent.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Water Code, §5.103 and §5.105, the Texas Solid Waste Disposal Act, §361.017 and §361.024(a), which provides the commission with the authority to carry out its powers and duties under the Texas Water Code and the Texas Solid Waste Disposal Act and other laws of the State of Texas, and to establish and approve all general policy of the commission.

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

Issued in Austin, Texas, on March 1, 1993.

TRD-9319693 Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Effective date: March 23, 1993

Proposal publication date: October 27, 1992

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

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 10. Family Self-Support Services

Child Care Management Services Statewide Implementation

• 40 TAC §10.3414

The Texas Department of Human Services (DHS) adopts an amendment to §10. 3414, concerning exceptions to eligibility, without changes to the proposed text as published in the January 26, 1993, issue of the *Texas Register* (18 TexReg 466).

The justification for the amendment is to clarify the situations for which a waiver would apply to allow families to receivè child care services.

The amendments will function by targeting families most in need and supporting the teen's effort to stay in school.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 44, which authorizes the department to administer public assistance and day care programs.

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

Issued in Austin, Texas, on March 3, 1993.

TRD-9319766 Nancy Murphy
Agency Liaison, Policy and Document Support
Texas Department of Human Services

Effective date: April 1, 1993

Proposal publication date: January 26, 1993

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

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Chapter 35. Pharmacy Services

Subchapter B. Administration

The Texas Department of Human Services (DHS) adopts the repeal of §§35.703-35.708; amendments to §§35.202, 35. 203, 35.402, 35.606, 35.701, and 35.702; and new §§35.704, 35.705, 35.707, and 35.708, concerning pharmacy services, without changes to the proposed text as published in the October 2, 1992, issue of the *Texas Register* (17 TexReg 6767).

The justification for the repeals, amendments, and new sections is to implement the new

requirements for submission of pharmacy claims through the on-line billing system.

The amendments and new sections will function by providing a more efficient process for handling pharmacy claims for reimbursement.

The department received one written comment during the public comment period from an individual who acknowledged the need for an on-line claims adjudication system, but offered a number of questions and suggestions concerning the rules.

Comment concerning §35.402(b): The commenter expressed concern about a number of recordkeeping requirements.

Response: No change is being made to the rule because DHS believes the rule appropriately addresses maintenance of records in an on-line system.

Comment concerning §35.606: The commenter suggested allowing faxing of physician overrides.

Response: No change was made to this rule because the actual physician signature is required by federal regulation.

Comment concerning §35.701: The commenter expressed concern about using on-line filing as the only method of claims submission and listed a number of specific concerns for performing functions on-line.

Response: DHS plans a redundant system which will be down for a specified time each night for routine maintenance. No other downtime is anticipated short of natural disaster. Pharmacy providers experiencing downtime may submit their claims when their systems are back on-line. The 90-day period for submission of adjustments begins with the date of the adjudication of the original claims as stated in §35.704.

Comment: The commenter questioned the department's fiscal impact statement that there would be no effect on small businesses or to persons required to comply with the proposal.

Response: The department determined that there would be no adverse fiscal impact because the costs have been included in the cost report. Additionally, almost all pharmacy providers are already computerized because of the requirements of other third party payors, so costs incurred for computerization cannot be attributed to the rule. The electronic processing of claims would actually be a cost savings to the provider because the expense incurred by the provider is less compared to the expense of billing from paper and magnetic tape.

• 40 TAC §35.202, §35.203

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

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

Issued in Austin, Texas, on March 3, 1993.

TRD-9319773 Nancy Murphy
Agency Liaison, Policy and Document Support
Texas Department of Human Services

Effective date: July 1, 1993

Proposal publication date: October 2, 1992

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

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Subchapter D. Limitations

• 40 TAC §35.402

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

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

Issued in Austin, Texas, on March 3, 1993.

TRD-9319777 Nancy Murphy
Agency Liaison, Policy and Document Support
Texas Department of Human Services

Effective date: July 1, 1993

Proposal publication date: October 2, 1992

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

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Subchapter F. Reimbursements

• 40 TAC §35.606

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds. medical assistance funds.

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

Issued in Austin, Texas, on March 3, 1993.

TRD-9319776 Nancy Murphy
Agency Liaison, Policy and Document Support
Texas Department of Human Services

Effective date: July 1, 1993

Proposal publication date: October 2, 1992

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

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Subchapter G. Pharmacy Claims

• 40 TAC §§35. 701, 35.702, 35.704, 35.705, 35.707, 35.708

The amendments and new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

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

Issued in Austin, Texas, on March 3, 1993.

TRD-9319775 Nancy Murphy
Agency Liaison, Policy and Document Support
Texas Department of Human Services

Effective date: July 1, 1993

Proposal publication date: October 2, 1992

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

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• 40 TAC §§35.703-35.708

The repeals are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

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

Issued in Austin, Texas, on March 3, 1993.

TRD-9319774 Nancy Murphy
Agency Liaison, Policy and Document Support
Texas Department of Human Services

Effective date: July 1, 1993

Proposal publication date: October 2, 1992

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

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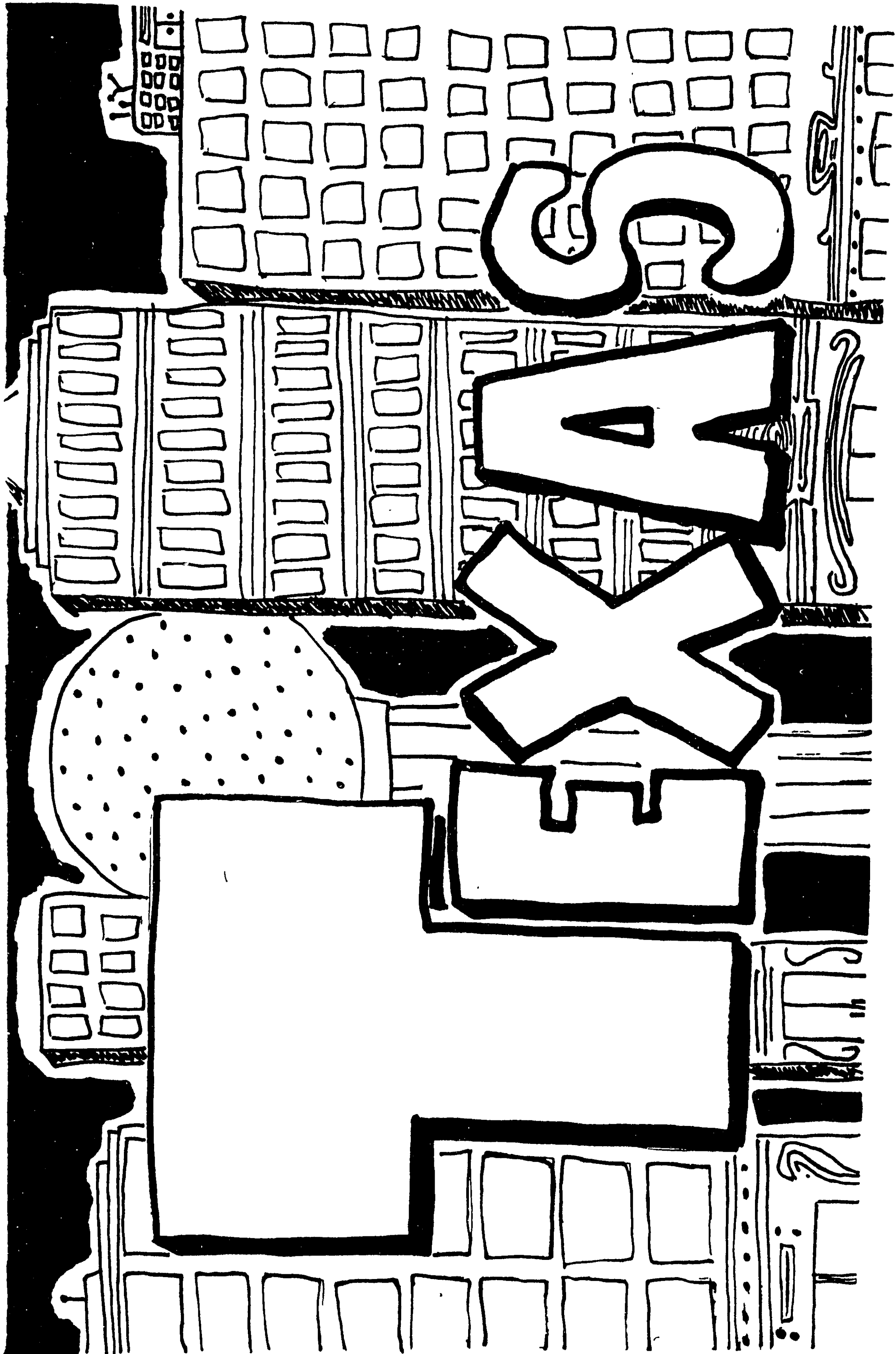

Name: Dan Henderson
Grade: 12
School: Arlington High, Arlington ISD

Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register*.

Emergency meetings and agendas. Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the Office of the Secretary of State in lobby of 221 East 11th Street, Austin. These notices may contain more detailed agenda than what is published in the *Texas Register*.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

Texas Department on Aging

Thursday, March 11, 1993, 8 a.m. The Texas Board on Aging's Finance Committee of the Texas Department on Aging will meet at the Texas Department on Aging, 1949 South IH-35, Third Floor Small Conference Room, Austin. According to the complete agenda, the committee will call the meeting to order; consider and possibly act on approval of the minutes of the February 11, 1993 finance committee meeting; report on monthly operating expenditures for January 1993; present to board; report on monthly operating expenditures for February 1993; present to board; and adjourn.

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas 78711, (512) 444-2727.

Filed: March 3, 1993, 3:43 p.m.

TRD-9319809

Thursday, March 11, 1993, 9:30 a.m. The Texas Board on Aging of the Texas Department on Aging will meet at the Texas Department on Aging, 1949 South IH-35, Third Floor Large Conference Room, Austin. According to the agenda summary, the board will call the meeting to order; consider and possibly act on: approval of the February 11, 1993 minutes; hear public testimony; executive director's report; presentation on Texas Association of Regional Councils' legislative agenda; amendments to Board and Citizens Advisory Council (CAC) policies and procedures; CAC nominations to fill term from Central Texas region; final adoption of published standards; report on residential repair request for proposals and indirect costs; remove conditions from and approve FY 1993 area plans of Ark-Tex and West Central Texas Area Agencies on Aging (AAAs), proposed topics and speakers for 1993 minority elderly conference; report on monthly operating expenditures; internal audit report on AAA administration; priority bills relating to aging issues; action plans; assignments to board; general announcements; and adjourn.

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas 78711, (512) 444-2727.

Filed: March 3, 1993, 3:42 p.m.

TRD-9319808

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The State Bar of Texas

Thursday-Friday, March 11-12, 1993, 1:30 p.m., and 8:30 a.m. respectively. The Commission for Lawyer Discipline of the State Bar of Texas will meet at the Austin Club, 110 East Ninth Street, Austin. According to the agenda summary, the commission will call the meeting to order; make introductions; review minutes; review status reports; commission's compliance with provisions of the State Bar Act, Texas Rules of Disciplinary Procedure and orders of the Supreme Court; discuss operations of grievance committees; discuss special counsel program; budget and operations of commission; presentation by president of TYLA; discuss ethics calls; collection of attorneys fees; report on proposed amendments to Rules 1.06(e) and (f) and 2. 09; discuss handling of compulsory discipline cases; discuss April meeting of commission; presentations on litigation dockets; pending litigation, pursuant to Article 6252-17(2)(e); discuss matters pending before evidentiary panels, pursuant to Article 6252-17(2)(e); discuss assignment of special counsel cases; personnel matters; settlement offers; consider assignment of special counsel; discuss operations of General Counsel's office; report on special counsel program in CLE; discuss Thiel correspondence; Rule 11.02, Texas Rules of Disciplinary Procedure; future meetings; discuss other matters; hear public comment; and adjourn.

Contact: Anne Dorris, 400 West 15th Street, Suite 1500, Austin, Texas 78701, (512) 463-1381.

Filed: March 3, 1993, 4:38 p.m.

TRD-9319813

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Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons

Friday, March 12, 1993, 9 a.m. The Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons will meet at the Texas Commission for the Blind, Criss Cole Rehabilitation Center, Staff Training Room, 4800 North Lamar Boulevard, Austin. According to the agenda summary, the committee will call the meeting to order; introduce committee members and guests; discuss acceptance of minutes from December 4, 1992 meeting; discuss and possibly act on new services and renewal services; new products and product changes and revisions; and adjourn.

Contact: Michael T. Phillips, P.O. Box 12866, Austin, Texas 78711, (512) 459-2605.

Filed: March 3, 1993, 1:36 p.m.

TRD-9319786

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Texas Bond Review Board

Tuesday, March 9, 1993, 10 a.m. The Staff Planning of the Texas Bond Review Board will meet in the Committee Room

Number 3, Fifth Floor, Clements Building, Austin. According to the emergency revised agenda summary, the staff will discuss other business-pending applications from Texas Department of Human Services. The emergency status is necessary due to correcting the name of agency as listed on the agenda.

Contact: Jim Thomassen, 300 West 15th Street, Clements Building, Suite 409, Austin, Texas 78701, (512) 463-1741.

Filed: March 3, 1993, 10:56 a.m.

TRD-9319779

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Texas Education Agency

Thursday, March 11, 1993, 9 a.m. The State Board of Education (SBOE) Committee on Personnel of the Texas Education Agency will meet at the William B. Travis Building, Room 1-111, 1701 North Congress Avenue, Austin. According to the agenda summary, the committee will hear public testimony; discuss teacher certification; assignment of personnel; professional environment; education personnel development; teacher education; appointments to the board of trustees of: Randolph Field ISD, Lackland ISD, Boys Ranch ISD; commissioner's rules of procedure relating to Teachers' Professional Practices Commission; and hear status report on the accreditation of school districts.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: March 2, 1993, 4:22 p.m.

TRD-9319758

Thursday, March 11, 1993, 9 a.m. The State Board of Education (SBOE) Committee on Students of the Texas Education Agency will meet at the William B. Travis Building, Room 1-100, 1701 North Congress Avenue, Austin. According to the agenda summary, the committee will hear public testimony; discuss curriculum-driver education rules; credit by examination; extracurricular activities; objectives for new areas of student assessment program; request for approval of tri-agency work force development and education coordination pilot projects; discussion of the master plan for career and technical education; and of secondary mathematics program.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: March 2, 1993, 4:22 p.m.

TRD-9319759

Thursday, March 11, 1993, 9 a.m. The State Board of Education (SBOE) Committee on School Finance of the Texas Education Agency will meet at the William B. Travis Building, Room 1-104, 1701 North Congress Avenue, Austin. According to the agenda summary, the committee will hear public testimony; give update on school finance, memorandum of understanding for regulation of massage schools; other special program provisions (regarding students enrolled in the Texas School for the Blind/Visually Impaired or Texas School for the Deaf); report on findings and activities of the Texas Commission on braille textbook production; discuss financial incentive for school districts that purchase lower-priced textbooks; program budgets for federal funds for 1993-1994 (new program); approval of tri-agency work force development and education coordination pilot projects; master lease resolution for the Master Equipment Lease Purchase Program; appointment to: School facilities Advisory Committee, 1993 State Textbook Subject Area Committees, Apprenticeship and Training Advisory Committee; program budgets for federal funds for 1993-1994 (continuation programs); master plan for career and technical education.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: March 2, 1993, 4:23 p.m.

TRD-9319760

Thursday, March 11, 1993, 1 p.m. The State Board of Education (SBOE) Committee of the Whole of the Texas Education Agency will meet at the William B. Travis Building, Room 1-104, 1701 North Congress Avenue, Austin. According to the agenda summary, the committee will hear public testimony; hear commissioner's overview of the March 1993 SBOE meeting; discuss the Educational Economic Policy Center Accountability Study; discuss the Texas State Health Plan; give update on Legislative issues; review of SBOE operating rules; and discuss pending litigation. The discussion of pending litigation will be held in executive session in accordance with Article 6252-17, §2(e), Vernon's Texas Civil Statutes, and the committee will meet in Room 1-103 to discuss this item.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: March 2, 1993, 4:22 p.m.

TRD-9319757

Thursday-Friday, March 11-12, 1993, 1 p.m. and 8:30 a.m. respectively. The Apprenticeship and Training Advisory Committee (ATAC) of the Texas Education Agency will meet at the Royce Hotel, 3401 South IH-35, Austin. According to the agenda summary, on Thursday, the committee will welcome visitors and guests; make introductions; hear comments from ATAC chairperson; discuss approval of the minutes of December 10-11, 1992; presentation on "Current National Developments in Youth Apprenticeship; implications for Texas": presentation on "Consolidation of Employment and Training Programs; Legislative Proposals"; report from the Bureau of Apprenticeship and Training; update on the Apprenticeship Program; and subcommittee meetings. On Friday, the committee will hear legislative update; overview of Tech-Prep; action of recommendation of 1993-1994 apprenticeship-related instruction contact-hour rate; reports from subcommittees; and election of officers.

Contact: Toni M. Dean, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9294.

Filed: March 3, 1993, 11:15 a.m.

TRD-9319781

Thursday, March 11, 1993, 4 p.m. The Apprenticeship and Training Advisory Committee-Planning Subcommittee of the Texas Education Agency will meet at the Royce Hotel, 3401 South IH-35, Austin. According to the complete agenda, the subcommittee will discuss possible topics, dates, and locations for future meetings.

Contact: Toni M. Dean, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9294.

Filed: March 3, 1993, 11:14 a.m.

TRD-9319780

Thursday, March 11, 1993, 4 p.m. The Apprenticeship and Training Advisory Committee-Finance and Budget Subcommittee of the Texas Education Agency will meet at the Royce Hotel, 3401 South IH-35, Austin. According to the complete agenda, the subcommittee will discuss administrative procedures and recommend a contact-hour rate for apprenticeship training programs for 1993-1994.

Contact: Toni M. Dean, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9294.

Filed: March 3, 1993, 11:15 a.m.

TRD-9319782

Friday, March 12, 1993, 8:30 a.m. The State Board of Education (SBOE) Committee on the Permanent School Fund (PSF) of the Texas Education Agency will meet at the William B. Travis Building, Room 1-109, 1701 North Congress Avenue, Austin. According to the agenda summary, the committee will hear public testimony; discuss recommended PSF investment programs for March and April and funds available for the program; appointments to the Investment Advisory Committee on the PSF; review of PSF securities transactions and the investment portfolio; and hear report of the PSF manager.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: March 2, 1993, 4:23 p.m.

TRD-9319762

Friday, March 12, 1993, 8:30 a.m. The State Board of Education (SBOE) Committee on Long-Range Planning of the Texas Education Agency will meet at the William B. Travis Building, Room 1-104, 1701 North Congress Avenue, Austin. According to the agenda summary, the committee will hear public testimony; expert speaker-The School of the Future; discuss expert speaker presentations; federal governmental relations activities; and biennial progress report on Long-Range Plan for Technology.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: March 2, 1993, 4:23 p.m.

TRD-9319761

Friday, March 12, 1993, 1 p.m. The State Board of Education (SBOE) of the Texas Education Agency will meet at the William B. Travis Building, Room 1-104, 1701 North Congress Avenue, Austin. According to the agenda summary, the board will hear public testimony; discuss SBOE resolutions; discuss approval of consent agenda; give update on legislative issues; discuss teacher certification; assignment of personnel professional environment; education personnel development; teacher education; curriculum; credit by examination; extra-curricular activities; new areas of student assessment; tri-agency work force development and education coordination pilot projects; memorandum of understanding for regulation of massage schools; other special program provisions; Texas Commission on Brailles Textbook Production; incentive for school districts that purchase lower-priced textbooks; program budgets for 1993-1994; master lease resolution for master equipment lease purchase program; discuss recommended permanent school fund investment programs for March and April; and information on agency administration.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: March 2, 1993, 4:24 p.m.

TRD-9319763

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Health and Human Services Commission

Thursday, March 11, 1993, 1:30 p.m. The Hospital Payment Advisory Subcommittee of the Health and Human Services Commission will meet at 1100 West 49th Street, Seventh Floor, Moreton Building, Room M-739, Austin. According to the complete agenda, the subcommittee will hear opening comments; discuss approval of minutes; outlier payments; reimbursement for disproportionate share hospital rules; open discussion; plan next meeting; and adjourn.

Contact: Geri Willems, P.O. Box 13247, Austin, Texas 78711, (512) 502-3256.

Filed: March 2, 1993, 2:52 p.m.

TRD-9319751

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Texas Department of Licensing and Regulation

Saturday, March 13, 1993, 8:30 a.m. The Texas Commission of Licensing and Regulation of the Texas Department of Licensing and Regulation will meet at 920 Colorado Street, E.O. Thompson Building, Room 1012, Austin. According to the complete agenda, the commission will call the meeting to order; take roll call; certification of quorum; review and discuss contested cases; agreed orders; rules update; hear legislative report; staff reports; meet in executive session; discuss date, time and location of next commission meeting; and adjourn.

Contact: Elvis Schulze, 920 Colorado Street, Austin, Texas 78711, (512) 463-3127.

Filed: March 3, 1993, 4:41 p.m.

TRD-9319814

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Texas Department of Protective and Regulatory Services

Friday, March 12, 1993, 10 a.m. The Texas Board of Protective and Regulatory Services of the Texas Department of Protective and Regulatory Services will meet at 701 West 51st Street, Public Hearing Room, Room 125-E, Austin. According to the complete agenda, the board will consider approval of the minutes of February 5, 1993; recognize outstanding achievement by youth in the PAL program; hear public testimony; chair's comments and announcements; comments and announcements from the board; hear executive director's report on tracking of board items and information resources strategic plan; second briefing on minimum child care standards; FY 1993 budget adjustments; delegation of signature authority; approval of financing arrangements for purchase or lease of equipment; approval of interim operating plan as required by the DIR; LAR; retention and release of abuse and neglect information; appointments to advisory committee on child care administrators and facilities; rule regarding regulation of registered family homes; report on status of policy review and development of PRS partnerships; legislative report; board will meet in executive session to evaluate and consider the duties of personnel serving in exempt positions; meet with agency counsel to seek advice with respect to pending or potential litigation; and reconvene in open session to take action, if necessary, resulting from discussion in executive session.

Contact: Michael Gee, P.O. Box 149030, Mail Code W-639, Austin, Texas 78714-9030, (512) 450-3645.

Filed: March 3, 1993, 3:22 p.m.

TRD-9319806

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Texas Real Estate Commission

Monday, March 15, 1993, 8 a.m. The Examination and Education Subcommittee of the Texas Real Estate Inspector Committee of the Texas Real Estate Commission will meet at TREC Headquarters, Room 234, Second Floor, 1101 Camino La Costa, Austin. According to the complete agenda, the committee will call the meeting to order; possible executive session to discuss examination materials pursuant to Attorney General Opinion H-484; discuss and possibly make recommendations concerning examinations, education requirements or monitoring of courses; and adjourn.

Contact: Mark A. Moseley, P.O. Box 12188, Austin, Texas 78711, (512) 465-3900.

Filed: March 4, 1993, 9:45 a.m.

TRD-9319827

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Texas Water Commission

Wednesday, March 10, 1993, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will consider approval of second quarter budget amendments.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: March 2, 1993, 4:29 p.m.

TRD-9319764

Wednesday, March 17, 1993, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will consider approving the following matters: minor amendment to municipal solid waste permit; Class two modification to hazardous waste permit; new permits; amendments; renewals; district matters; rate

matters; examiner's memorandums; in addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including, but not limited to, rescheduling an item in its entirety or for particular action at a future date or time.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: March 2, 1993, 1:37 p.m.

TRD-9319725

Wednesday, March 17, 1993, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will consider approving the following matters: enforcement actions; status of agreed order issued December 2, 1992 in the matter of Elf Atochem North America; examiner's proposal for decision; meet in executive session; in addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including, but not limited to, rescheduling an item in its entirety or for particular action at a future date or time.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: March 2, 1993, 4:29 p.m.

TRD-9319726

Friday, March 19, 1993, 10 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin Building, Room 119, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will hold a hearing on William Lee Boomer, Receiver for South Seminary Addition Water Utility's petition requesting authorization to discontinue water utility service and cancel its certificate of convenience and necessity #12632 for its water utility service area. The service area is located totally within the City of Fort Worth. Docket Number 9859-0.

Contact: Linda Sorrells, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: March 2, 1993, 1:39 p.m.

TRD-9319731

Wednesday, March 24, 1993, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will hold a hearing on Fertex, Inc.'s Application Number TA-7004 for a permit to divert and use a total of 3,200 acre-feet of water for a three-year period from Cottonwood Creek, tributary of Ten Mile Creek and Ten Mile Creek, tributary of the Trinity River, Trinity River Basin, for irrigation purposes (rice farming) in Dallas County.

Contact: Mark Evans, P.O. Box 13087, Austin, Texas 78711, (512) 463-4584.

Filed: March 2, 1993, 1:38 p.m.

TRD-9319728

Wednesday, March 24, 1993, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will hold a hearing on Texas Parks and Wildlife Department's Application Number TA-6996 for a permit to divert and use a total of 50 acre-feet of water for a one-year period from Geronimo Creek, tributary of the Guadalupe River, Guadalupe River Basin, for industrial purposes (fish hatchery) in Guadalupe County.

Contact: Mark Evans, P.O. Box 13087, Austin, Texas 78711, (512) 463-4584.

Filed: March 2, 1993, 1:38 p.m.

TRD-9319727

Wednesday, April 14, 1993, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will hold a hearing on Harris County Municipal Utility District Number 202's application for approval of standby fees per lot or equivalent connection (based on 3.3 equivalent connection per acre) on all unimproved property in the district, as follows: annual operation and maintenance standby fee of $86; and annual debt service standby fee of $376.

Contact: Jim Herbert, P.O. Box 13087, Austin, Texas 78711, (512) 371-6219.

Filed: March 2, 1993, 1:39 p.m.

TRD-9319733

Wednesday, April 14, 1993, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will hold a hearing on Application Number 5450 submitted by Fred Joyce-Mary Meyers Enterprises, Inc. for authorization to sue a 6.9 acre-foot reservoir created by a dam constructed pursuant to §11.142 of the Texas Water Code on an unnamed tributary of Big Bear Creek, tributary of the West Fork Trinity River, tributary of the Trinity River, Trinity River Basin. The reservoir will be used for in-place recreational purposes and is located approximately 16.3 miles northeast of Fort Worth in Tarrant County.

Contact: Arlette R. Capehart, P.O. Box 13087, Austin, Texas 78711, (512) 475-2347.

Filed: March 2, 1993, 1:39 p.m.

TRD-9319732

Wednesday, April 14, 1993, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will hold a hearing on Baskin Family Camps, Inc.'s application for a permit to authorize the use of a reservoir created by a dam constructed pursuant to §11.142 of the Texas Water Code on an unnamed tributary of Hickory Creek, tributary of the Colorado River, Colorado River Basin. The reservoir is located approximately 15 miles southeast of Burnet in Burnet County, and will be used for in-place recreational use at a camp. Application Number 5452.

Contact: Terry L. Slade, P.O. Box 13087, Austin, Texas 78711, (512) 475-4586.

Filed: March 2, 1993, 1:38 p.m.

TRD-9319730

Thursday, April 15, 1993, 10 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the Pearland Community Center, Purpose Room A, 3523 Liberty Drive, Pearland. According to the agenda summary, the commission will consider an application for an amendment to Permit Number MSW1919 for National Medical Waste of Texas, Inc. to increase the amount of municipal solid waste to a maximum of 23 tons per day and increase the operating hours to 24 hours per day, seven days a week. This application has been designated MSW1919-A. The site is west of the City of Pearland, 0.1 mile east of the intersection of FM Road 518 and County Road 106 (Brookside Road), adjacent to and on the south side of County Road 106 in the extraterritorial jurisdiction of the City of Pearland in Brazoria County.

Contact: Heidi Jackson, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: March 4, 1993, 9:20 a.m.

TRD-9319826

Tuesday, April 27, 1993, 10 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin Building, Room 1149B, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will hold a hearing on Harris County Municipal Utility District Number 359's application for creation of the municipal utility district.

Contact: Carol Wood, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: March 2, 1993, 1:38 p.m.

TRD-9319729

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Regional Meetings

Meetings Filed March 2, 1993

The Bexar-Medina-Atascosa Counties Water Control and Improvement District Number 1 Board of Directors met at 226 Highway 132, Natalia, March 8, 1993, at 8 a.m. Information may be obtained from John W. Ward, III, P. O. Box 170, Natalia, Texas 78059, (210) 663-2132. TRD-9319736.

The Colorado County CAD Board of Directors will meet at the Colorado County Courthouse, 400 Spring, Columbus, March 9, 1993, at 1:30 p.m. Information may be obtained from Billy Youens, P.O. Box 10, Columbus, Texas 78934, (409) 732-8222. TRD-9319737.

The Dallas Area Rapid Transit Officers' and Chairs' met at the DART Headquarters, 1401 Pacific Avenue, Conference Room C, Dallas, March 5, 1993, at noon. Information may be obtained from Nancy McKethan, 1401 Pacific Avenue, Dallas, Texas 75202, (214) 749-3347. TRD-9319717.

The 50th Judicial District Juvenile Board will meet in the District Courtroom, Knox County Courthouse, Benjamin, March 16, 1993, at noon. Information may be obtained from David Hajek, Box 508, Seymour, Texas 76380, (817) 888-2852. TRD-9319724.

The Golden Crescent Private Industry Council, Inc. G.C. Quality Work Force Planning Committee will meet in the Private Dining Room, DeTar Hospital, Victoria, March 9, 1993, at 3:30 p.m. Information may be obtained from Carol Matula, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9319718.

The High Plains Underground Water Conservation District Number 1 Board of Directors will meet in the Conference Room, 2930 Avenue Q, Lubbock, March 9, 1993, at 10 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, (806) 762-0181. TRD-9319756.

The Hood County Appraisal District Appraisal Review Board will meet at 1902 West Pearl, District Office, Granbury, March 9, 1993, at 9:30 a.m. Information may be obtained from Harold Chesnut, P.O. Box 819, Granbury, Texas 76048, (817) 573-2471. TRD-9319765.

The Sabine Valley Center Care and Treatment Committee met at the Administration Building, 107 Woodbine Place, Longview, March 8, 1993, at 5:30 p.m. Information may be obtained from Mack O. Blackwell or LaVerne Moore, P.O. Box 6800, Longview, Texas 75601, (903) 758-2471. TRD-9319752.

The Sabine Valley Center Personnel Committee met at the Administration Building, 107 Woodbine Place, Longview, March 8, 1993, at 5:30 p.m. Information may be obtained from Mack O. Blackwell or LaVerne Moore, P.O. Box 6800, Longview, Texas 75601, (903) 758-2471. TRD-9319753.

The Sabine Valley Center Finance Committee met at the Administration Building, 107 Woodbine Place, Longview, March 8, 1993, at 6 p.m. Information may be obtained from Mack O. Blackwell or LaVerne Moore, P.O. Box 6800, Longview, Texas 75601, (903) 758-2471. TRD-9319754.

The Sabine Valley Center Board of Trustees met at the Administration Building, 107 Woodbine Place, Longview, March 8, 1993, at 7 p.m. Information may be obtained from Mack O. Blackwell or LaVerne Moore, P.O. Box 6800, Longview, Texas 75601, (903) 758-2471. TRD-9319755.

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Meetings Filed March 3, 1993

The Aqua Water Supply Corporation met at the Aqua Water Supply Corporation Office, 305 Eskew, Bastrop, March 8, 1993, at 7:30 p.m. Information may be obtained from Adlinie Rathman, P.O. Box P, Bastrop, Texas 78602, (512) 321-3943. TRD-9319810.

The Austin Transportation Study Policy Advisory Committee will meet at the Joe C. Thompson Conference Center, Room 2.102, Austin, March 9, 1993, at 6 p.m. Information may be obtained from Michael R. Aulick, P.O. Box 1088, Austin, Texas 78767, (512) 499-2275. TRD-9319816.

The Austin Transportation Study Policy Advisory Committee will meet at the Joe C. Thompson Conference Center, Room 3.110, Austin, March 12, 1993, at 1:30 p.m. Information may be obtained from Michael R. Aulick, P.O. Box 1088, Austin, Texas 78767, (512) 499-2275. TRD-9319815.

The Bexar-Medina-Atascosa Counties Water Control and Improvement District Number One Board of Directors met at 226 Highway 132, Natalia, March 8, 1993, at 8 a.m. (Revised agenda). Information may be obtained from John W. Ward III, P.O. Box 170, Natalia, Texas 78059, (512) 663-2132. TRD-9319807.

The Brazos Valley Development Council Board of Directors will meet at the Council Office, 3006 East 29th Street, Suite #2, Bryan, March 10, 1993, at 1:30 p.m. Information may be obtained from Tom Wilkinson, Jr., P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 776-2277. TRD-9319802.

The Cass County Appraisal District Board of Directors met at the Cass County Appraisal District, 502 North Main Street, Linden, March 8, 1993, at 7 p.m. Information may be obtained from Janelle Clements, P.O. Box 1150, Linden, Texas 75563, (903) 756-7545. TRD-9319785.

The Coleman County Water Supply Corporation Board of Directors met at the Corporation Office, 214 Santa Anna Avenue, Coleman, March 8, 1993, at 1:30 p.m. Information may be obtained from Davey Thweatt, 214 Santa Anna Avenue, Coleman, Texas 76834, (915) 625-2133. TRD-9319784.

The Colorado River Municipal Water District Board of Directors will meet at 400 East 24th Street, Big Spring, March 9, 1993, at 10 a.m. Information may be obtained from O. H. Ivie, P.O. Box 869, Big Spring, Texas 79721, (915) 267-6341. TRD-9319789.

The Erath County Appraisal District Board of Directors will meet in the Board Room, 1390 Harbin Drive, Stephenville, March 9, 1993, at 7 a.m. Information may be obtained from Jerry Lee, 1390 Harbin Drive, Stephenville, Texas 76401, (817) 965-5434. TRD-9319768.

The Grand Parkway Association will meet at 5757 Woodway, Suite 140 East Wing, Houston, March 10, 1993, at 8:15 a.m. Information may be obtained from Jerry L. Coffman, 5757 Woodway, 140 East Wing, Houston, Texas 77057, (713) 782-9330. TRD-9319800.

The Hays County Appraisal District Appraisal Review Board will meet at 632 A East Hopkins, Municipal Building, San Marcos, March 11, 1993, at 8:30 a.m. Information may be obtained from Lynnell Sedlar, 632 A East Hopkins, San Marcos, Texas 78666, (512) 754-7400. TRD-9319778.

The Lower Colorado River Authority Retirement Benefits Committee will meet at 3701 Lake Austin Boulevard, Hancock Building, Austin, March 10, 1993, at 9 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3283. TRD-9319811.

The Permian Basin Regional Planning Commission Board of Directors will meet at the PBRPC Offices, 2910 La Force Boulevard, Midland International Airport, Midland, March 10, 1993, at 1:30 p.m. Information may be obtained from Terri Moore, P.O. Box 60660, Midland, Texas 79711, (915) 563-1061. TRD-9319788.

The Sabine River Authority of Texas Board of Directors will meet at the Fredonia Hotel, Nacogdoches, March 9, 1993, at 10:30 a.m. Information may be obtained from Sam F. Collins, P.O. Box 579, Or-

ange, Texas 77630, (409) 746-3200. TRD-9319793.

The South Franklin Water Supply Corporation Board of Directors will meet at the Office of South Franklin Water Supply Corporation, Highway 115, South of Mount Vernon, March 9, 1993, at 7 p.m. Information may be obtained from Richard Zachary, P.O. Box 591, Mt. Vernon, Texas 75457, (903) 860-3400. TRD-9319783.

The Sulphur River Basin Authority Board of Directors will meet at the Mt. Pleasant Chamber of Commerce Building, 1604 North Jefferson Street, Mt. Pleasant, March 9, 1993, at 3 p.m. Information may be obtained from William O. Morriss, P.O. Box 240, Texarkana, Texas 75504, (903) 793-5511. TRD-9319801.

Meetings Filed March 4, 1993

The Bi-County WSC will meet at the Catfish Village, Highway 155, Ore City, March 9, 1993, at 8 p.m. Information may be obtained from Freeman Phillips, P.O. Box 848, Pittsburg, Texas 75686, (903) 856-5840. TRD-9319817.

The Brown County Appraisal District Board of Directors met at 403 Fisk Avenue, Brownwood, March 8, 1993, at 7 p.m. Information may be obtained from Doran E. Lemke, 403 Fisk Avenue, Brownwood, Texas 76801, (915) 643-5676. TRD-9319818.

The Dallas Central Appraisal District Board of Directors will meet at 2949 North Stemmons Freeway, Second Floor, Dallas, March 10, 1993, at 7:30 a.m. Information may be obtained from Rick L. Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247, (214) 631-0520. TRD-9319819.

The El Oso Water Supply Corporation Board of Directors will meet at their office, FM Road 99, Karnes City, March 9, 1993, at 7:30 p.m. Information may be obtained from Judith Zimmermann, P.O. Box 309, Karnes City, Texas 78118, (210) 780-3539. TRD-9319824.

The South Plains Association of Governments Executive Committee will meet at 1323 58th Street, Lubbock, March 9, 1993, at 9 a.m. Information may be obtained from Jerry D. Casstevens, P.O. Box 3730, Lubbock, Texas 79452-3730, (806) 762-8721. TRD-9319822.

The South Plains Association of Governments Board of Directors will meet at 1323 58th Street, Lubbock, March 9, 1993, at 10 a.m. Information may be obtained from Jerry D. Casstevens, P.O. Box 3730, Lubbock, Texas 79452-3730, (806) 762-8721. TRD-9319823.

The Sulphur-Cypress Soil and Water Conservation District Number 419 will meet at 1809 West Ferguson, Suite B, Mt. Pleasant, March 11, 1993, at 8:30 a.m. Information may be obtained from Beverly Amerson, 1809 West Ferguson, Suite B, Mt. Pleasant, Texas 75455, (903) 572-5411. TRD-9319828.

The Texas Regional Planning Commissions Employee Benefit Plan Agency Board of Trustees will meet at the Omni Hotel, Senate Room, Austin, March 10, 1993, at 1 p.m. Information may be obtained from Jerry D. Casstevens, P.O. Box 3730, Lubbock, Texas 79452-3730, (806) 762-8721. TRD-9319825.

In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Commission on Alcohol and Drug Abuse

Statewide Advisory Council Meeting

The Statewide Advisory Council of the Texas Commission on Alcohol and Drug Abuse will meet Thursday, March 11, 1993, 8:30 a.m. to 5 p.m. and Friday, March 12, 1993, 8:30 a.m. to noon. The meeting will be held at the Driskill Hotel, Sixth and Brazos Streets, Austin.

Issued in Austin, Texas, on March 1, 1993.

TRD-9319640 Bob Dickson
Executive Director
Texas Commission on Alcohol and Drug Abuse

Filed: March 1, 1993

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State Banking Board

Notice of Hearing Cancellation

In the mauer of the application for change of domicile for The Bank of the West, El Paso County, El Paso, before the State Banking Board, State of Texas, Austin, Travis County.

As no opposition has been noted in the application for domicile change by The Bank of the West, El Paso, the hearing previously scheduled for Thursday, March 11, 1993, has been cancelled.

Issued in Austin, Texas, on March 1, 1993.

TRD-9319690 William F. Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: March 2, 1993

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Comptroller of Public Accounts

Notice of Request For Proposals For Limited Facilities Management Review of Public Higher Education Institutions

Notice of Request for Proposals. Pursuant to Texas Civil Statutes, Article 6252-11c, (Use of Private Consultants by State Agencies) the Comptroller of Public Accounts announces its Request For Proposals (RFP) for a limited review of the costs and practices of facilities management of educational and general facilities in two public higher education institutions.

The purpose of the RFP is to obtain proposals for an independent study of facilities management costs and practices, and to issue a report thereon. The study is intended to produce recommendations for the improvement of facilities management practices and the reduction of costs in the areas of general repairs and maintenance of facilities, deferred maintenance, grounds maintenance, utilities, security and custodial services, and moving and rearrangements, including all personnel costs.

Contact. Parties interested in submitting a proposal should contact Dena Dupont in the General Counsel's Office, Comptroller of Public Accounts, 111 East 17th Street, Room 113, Austin, Texas 78774, (512) 463-4820, for a complete copy of the RFP. The RFP will be available for pickup at the above address on Tuesday, March 9, 1993, between 1 p.m. and 5 p.m., and during normal business hours thereafter.

Closing Date. Proposals must be received in the General Counsel's Office no later than 3 p.m. on Friday, April 9, 1993. Proposals received after this date and time will not be considered.

Award Procedure. All proposals will be subject to evaluation by a committee based on the evaluation criteria set forth in the RFP. The committee will determine which proposal best meets these criteria and will make a recommendation to the Deputy Comptroller who will then make a recommendation to the Comptroller. The Comptroller will make the final selection. A proposer may be asked to clarify its proposal at any point throughout the evaluation process. The evaluation committee may elect to require oral presentations by some or all proposers for this purpose. The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller is under no legal or other requirements to execute a contract on the basis of this notice or the distribution of the RFP. Neither this notice nor the RFP commits the Comptroller to pay for any costs incurred prior to the execution of a contract.

The anticipated schedule of events is as follows: RFP available March 9, 1993 (1 p.m.); Proposals due by April 9, 1993 (3 p.m.); Contract Award- April 14, 1993, or as soon as possible thereafter.

Issued in Austin, Texas, on March 3, 1993.

TRD-9319772 Tres Lorton
Senior Legal Counsel, General Law Section
Comptroller of Public Accounts

Filed: March 3, 1993.

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Texas Education Agency

Revision of Invitation for Private Consultants

The Texas Education Agency is revising an invitation for private consultants to offer services relating to "Determining Student Results to Meet Real World Needs." The document was published in the February 26, 1993, issue of the *Texas Register* (18 TexReg 1305).

Consultants who wish to make an offer should contact the Document Control Center at (512) 463-9304 for additional information. Please refer to RFP #701-93-009.

Issued in Austin, Texas, on March 3, 1993.

TRD-9319771 Lionel R. Meno
Commissioner of Education
Texas Education Agency

Filed: March 3, 1993

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Governor's Energy Office

Request for Proposals (Extension)

The deadline for submission of proposals from prospective contractors for the Request for Proposals as published in the January 1, 1993, issue of the *Texas Register* (18 TexReg 81) is hereby extended from February 14, 1993, to March 31, 1993. The contractor selection date is extended from May 1, 1993, to July 15, 1993.

For further information and to obtain a copy of the required proposal format and information package, contact Judith Carroll at (512) 463-1871, Governor's Energy Office, P.O. Box 12428, Austin, Texas 78711. Proposal packets will be sent first-class mail. The Energy Office will not fax proposal packets.

Issued in Austin, Texas, on January 21, 1993.

TRD-9319656 Harris Worcester
Director
Governor's Energy Office

Filed: March 1, 1993

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Texas Department of Health

Designation of Sites Serving Medically Underserved Populations

The Department of Health is required under Texas Civil Statutes, Article 4495b, §3.06, to designate sites serving medically underserved populations. In addition, the department is required to publish notice of its designations in the *Texas Register* and to provide an opportunity for public comment on the designations.

Accordingly, the department has designated the following as a site serving medically underserved populations: the medical practice of Charles R. Moses, M. D., 3737 Doctors Drive, Port Arthur, Texas 77642. Designations are based on proven eligibility as sites serving a disproportionate number of clients eligible for federal, state, or locally funded health care programs.

Oral and written comments on the designations may be directed to Carol Daniels, Chief, Bureau of State Health Data and Policy Analysis, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756; (512) 458-7261. Comments will be accepted for 30 days from the date of this notice.

Issued in Austin, Texas, on March 3, 1993.

TRD-9319769 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: March 3, 1993

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Texas Department of Housing and Community Affairs

Notice of Public Hearing, Texas Department of Housing and Community Affairs Low Income Housing Tax Credit State Allocation Plan

Notice is hereby given of public hearing to be held by the Texas Department of Housing and Community Affairs on Monday, March 22, 1993, at 811 Barton Springs Road, Suite 300, Austin, Texas 78704, 1 p.m., with respect to the Department's proposed plan for allocation of low-income housing tax credits among projects in Texas as mandated by Congress when it extended the provisions of Section 42 of the Internal Revenue Code of 1986, as amended, concerning low-income housing tax credits. The proposed state allocation plan prepared by the Department for discussion at the public hearing designates, among other things, threshold criteria, evaluation factors, selection criteria, final ranking, tax exempt bond financed projects, credit amount and compliance monitoring for projects which request an allocation of low-income housing tax credits in the State of Texas.

All interested persons are invited to attend this public hearing to express their views on the proposed allocation plan to establish selection criteria, priorities, and procedures for allocating the housing tax credits, monitoring compliance and to further assist the Department in determining the actual housing needs of families of low and moderate income in the State of Texas. Persons who intend to appear at the hearing are encouraged to contact Robert Johnston in advance of the hearing.

Questions and requests for a copy of the proposed allocation plan may be directed to: Robert Johnston, Director of Multifamily Programs, Texas Department of Housing and Community Affairs, 811 Barton Springs Road, Suite 300, Austin, Texas 78704, (512) 475-3340.

All interested persons unable to attend the hearing may submit their views in writing to Robert Johnston before the hearing. All written comments will be available for public inspections.

This published notice and the above-described hearing are held in satisfaction of the requirements of Section(m) of the Internal Revenue Code of 1986, as amended.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Aurora Carvajal at (512) 475-3822 five work days prior to the meeting so that appropriate arrangements can be made. Individuals using TDD machines may access: 1 (800) RELAY TX.

The Texas Department of Housing and Community Affairs does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services.

Issued in Austin, Texas, on February 24, 1993.

TRD-9319684 Henry Flores
Executive Director
Texas Department of Housing and Community Affairs

Filed: March 2, 1993

Texas Racing Commission

Correction of Error

The Texas Racing Commission proposed the repeal of 16 TAC §313.112, concerning official workouts, amendments to §313.22, concerning general duties, §313.405, concerning whips and other equipment, and new §§313. 501-313.508, concerning training facilities. The rules were published in the February 23, 1993, *Texas Register* (18 TexReg 1125).

Due to proofreading errors by the *Texas Register* the zeros were removed from statutor cites as follows.

On page 1125, §313.22, in the fifth paragraph of the preamble "§3.2" should read "§3.02", and "§3.7" should read "§3.07". In §313.112, fifth paragraph, "§3.2" should read "§3.02. On page 1126, §313.405, fifth paragraph of the preamble, "§3.2" should read "§3.02" and "§14.3" should read "§14.03". In the fifth paragraph of the preamble to §§313. 501-313.508, "§3.2" should read "§3.02", "§7.2" should read "§7.02", and "§7.5" should read "§7.05".

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Texas Department of Transportation

Public Hearing Notice

Pursuant to the Texas Coastal Waterway Act of 1975, Texas Civil Statutes, Article 5415e-2, §6(g), the Texas Transportation Commission will conduct a public hearing to receive data, evidence, comments, views, and/or testimony concerning the acquisition of land or interest therein by donation, lease, purchase, or condemnation which is environmentally suitable for use as disposal sites for materials dredged from the main channel of the Gulf Intracoastal Waterway. The location of the individual proposed site to be considered by the commission is near Jones Lake in the vicinity of West Bay and is more specifically described as follows.

Galveston County-one site of 180 acres more or less located on the north side of the Highland Bayou Diversion Channel near the mouth of Basford Bayou, being more specifically identified by the United States Army Corps of Engineers as opposite their station number 37+000.

The public hearing will be held at 9:30 a.m., Wednesday, March 24, 1993, in the first floor hearing room, Dewitt C. Greer State Highway Building, 11th and Brazos Streets, Austin.

Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of commenters or witnesses will be reserved exclusively to the commission as may be necessary to ensure a complete record. While any person with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the commission reserves the right to restrict testimony in terms of time or repetitive content.

Maps, environmental impact statements, and other displays concerning the proposed site will be exhibited at the public hearing. Prior to the public hearing, information about the proposed site will be on file and available for inspection at the Texas Department of Transportation, Division of Transportation Planning, Building Number 1, 40th and Jackson Streets, Austin, with B. C. Gersch, P.E., (512) 467-3832.

The State's Relocation Assistance Program concerning the benefits and services for displacees, and information about the site acquisition process are available at the previously noted office.

For further information, please contact Alvin R. Luedecke, Jr., P.E. Director of Transportation Planning, P.O. Box 5051, Austin, Texas 78763-5051, (512) 465-7346; or Marcus L. Yancey, Jr., P.E., Associate Executive Director, Planning and Policy, (512) 463-8627.

Issued in Austin, Texas, on March 1, 1993.

TRD-9319767 Diane L. Northam
Legal Administrative Assistant
Texas Department of Transportation

Filed: March 3, 1993

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Texas Veterans Land Board

Escrow Restructuring Request

The Texas Veterans Land Board (VLB) is requesting ideas for the purpose of restructuring the Texas Veterans Land Program (Land Program) 1985 and 1986 Refunding escrows and the Texas Veterans Housing Assistance Program (Housing Program) 1992 Defeasance escrow.

All of the then outstanding debt in the Land Program was refunded in 1985 and 1986. Certain bonds in the Housing Program Series 1984, 1984A, 1984B, and 1985 were defeased in 1992. Ever changing interest rate market conditions may have created opportunities to more efficiently fund the aforementioned escrows.

The closing date for receipt of ideas for the escrow restructuring is 5 p.m. , March 23, 1993. Further information may be obtained by contacting H. Ellis Phifer at (512) 463-5289.

VLB intends to review all suggestions to determine which method(s) achieves the following goals: provide savings to VLB; maintenance of Federal arbitrage yield compliance; minimization of implementation costs; and expedient implementation.

If an idea garnered through this request is selected for implementation, VLB intends to award the opportunity to execute the recommendations to the firm(s) providing the idea.

Issued in Austin, Texas, on March 3, 1993.

TRD-9319770 Garry Mauro
Chairman
Texas Veterans Land Board

Filed: March 3, 1993

♦ ♦ ♦

Texas Water Commission

Notice of Applications for Municipal Solid Waste Permits

Notice is given by the Texas Water Commission of public notices of waste permit applications issued during the period of February 22-26, 1993.

No public hearing will be held on these applications unless an affected person has requested a public hearing. Any

such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester, would be adversely affected by the granting of the application. If the commission determines that the request sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public interest, the commission shall conduct a public hearing, after the issuance of proper and timely notice of the hearing. If no sufficient request for hearing is received within 30 days of the date of publication of notice concerning the applications, the permit will be submitted to the commission for final decision on the application.

Information concerning any aspect of these applications may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7906.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number, and type of application-new permit, amendment, or renewal.

City of Floydada; Type I (landfill) municipal solid waste management facility; on a 48.99 acre site, east-southeast of Floydada, 1.5 miles east of the intersection of U.S. Highway 62/70 and FM Road 1958, and 0.3 mile south of U.S. Highway 62/70 in Floyd County; new; MSW2207.

Recycle with Kim Cor Hauling, Inc.; Type V (materials recovery facility and transfer station) municipal solid waste management facility; on a 0.92 acre site, approximately 150 feet west of FM Road 1431, at a point approximately two miles north of the intersection of FM Road 1431 and FM Road 2900, at 167 Industrial Boulevard in the City of Kingsland, Llano County; new; MSW2206.

Issued in Austin, Texas, on February 26, 1993.

TRD-9319734 Gloria A. Vasquez
Chief Clerk
Texas Water Commission

Filed: March 2, 1993

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Notice of Application For Waste Disposal Permit

Notice is given by the Texas Water Commission of public notices of waste disposal permit applications issued during the period of February 22, 1993-February 26, 1993.

No public hearing will be held on these applications unless an affected person has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester, would be adversely affected by the granting of the application. If the commission determines that the request sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public interest, the commission shall conduct a public hearing, after the issuance of proper and timely notice of the hearing. If no sufficient request for hearing is received within 30 days of the date of publication of notice concerning the applications, the permit will be submitted to the commission for final decision on the application.

Information concerning any aspect of these applications may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7906.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number, and type of application–new permit, amendment, or renewal.

Applied Industrial Materials Corporation; a petroleum coke storage yard; approximately 0.5 mile west of the Navigation Boulevard drawbridge adjacent to Corpus Christi Inner Harbor in the City of Corpus Christi, Nueces County; renewal; 02291.

Browning Ferris, Inc.; waste management facility; on 216.5 acres of land adjoining Jenkins Road, approximately six miles east of Anahuac, Chambers County; amendment; SW39039.

City of Corpus Christi; Allison Wastewater Treatment Facilities; in the northwest portion of the City of Corpus Christi, approximately one mile north of Interstate Highway 37 at the end of Allison Road in Nueces County; renewal; 10401-06.

El Paso Water Utilities Public Service Board; Southeast (Roberto R. Bustamante) Wastewater Treatment Facilities; approximately 4,000 feet southeast of the Riverside Canal headgates, north of the Rio Grande River and 1.5 miles northwest of the Socorro Wastewater Treatment Plant in El Paso County; renewal; 10408-10.

G and L Tool Company; Five Oaks Wastewater Treatment Facilities; approximately 3,300 feet west from the bridge where Rothwood Road crosses Spring Creek in Harris County; renewal; 12382-01.

Gulf Coast Trades Center; wastewater treatment facilities; approximately 0. 4 mile north of the intersection of Interstate Highway 45 and Sheppard Hill Road and approximately 4.1 miles north of the City of Willis on the west side of Interstate Highway 45 in Montgomery County; renewal; 11829-01.

Harris County Municipal Utility District Number 49; wastewater treatment facilities; at 14901 John Ralston Road, approximately 400 feet north of the North Belt and approximately 2,500 feet east of Garners Bayou in Harris County; renewal; 11919-01.

Houston Lighting and Power Company; T. H. Wharton Steam Electric Station; at 16301 Tomball Parkway (FM Road 149) approximately 1,000 feet south of the intersection of Mills Road and FM Road 149, approximately 17 miles northwest of the City of Houston, Harris County; renewal; 01039.

Hoyer, USA, Inc.; an intermodal container cleaning and servicing facility; on Chemical Road, approximately 1/2 mile north of Bay Area Boulevard in the City of Pasadena, Harris County; new; 03568.

The Lubrizol Corporation; a plant manufacturing additives for lubricating oils, grease and fuels; in the Bayport Industrial Complex, approximately one mile south of the intersection of Fairmont Parkway and Bay Area Boulevard, Harris County; renewal; 02594.

City of Madisonville; wastewater treatment facilities; 550 feet east of South Martin Luther King Street and 750 feet south of the intersection of South Martin Luther King Street and Fourth Street in the City of Madisonville in Madison County; renewal; 10215-01.

North Texas Municipal Water District; wastewater treatment facilities; approximately 0.4 of a mile southeast of State Highway 78 and 1.25 miles southwest of the City of Wylie central business district at the most northerly intersection of FM Road 544 and State Highway 78, in Collin County; renewal; 10384-01.

Northwest Harris County Municipal Utility District Numbers 21, 22, and 23; the Northchase Wastewater Treatment Facilities; approximately one mile southeast of the intersection of Stuebner-Airline Road and Bammel-North Houston Road, northwest of the City of Houston in Harris County; renewal; 12144-01.

Troy Potter, Inc.; a carbon black plant; adjacent to FM Road 1485 at a site approximately 1.5 miles southeast of State Highway 105 and FM Road 1485 intersection and approximately five miles east of the City of Conroe, Montgomery County; renewal; 01154.

City of San Angelo; wastewater treatment facilities; at Avenue I and Metcalf Street in the City of San Angelo, Tom Green County; renewal; 10641-01.

San Antonio Water System; the Medio Creek Wastewater Treatment Facilities; approximately 1,300 feet north of the point where U.S. Highway 90 crosses Medio Creek, on the west side of Medio Creek in Bexar County; renewal; 10137-40.

San Elizario Independent School District; the San Elizario School Wastewater Treatment Facilities; at 12280 Socorro Road in El Paso County; renewal; 13380-01.

Eli Sasson; the Mohdot Village Home Park Wastewater Treatment Facilities; approximately 1.5 miles southeast of the intersection of State Highway 6 and FM Road 529, northwest of the City of Houston in Harris County; renewal; 11414-01.

Sportsman's World Municipal Utility District; a reverse osmosis potable water treatment plant; approximately 1/2 mile south-southwest of the mouth of the Bluff Creek tributary to the main body of Possum Kingdom Reservoir and approximately 1/4 miles southeast of the Bluff Creek Marina, Palo Pinto County; renewal; 02461.

Issued in Austin, Texas, on February 26, 1993.

TRD-9319735 Gloria A. Vasquez
Chief Clerk
Texas Water Commission

Filed: March 2, 1993

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1993 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the January-December 1993 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 July 30, November 5, November 30, and December 28. A 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 Friday, January 1	Monday, December 28	Tuesday, December 29
2 Tuesday, January 5	Wednesday, December 30	Thursday, December 31
3 Friday, January 8	Monday, January 4	Tuesday, January 5
4 Tuesday, January 12	Wednesday, January 6	Thursday, January 7
5 Friday, January 15	Monday, January 11	Tuesday, January 12
6 Tuesday, January 19	Wednesday, January 13	Thursday, January 14
Friday, January 22	1992 ANNUAL INDEX	
7 Tuesday, January 26	Wednesday, January 20	Thursday, January 21
8 Friday, January 29	Monday, January 25	Tuesday, January 26
9 Tuesday, February 2	Wednesday, January 27	Thursday, January 28
10 Friday, February 5	Monday, February 1	Tuesday, February 2
11 Tuesday, February 9	Wednesday, February 3	Thursday, February 4
12 Friday, February 12	Monday, February 8	Tuesday, February 9
13 Tuesday, February 16	Wednesday, February 10	Thursday, February 11
14 *Friday, February 19	Friday, February 12	Tuesday, February 16
15 Tuesday, February 23	Wednesday, February 17	Thursday, February 18
16 Friday, February 26	Monday, February 22	Tuesday, February 23
17 Tuesday, March 2	Wednesday, February 24	Thursday, February 25
18 Friday, March 5	Monday, March 1	Tuesday, March 2
19 Tuesday, March 9	Wednesday, March 3	Thursday, March 4
20 Friday, March 12	Monday, March 8	Tuesday, March 9
21 Tuesday, March 16	Wednesday, March 10	Thursday, March 11
22 Friday, March 19	Monday, March 15	Tuesday, March 16
23 Tuesday, March 23	Wednesday, March 17	Thursday, March 18
24 Friday, March 26	Monday, March 22	Tuesday, March 23
25 Tuesday, March 30	Wednesday, March 24	Thursday, March 25
26 Friday, April 2	Monday, March 29	Tuesday, March 30
27 Tuesday, April 6	Wednesday, March 31	Thursday, April 1
28 Friday, April 9	Monday, April 5	Tuesday, April 6
29 Tuesday, April 13	Wednesday, April 7	Thursday, April 8
Friday, April 16	FIRST QUARTERLY INDEX	
30 Tuesday, April 20	Wednesday, April 14	Thursday, April 15

31 Friday, April 23	Monday, April 19	Tuesday, April 20
32 Tuesday, April 27	Wednesday, April 21	Thursday, April 22
33 Friday, April 30	Monday, April 26	Tuesday, April 27
34 Tuesday, May 4	Wedesday, April 28	Thursday, April 29
35 Friday, May 7	Monday, May 3	Tuesday, May 4
36 Tuesday, May 11	Wednesday, May 5	Thursday, May 6
37 Friday, May 14	Monday, May 10	Tuesday, May 11
38 Tuesday, May 18	Wednesday, May 12	Thursday, May 13
39 Friday, May 21	Monday, May 17	Tuesday, May 18
40 Tuesday, May 25	Wednesday, May 19	Thursday, May 20
41 Friday, May 28	Monday, May 24	Tuesday, May 25
42 Tuesday, June 1	Wednesday, May 26	Thursday, May 27
43 *Friday, June 4	Friday, May 28	Tuesday, June 1
44 Tuesday, June 8	Wednesday, June 2	Thursday, June 3
45 Friday, June 11	Monday, June 7	Tuesday, June 8
46 Tuesday, June 15	Wednesday, June 9	Thursday, June 10
47 Friday, June 18	Monday, June 14	Tuesday, June 15
48 Tuesday, June 22	Wednesday, June 16	Thursday, June 17
49 Friday, June 25	Monday, June 21	Tuesday, June 22
50 Tuesday, June 29	Wednesday, June 23	Thursday, June 24
51 Friday, July 2	Monday, June 28	Tuesday, June 29
52 Tuesday, July 6	Wednesday, June 30	Thursday, July 1
53 Friday, July 9	Monday, July 5	Tuesday, July 6
Tuesday, July 13	SECOND QUARTERLY INIDEX	
54 Friday, July 16	Monday, July 12	Tuesday, July 13
55 Tuesday, July 20	Wednesday, July 14	Thursday, July 15
56 Friday, July 23	Monday, July 19	Tuesday, July 20
57 Tuesday, July 27	Wednesday, July 21	Thursday, July 22
Friday, July 30	NO ISSUE PUBLISHED	
58 Tuesday, August 3	Wednesday, July 28	Thursday, July 29
59 Friday, August 6	Monday, August 2	Tuesday, August 3
60 Tuesday, August 10	Wednesday, August 4	Thursday, August 5
61 Friday, August 13	Monday, August 9	Tuesday, August 10
62 Tuesday, August 17	Wednesday, August 11	Thursday, August 12
63 Friday, August 20	Monday, August 16	Tuesday, August 17
64 Tuesday, August 24	Wednesday, August 18	Thursday, August 19
65 Friday, August 27	Monday, August 23	Tuesday, August 24
66 Tuesday, August 31	Wednesday, August 25	Thursday, August 26
67 Friday, September 3	Monday, August 30	Tuesday, August 31
68 Tuesday, September 7	Wednesday, September 1	Thursday, September 2
69 *Friday, September 10	Friday, September 3	Tuesday, September 7

70 Tuesday, September 14	Wednesday, September 8	Thursday, September 9
71 Friday, September 17	Monday, September 13	Tuesday, September 14
72 Tuesday, September 21	Wednesday, September 15	Thursday, September 16
73 Friday, September 24	Monday, September 20	Tuesday, September 21
74 Tuesday, September 28	Wednesday, September 22	Thursday, September 23
75 Friday, October 1	Monday, September 27	Tuesday, September 28
76 Tuesday, October 5	Wednesday, September 29	Thursday, September 30
77 Friday, October 8	Monday, October 4	Tuesday, October 5
Tuesday, October 12	THIRD QUARTERLY INDEX	
78 Friday, October 15	Monday, October 11	Tuesday, October 12
79 Tuesday, October 19	Wednesday, October 13	Thursday, October 14
80 Friday, October 22	Monday, October 18	Tuesday, October 19
81 Tuesday, October 26	Wednesday, October 20	Thursday, October 21
82 Friday, October 29	Monday, October 25	Tuesday, October 26
83 Tuesday, November 2	Wednesday, October 27	Thursday, October 28
Friday, November 5	NO ISSUE PUBLISHED	
84 Tuesday, November 9	Wednesday, November 3	Thursday, November 4
85 Friday, November 12	Monday, November 8	Tuesday, November 9
86 Tuesday, November 16	Wednesday, November 10	Thursday, November 11
87 Friday, November 19	Monday, November 15	Tuesday, November 16
88 Tuesday, November 23	Wednesday, Novmber 17	Thursday, November 18
89 Friday, November 26	Monday, November 22	Tuesday, November 23
Tuesday, November 30	NO ISSUE PUBLISHED	
90 Friday, December 3	Monday, November 29	Tuesday, November 30
91 Tuesday, December 7	Wednesday, December 1	Thursday, December 2
92 Friday, December 10	Monday, December 6	Tuesday, December 7
93 Tuesday, December 14	Wednesday, December 8	Thursday, December 9
94 Friday, December 17	Monday, December 13	Tuesday, December 14
95 Tuesday, December 21	Wednesday, December 15	Thursday, December 16
96 Friday, December 24	Monday, December 20	Tuesday, December 21
Tuesday, December 28	NO ISSUE PUBLISHED	

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