

# Texas Register

Volume 18, Number 47, June 18, 1993

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Texas Register



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How to Use the Texas Register

Information Available: The 10 sections of the Texas Register represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency 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Withdrawn Sections - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.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
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The Table of TAC Titles Affected is cumulative for each volume of the Texas Register (calendar year).

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

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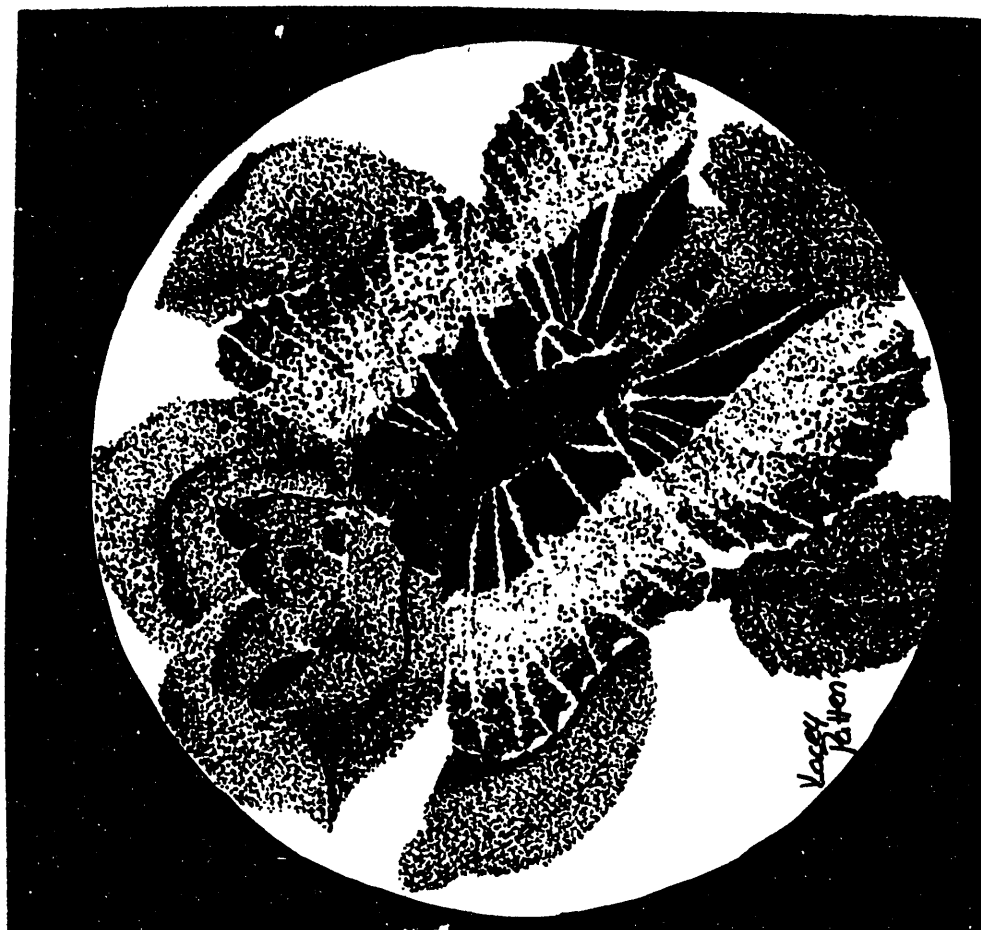
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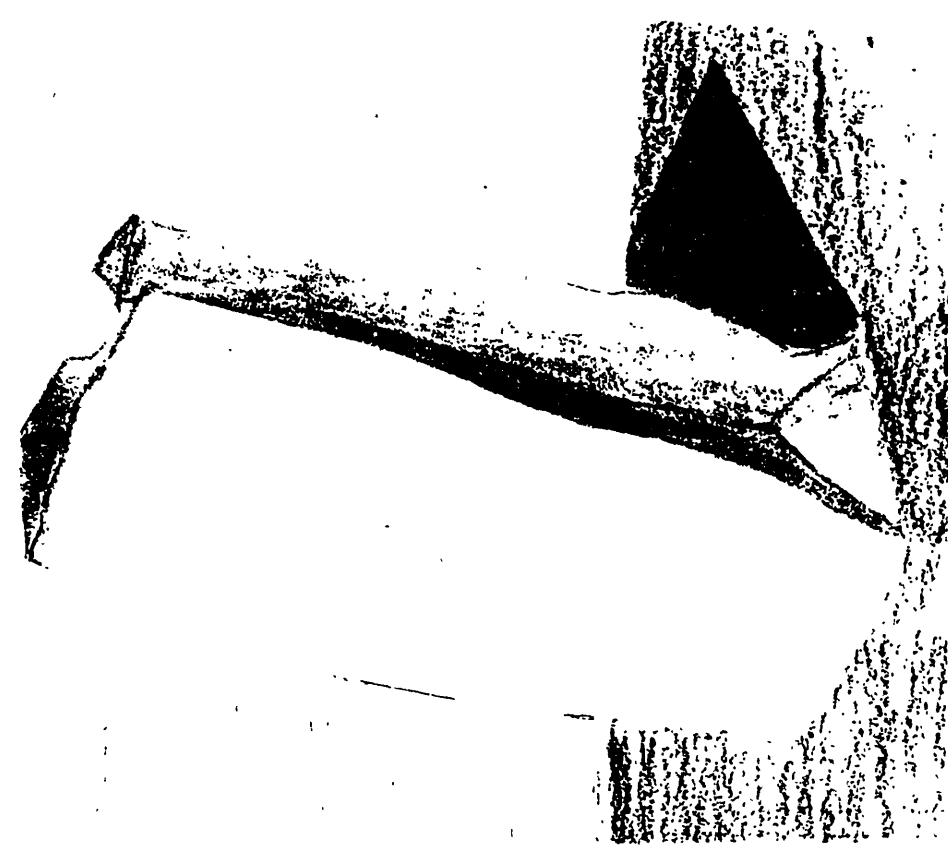
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Name: Kacey Patten  
Grade: 8  
School: Hendrick Middle School, Plano ISD



Name: Paige Orton  
Grade: 7  
School: Hendrick Middle School, Plano ISD

# Withdrawn Sections

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

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## TITLE 19. EDUCATION

### Part II. Texas Education Agency

#### Chapter 68. Transportation

##### Subchapter A. Transportation Operation

##### Transportation Administration

##### • 19 TAC §68.35

The Texas Education Agency has withdrawn from consideration for permanent adoption a proposed new §68.35, which appeared in the May 18, 1993, issue of the *Texas Register* (18 TexReg 3237). The effective date of this withdrawal is June 14, 1993.

Issued in Austin, Texas, on June 14, 1993.

TRD-9324239      Criss Cloudt  
Director, Policy Planning  
and Evaluation  
Texas Education Agency

Effective date: June 14, 1993

For further information, please call: (512)  
463-9701



# 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 19. EDUCATION

### Part I. Texas Higher Education Coordinating Board

#### Chapter 5. Program Development

#### Subchapter K. Private Degree-Granting Institutions Operating in Texas

##### • 19 TAC §5.213

The Texas Higher Education Coordinating Board adopts an amendment to §5.213, concerning administrative procedures related to certification of nonexempt institutions, without changes to the proposed text as published in the February 16, 1993, issue of the *Texas Register* (18 TexReg 999).

The amendment will make it clear to all exactly what standards must be met to be awarded this public trust.

The amendment would specify the criteria used by the Board to recognize accrediting agencies for purposes of exemption from the certification law. The overall intent of the law is to protect citizens of the state from substandard education while unaccredited institutions are working toward full accreditation by an agency judged by the Board to be appropriate.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Education Code, §61.311, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules regarding Administrative Procedures Related to Certification of Nonexempt Institutions.

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 June 9, 1993.

TRD-9324140 James McWhorter  
Assistant Commissioner for  
Administration  
Texas Higher Education  
Coordinating Board

Effective date: July 1, 1993

Proposal publication date: February 16, 1993

For further information, please call: (512) 483-6160

#### Subchapter P. Testing and Remediation

##### • 19 TAC §§5.313, 5.314, 5.317

The Texas Higher Education Coordinating Board adopts amendments to §§5.313, 5.314, and 5.317, concerning testing and remediation, without changes to the proposed text as published in the March 30, 1993, issue of the *Texas Register* (18 TexReg 1992).

The amendments will enable nine hour and remediation rules to be clearer to administer and enforce. Greater clarity about the force and impact of the policy manual will result from the policy rule.

The amendments will delete the 15 hour rule and this will comply with the law. The rule directing schools to follow the policy manual links the two documents together (rules and policies) while allowing more topical or flexible topics to be expressed as policies. There will also be clarification when remediation should begin. The rules will be effective Fall, 1993.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Education Code, §51.306, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules regarding Testing and Remediation.

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 June 9, 1993.

TRD-9324141 James McWhorter  
Assistant Commissioner for  
Administration  
Texas Higher Education  
Coordinating Board

Effective date: July 1, 1993

Proposal publication date: March 30, 1993

For further information, please call: (512) 483-6160

#### Subchapter S. Transfer of Lower Division Course Credit

##### • 19 TAC §5.391

The Texas Higher Education Coordinating Board adopts an amendment to §5.391, con-

cerning requirements and limitations, without changes to the proposed text as published in the May 7, 1993, issue of the *Texas Register* (18 TexReg 2931).

This is a technical amendment changing the word "and" to "including those." This amendment was inadvertently omitted from the final adoption in January 1992 of rules enhancing the transferability of credit from community colleges to universities by requiring universities to identify comparable courses in its catalog

The amendment makes necessary technical changes that were inadvertently omitted from the adoption in 1992.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Education Code, §61.051(g) and §61.078(e), which provides the Texas Higher Education Coordinating Board with the authority to adopt rules regarding Transfer to Lower-Division Course Credit.

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 June 9, 1993.

TRD-9324142 James McWhorter  
Assistant Commissioner for  
Administration  
Texas Higher Education  
Coordinating Board

Effective date: July 1, 1993

Proposal publication date: May 7, 1993

For further information, please call: (512) 483-6160

## Part II. Texas Education Agency

### Chapter 75. Curriculum

#### Subchapter B. Essential Elements-Prekindergarten-Grade 6

##### • 19 TAC §75.31

The Texas Education Agency (TEA) adopts an amendment to §75.31, concerning essential curriculum elements, without changes to the proposed text as published in the May 4, 1993, issue of the *Texas Register* (18 TexReg 2893). The section lists the fine arts essential elements for prekindergarten-Grade

6. The amendment restores language in §75.31(g)(1), concerning art as an essential element for Grade 6, that was inadvertently omitted by TEA from the proposed new rule as published in the October 25, 1991, issue of the *Texas Register* (16 TexReg 5957). The section was subsequently adopted without changes in the December 6, 1991, issue of the *Texas Register* (16 TexReg 7011).

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Education Code, §21.101(c), which authorizes the State Board of Education to promulgate rules designating the essential elements of each subject and course in the state curriculum.

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 June 14, 1993.

TRD-9324240  
Cris Cloudt  
Director, Policy Planning  
and Evaluation  
Texas Education Agency

Effective date: July 5, 1993

Proposal publication date: May 4, 1993

For further information, please call: (512) 463-9701

## Chapter 137. Professional Educator Preparation and Certification

### Subchapter J. Graduate Education Programs for Professional Certification

- 19 TAC §§137.303, 137.306, 137.307, 137.313, 137.316

The Texas Education Agency (TEA) adopts amendments to §§137.303, 137.306, 137.307, 137.313, and 137.316, concerning professional educator certification, without changes to the proposed text as published in the April 27, 1993, issue of the *Texas Register* (18 TexReg 2785). The amendments are adopted in accordance with the sunset review process mandated by Senate Bill 1, 71st Legislature. Public comment was received regarding certain certification requirements that were omitted from portions of Chapter 137, Subchapter J, of this title (relating to Graduate Education Programs for Professional Certification) as adopted by TEA in the March 23, 1993, issue of the *Texas Register* (18 TexReg 1958). The TEA agrees that including these requirements clarifies the prerequisites for certain professional credentials.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Education Code, §§11.26, 13.032-13.039, 13.0321, 13.045-13.052, 13.116, 13.202, 13.211, 13.501-13.506, and 16.056; and Texas Civil Statutes, Article 6252-13c(a)-

(e), which authorize the State Board of Education to promulgate rules concerning professional educator certification.

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 June 14, 1993.

TRD-9324241  
Cris Cloudt  
Director, Policy Planning  
and Evaluation  
Texas Education Agency

Effective date: July 5, 1993

Proposal publication date: April 27, 1993

For further information, please call: (512) 463-9701

## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### Part I. General Land Office

#### Chapter 19. Oil Spill Prevention and Response

##### Subchapter B. Spill Prevention and Preparedness

- 31 TAC §19.17

The General Land Office (GLO) adopts an amendment to §19.17, concerning vessel response plans and proof of financial responsibility, with changes to the proposed text as published in the April 20, 1993, issue of the *Texas Register* (18 TexReg 2521).

The changes are necessary to enhance coordination between federal and state requirements for vessel response plans. The GLO is accepting portions of the federal response plans without any additional mandates at this time.

The amendment will allow vessel owners and operators subject to federal law to meet the requirements of the Oil Spill Prevention and Response Act of 1991 (OSPPRA) without preparing additional materials. The vessel owners and operators are only required to submit certain portions of the federal plans to the GLO. However, the vessel owners and operators must send the GLO copies of correspondence with the United States Coast Guard related to plan acceptance and deficiencies.

In response to comments, several modifications were made. This section, as modified, is adopted to clarify the relationship between federal requirements for vessel response plans under the Oil Pollution Act of 1990 (OPA), 33 United States Code, §2701 et seq and as amended by OPA, the Federal Water Pollution Control Act (Clean Water Act), 33 United States Code, §1251 et seq and under OSPRA, Texas Natural Resources Code, Chapter 40. Vessels that are in compliance with the requirements of federal laws and regulations satisfy the requirements of Texas law. (OSPRA, §40.114(c)).

One comment suggested that subsection (a)(1) be amended to state that not all vessels subject to OPA are required to submit response plan by August 18, 1993. For example, dedicated response vessels or vessels not currently trading in United States waters, do not have to submit plans by August 18, 1993. Compliance with the provisions of OPA and rules adopted thereunder satisfy Texas law and therefore the rule is amended to reiterate the statutory provision.

The same commenter also suggested that dedicated response vessels and any other vessels of opportunity be exempted from Texas response plan requirements. OSPRA, §40.114 was recently amended (Texas Senate Bill 1049, 73rd Legislature (1993)) to exempt dedicated response vessels or any vessel which engages in activities solely related to the containment and cleanup of oil. The suggestion is not adopted since the legislative change makes it unnecessary.

Several commenters suggested that the rule be amended to state that the submission of the entire vessel response plan required by OPA may be submitted to the GLO. Their concern was the additional paperwork entailed in submitting portions of an already prepared plan. The rule is amended to add this suggestion.

The rule is also amended to include the mailing address of the GLO in this section.

No one who commented opposed adoption of the rule. Those who commented requested specific changes or additions to the rule. Comments were received from Marine Spill Response Corporation, The Transportation Institute, and Hudson Maritime Services.

The amendments are adopted under the Texas Natural Resources Code, §40.007, which authorizes the land commissioner to promulgate rules necessary and convenient to the administration of OSPRA.

#### §19.17. Vessel Response Plans and Proof of Financial Responsibility.

##### (a) Response Plans.

(1) Vessels subject to the Oil Pollution Act, 33 United States Code, §2701 et seq and the Federal Water Pollution Control Act (Clean Water Act), 33 United States Code, §1251 et seq as amended by OPA. Vessels operating in coastal waters of the State of Texas that are subject to OPA must have response plans as required by 33 United States Code, §1321(j)(5) and §2716.

(A) Submission of Vessel Response Plans to the GLO. All owners and operators of vessels that intend to enter the coastal waters of the State of Texas and that are subject to OPA response plan requirements must submit the following English language version sections of their plan, or if they chose, the entire plan to the GLO by August 18, 1993 or whenever required by federal law:

(i) general information and introduction;

(ii) notification procedures;

(iii) list of contacts;

(iv) geographic-specific appendix for each Captain of the Port (COTP) zone in Texas in which the vessel intends to operate;

(v) vessel-specific appendix for each vessel which intends to enter coastal waters of the State of Texas covered by the plan; and

(vi) shore-based response activities. The sections must be accompanied by a letter from the person who signed the vessel response plan that was submitted to the United States Coast Guard and the letter must verify that the submissions to the GLO are identical to those submitted to the United States Coast Guard.

(B) Submission of United States Coast Guard Letter of Acknowledgment or Deficiency. Vessel owners and operators are required to forward to the GLO copies of all correspondence between the United States Coast Guard and the vessel owner or operator relating to the receipt, acceptance, deficiency, corrections of deficiencies and notification of changes in the vessel response plan submitted pursuant to OPA, §2716. The vessel response plans and letters should be submitted by mail to: Texas General Land Office, Division of Oil Spill Prevention and Response, 1700 North Congress Avenue, Room 740, Austin, Texas 78701-1495, Attention: Tricia Clark.

(2) Vessels subject to the OSPRA, Texas Natural Resources Code, Chapter 40. Regulated vessels, under OSPRA, are those vessels whose capacity to carry oil as fuel or cargo exceeds 10,000 U.S. gallons. These vessels will be required to meet the vessel response plan requirements of §40.114 when rules are adopted thereunder.

(b) Financial Responsibility. Those vessels covered by OSPRA but not covered by OPA will be required to meet the financial responsibility requirements of OSPRA, §40.202(a)(1) and (2) when rules are adopted under that section.

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 June 10, 1993.

TRD-8324127 Garry Mauro  
Commissioner  
General Land Office

Effective date: July 1, 1993

Proposal publication date: April 20, 1993

For further information, please call: (512) 663-5007

## Part IX. Texas Water Commission

### Chapter 330. Municipal Solid Waste

The Texas Water Commission (TWC) adopts the repeal of §§330.1-330.8, 330.21-330.25, 330.31-330.34, 330.41, 330.42, 330.51-330.67, 330.112-330.155, 330.171-330.180, 330.231, 330.241-330.243, 330.271-330.282, 330.900-330.918 and adopts new §§330.1-330.14, 330.21-330.25, 330.31-330.34, 330.41, 330.50-330.65, 330.111-330.139, 330.150-330.159, 330.200-330.206, 330.230, 330.231, 330.233-330.242, 330.250-330.256, 330.280-330.286, and 330.300-330.305, concerning the management of municipal solid waste. Sections 330.1-330.4, 330.7, 330.9-330.11, 330.14, 330.32, 330.41, 330.51-330.53, 330.55, 330.56, 330.58, 330.62, 330.113, 330.114, 330.119, 330.121-330.125, 330.127, 330.130, 330.133, 330.135, 330.136, 330.150, 330.159, 330.200, 330.202, 330.205, 330.206, 330.230, 330.231, 330.233-330.235, 330.238, 330.250-330.256, 330.281, 330.283-330.286, 330.300, and 330.304 are adopted with changes to the proposed text as published in the March 9, 1993, issue of the *Texas Register* (18 TexReg 1485). Sections 330.5, 330.6, 330.8, 330.12, 330.13, 330.21-330.25, 330.31, 330.33, 330.34, 330.50, 330.54, 330.57, 330.59-330.61, 330.63-330.65, 330.111, 330.112, 330.115-330.118, 330.120, 330.126, 330.128, 330.129, 330.131, 330.132, 330.134, 330.137-330.139, 330.151-330.158, 330.201, 330.203, 330.204, 330.236, 330.237, 330.239-330.242, 330.280, 330.282, 330.301-330.303, 330.305, and repealed §§330.1-330.8, 330.21-330.25, 330.31-330.34, 330.41, 330.42, 330.51-330.67, 330.112-330.155, 330.171-330.180, 330.231, 330.241-330.243, 330.271-330.282, 330.900-330.918 are adopted without changes and will not be published.

The adopted new sections implement the provisions of Parts 257 and 258 of Subtitle D of the Federal Resource Conservation and Recovery Act (Subtitle D), relating to Municipal Solid Waste Landfill Facilities (MSWLF), issued on October 9, 1993, except for proposed Subchapter K, §§330.280-330.286 of this title (relating to Financial Assurance) which is effective April 9, 1994. However, the commission anticipates that EPA will propose rules this summer that will extend the effective date of Subtitle D from October 9, 1993 to April 9, 1994 and will extend the financial assurance effective date from April 9, 1994 to April 9, 1995. In addition, EPA is expected to propose changes that would allow an approved state to grant additional extensions to a narrow set of certain facilities which have made a good faith effort to comply with the standards. Upon publication of a final rule by EPA, the commission will amend these sections to incorporate the new effective date(s).

Furthermore, on May 7, 1993, the U.S. Court of Appeals for the District of Columbia Circuit

(Natural Resources Defense Council, Inc. versus EPA, CA DC, No. 92-1005, 5/7/93) vacated the Subtitle D small landfill exemption for groundwater monitoring and concluded that EPA must revise its final rule to require groundwater monitoring, as necessary to detect contamination, at all landfills. Upon publication of a final rule by EPA, the commission will amend these sections to incorporate the revised criteria.

The proposed amendments were published in the March 9, 1993, issue of the *Texas Register* (18 TexReg 1485). Public hearings to receive comments on the proposed amendments were held in seven cities across the state between April 12 and April 15, 1993; written comments were received through April 15, 1993.

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 were proposed on March 9, 1993.

As a result of the public comment process, 1,298 individual comments on the rules were received, synopsisized, and categorized from 90 individuals, organizations, corporations, and political subdivisions.

The commission received comments on the proposed rules from the following organizations: 3M Austin Center; Browning Ferris Inc.; Beck Redymix Concrete Co.; Stephen B. Aikman; Charter Waste Management Corporation; Gundie Lining Systems, Inc.; Laidlaw Waste Systems, Inc.; Micro Waste Corporation; Sanifill; Trash Away Service, Inc.; Tricil; Waste Management of North America; Waste Reduction Services, Alamo Area Council of Governments; Concho Valley Council of Governments; Consulting Engineer Company of Texas; League of Women Voters of Texas; National Solid Wastes Management Association; Nortex Regional Council of Governments; Resource Conservation Council; Sparsely Populated Entities Coalition; Solid Waste Association of North America; Sierra Club; Texas Campaign for the Environment; Texas Council of Engineering Laboratories; Texas Municipal League; Texas A&M University; City of Abilene; City of Brownwood; City of Canadian; City of Canyon; City of College Station; City of Corpus Christi; City of Dalhart; City of Dallas; City of Duncannon; City of Kingsville; City of Midland; City of Perryton; City of Plainview; City of Plano; City of San Angelo; City of Seguin; City of Snyder; City of Spearman; City of Sweetwater; City of Tulia; City of Tyler; City of Vernon; City of Waco; City of Wichita Falls; Judge, Hartley County; Commissioner, San Patricio County; Citizens To Save Lake Waco; Senator Lucio, Hidalgo County; EPA Region IV; Emcon Baker-Shiflett, Inc; EnviroStat; Environmental Energy Group; Freese and Nichols, Inc.; HMA Environmental Service; McBride-Ratcliff and Associates, Inc.; Parkhill, Smith & Cooper, Inc.; Southern Ecology Management, Inc.; Brown McCarroll and Oaks Hartline; concerned citizens, and TWC staff.

There were several main categories of com-



ments: general comments; requests for clarity or correction of a typo; requests for additional definitions, provisions or, increased standards; requests for changes to items that exist in current Municipal Solid Waste Management Rules; requests for changes that would make the rule inconsistent with Subtitle D; requests for changes that would make the rule inconsistent with commission policy to not be more stringent than Subtitle D; and requests for relief from provisions that are necessary for implementation and enforcement of the rule.

General comments mainly expressed support of the rules and the hard work and dedication of the staff. Most commenters felt that the rules had implemented Subtitle D without exceeding the Federal Standards and were very complimentary of the rule making process. A few commenters expressed disappointment and felt the rules exceed Federal Standards, continue to be rigid and uncompromising, and are too stringent. A few commenters asked for general clarification of definitions.

Several hundred comments pertained to issues that were beyond the scope of this rulemaking. Sixty of these asked the commission to add definitions to the proposed rule to provide more clarity. The commission agrees that some additional definitions may help clarify the rule, but believes that these additional definitions will have to be proposed in a separate rulemaking to allow adequate input from all affected groups. Several commenters were concerned with proposed §330.203, which concerns excavation below the water table and the use of soil ballast versus solid waste ballast. The commission is aware of the economic and environmental magnitude of this issue and will therefore consider this issue in a separate rulemaking. The commission is in the process of forming a blue-ribbon panel to explore all aspects of this issue. Several commenters suggested changes to proposed §330.136 and §330.137, regarding Special Waste and Industrial Waste. Most commenters suggested revisions to make the language consistent with §§335.501-335.515 of this title (relating to Waste Classification). The commission believes that revisions are necessary and will pursue a separate rulemaking to correct the inconsistencies. Based upon comments received, the commission will consider possible rulemaking to deal with the following issues and concerns: vertical expansions over closed MSWLF units; a separate subchapter that describes the requirements for the design and operation of Type IV facilities; a requirement to test leachate collected from leachate collection systems of MSWLF units; a requirement that a full-time inspector "shall" be on-site during all liner construction activities; additional location restrictions with respect to sole source aquifers and established residences; additional performance criteria for larger landfills (>20 TPD) in arid areas of the state; allowing rural hospitals to act as transfer stations for medical waste and allowing these facilities to treat "off-site" medical wastes; general revisions to that portion of the rules which implement current MSW regulations; hours of operation for MSWLF units; location restrictions for MSWLF units located near airports; and review definitions of "MSWLF unit", "MSWLF site" and "facility".

Numerous commenters requested changes that would make the rule inconsistent with Subtitle D. The commission cannot relax or delete a standard contained in Subtitle D, since Subtitle D is self-implementing on October 9, 1993. Furthermore, the commission is seeking program approval from EPA to administer the Subtitle D program in Texas. Relaxing or deleting a standard would result in the Texas program being rejected. A few of the requested changes are summarized as follows: increase the small landfill exemption volume from 20 TPD to 250 TPD; extend the effective date of the rule; remove the ban on field filtering; reduce the HDPE liner thickness requirement from 60 mils to 40 mils; reduce the requirement that the final cover system must be as impermeable as the bottom liner system; revise the rule to allow the recirculation of leachate and gas condensate at any MSWLF unit, not just at those with a composite liner; reduce the requirements for demonstrating an alternative liner; delete the requirement for public involvement in the selection of a corrective action remedy; and expand liquids restriction to exclude containers for off-spec liquid from industrial and commercial sources.

Numerous commenters requested changes that would make the rule more stringent than title D. In a letter to Governor Richards dated July 17, 1992, the commissioners and the executive director of the Texas Water Commission committed to establishing municipal solid waste regulations that were no more stringent than Subtitle D, unless such measures are necessary to protect key resources such as the Edwards Aquifer (Underground River). Therefore, numerous requested changes were not incorporated. A few of the requested changes are summarized as follows: prohibit the location of MSWLF units in the 100-year floodplain; prohibit the disposal of hazardous waste from conditionally exempt small-quantity generators from disposal in a MSWLF; require ground-water monitoring of all MSW sites; require composite liners and leachate collection systems (remove the alternative liner design) for new and lateral expansions to MSWLF units; require compatibility testing of leachate with synthetic liner material; define the point of compliance at the outer boundary of the liner system; modify the procedures for obtaining background groundwater quality data; revise the statistical methods; require a MSWLF unit to stop receiving waste until the corrective action remedy is complete; increase standards for obtaining the Arid Exemption; the definition of airports should include military airports; define a practicable alternative for a small landfill as a site within 150 miles; and prohibit the permitting of sites with high methane migration potential.

Numerous commenters requested changes to non-Subtitle D portions of the existing Municipal Solid Waste Regulations. The focus of this rulemaking was to incorporate the requirements of Subtitle D. Very few changes were made to non-Subtitle D issues contained in the rules. Since the commission repealed and re-proposed the portion of the rule that are not Subtitle D, several commenters made recommendations to those portions of the rule. The comments

focused on processing and enclosed containers. The commission is not considering these changes at this time.

Numerous comments dealt with issues that are necessary for the enforcement and implementation of Subtitle D. Since Subtitle D is a self-implementing rule, many of the requirements center around the placing of required plans and documentation in the operating record. Approved states must demonstrate to EPA that they have a program capable of implementing and enforcing the requirements of Subtitle D. Therefore, in approved states those plans and certification will have to be submitted for executive director review and approval. The majority of the comments in this group centered on specifications that exist in the rule. Most of these specifications exist in current rules and are necessary for the implementation and enforcement of the program.

Approximately 700 comments concerned issues specific to this rulemaking. The commission has carefully considered these comments and has amended the proposed rule where appropriate.

There were a number of typographical errors reported by commenters throughout the proposed rule, and these have been corrected.

Several commenters requested the addition of the term "intentionally and knowingly" to all of the prohibitions included in Subchapter A. This has been a subject of numerous discussions with the Advisory Panel appointed by the commission during rules development. The current language corresponds to either current regulations or current statute, and the commission believes it is appropriate to retain it as written.

In proposed §330.1, the word "unit" was changed to "facility" in Subparagraph (a), last sentence, to give the correct meaning.

One commenter requested that the term "interim status" not be used in proposed §330.1(b), because of its previous usage in connection with the hazardous waste program. The commission believes the designation is appropriate, given the need to provide a transition period during which the owners and operators of municipal solid waste facilities can update their site development plans to conform to the new regulations. The commission does not believe the term "interim status" carries any particular connotation that hazardous waste is involved, given that it is a part of the municipal solid waste landfill regulations.

The multiple gender designation in proposed §330.1(c) has been eliminated to conform to general practice in the rules.

A large number of commenters questioned the addition of the word "change" in proposed §330.1(b). The commission believes this designation is appropriate, since it is possible for an applicant to use either a modification or an amendment, depending upon the specifics of the situation. An applicant would request a modification, if he was simply upgrading to meet federal Subtitle D requirements, or he would request an amendment if he wished to upgrade to Subtitle D requirements and expand or increase the capacity of the landfill.

Comments concerning proposed §330.2 are as follows: A large number of commenters requested clarification of the definition of "buffer zone." This definition has been changed to read "a zone free of municipal solid waste processing and disposal activities, adjacent to the site boundary."

The definition of "composite liner" was changed to coincide with the Subtitle D definition, at the suggestion of one commenter. The multiple gender designation included in the definition for "executive director" was changed to a singular gender, to provide consistency.

The word "fluorescent" was eliminated from the definition of PCB wastes, at the suggestion of one commenter.

The definition for "point of compliance" was modified to conform to Subtitle D language, as was suggested by several commenters.

One commenter requested deletion of the definition for "population equivalent". The commission believes that it is essential to retain this definition, since it relates to other subchapters within the title, relating to fee assessments, etc. We do not believe that it will adversely affect the exemptions granted to small landfills receiving less than 20 tons per day of waste.

The definition for "small MSWLF" was changed to conform to Subtitle D language, at the suggestion of one commenter. The definition for "triple rinse" was modified, at the recommendation of one commenter, to specify that a solvent should be capable of removing the contents of the container being rinsed.

The definition of the word "washout" was modified by deleting the last four words "of the base flood".

Proposed §330.3(b) was modified, at the request of one commenter, so that a resubmission of a closure report is not required, if one had already been submitted. Two commenters requested that the 25-inch precipitation line be defined as being on the western boundary of any county it intersects. While this would simplify determination of communities who are near the line, we do not believe it would conform to Subtitle D requirements, and the commission has elected to leave the language as currently proposed. The rules provide a means for establishing the average annual precipitation for those borderline communities.

In proposed §330.3(f)(4), one commenter suggested that the use of the words "documentation" and "demonstrate" was too strong. After reviewing Subtitle D language, the commission believes these words should be retained.

One commenter suggested that proposed §330.3(f)(4)(A) be modified to clarify that the budget test would apply to the community which actually owned and operated the landfill. This has been done.

Two commenters suggested modifying the language of proposed §330.4(a) to recognize previously approved permits for lateral expansions. The commission believes that other portions of the regulations already provide

adequately for "grandfathering" of current permits.

In proposed §330.4, a new phrase has been added at the end of subsection (a), as follows, "except as provided for specifically herein," in order to accommodate possible future permit by rule regulations.

Several commenters pointed out that proposed §330.4(d) was in conflict with the population limits included elsewhere in the regulations. Although the commission has a separate rulemaking proposing to increase this population limit and provide for a tonnage limit, the commission believes that the current regulations should remain at 5,000 persons population, and this change has been made.

Several commenters pointed out that proposed §330.4(i) and (l) introduce new permitting or registration requirements for on-site medical waste incinerators. The commission agrees that this conflicts with the policy of keeping current regulations generally as they are for this rulemaking, and has replaced subsection (i) with the language included in the current municipal solid waste regulations, and modified subsection (l).

One commenter also pointed out a change in proposed §330.4(n), regarding the requirements for registration of exploratory and test operations. This paragraph has been deleted, and the following substituted therefor: "For materials extraction and gas recovery operations relating to municipal solid waste, a permit is required. However, exploratory and test operations for feasibility purposes may be conducted after approval of the executive director. Applicants should consult with the executive director to confirm applicability of specific requirements."

There were several comments on proposed §330.6, suggesting that the commission should not use technical guides to regulate. The commission believes this section expresses this same philosophy, although it does provide that, in certain quality control areas which are not addressed by the rules, guidelines are mandatory. The commission believes that inclusion of this specific requirement in these rules is appropriate and does not constitute regulation by technical guidance.

At the request of two commenters, the following has been added to proposed §330.9: "On April 9, 1994, the provisions of §§ 330.280-330.286 of this title (relating to Financial Assurance) will supersede this section."

One commenter questioned the need for coordination with FAA, in proposed §330.11(d), noting that Subtitle D only requires notification, in those instances where landfill sites are proposed more than 10,000 feet from airports. Considering the criticality of bird hazards near airports, and the fact that the proposed language is currently included in the municipal solid waste regulations, the commission believes it is appropriate to retain it here.

At the suggestion of one commenter, proposed §330.11(g) has been modified to reflect that the commission is a necessary and indispensable party to any suit filed by a local

government under the Texas Solid Waste Disposal Act.

There were a number of suggestions for increasing the stringency of the demonstrations required for Type IV-AE landfills, in proposed §330.14. After reviewing Subtitle D requirements, the commission believes the current demonstrations are sufficient to comply with the federal requirements, and will retain current language.

In the title of proposed §330.14, the word "process" has been substituted for "flow-chart," at the suggestion of one commenter, as being more descriptive of this section.

Proposed §330.14(b)(2) has been modified to indicate that the records indicated in parenthesis are examples of appropriate records which may be used in determining which wells are completed in the shallowest aquifer.

In proposed §330.14(c), one commenter requested definition of the term "considerable period". This has been done.

At the request of one commenter, proposed §330.14(e)(A) has been clarified to reflect the fact that alternative wells and springs are to come from within the plotted area.

In proposed §330.14(g), the word "aquifer" in the second sentence has been replaced by "water level," at the suggestion of one commenter.

In proposed §330.14(h), the term "groundwater professional" has been replaced with "groundwater scientist," at the suggestion of one commenter, who pointed out that this was inconsistent with the definitions included in Subtitle D and the remainder of the regulations.

With respect to proposed §330.32(g), two commenters asked the commission to clarify that enclosed containers or enclosed vehicles used to transport waste to a Type IV landfill must be free of household waste. The commission agrees with this comment and has amended the proposed §330.32(g) and proposed §330.135 accordingly.

With respect to proposed §330.41(b), concerning Municipal Solid Waste Facility-Type I, several commenters stated that the inclusion of design standards for Type I facilities should be deleted since it would mean re-permitting and retrofitting existing units. The commission disagrees with this comment. Existing permitted units are excluded from changed requirements in §330.1(b), which specifically allows existing landfills to continue to operate under previously approved permits, unless a change is mandated by the Federal Subtitle D portion of these rules. The commission interprets this to mean that existing landfills do not have to retrofit those existing portions or re-permit existing units. Furthermore, two commenters asked the commission to remove the 900 feet set-back requirement for Type IV sites located on Type I sites. Under proposed §330.41(c), which is referenced in proposed §330.41(b), the commission can approve an alternative set-back distance if specific site conditions warrant, and the commission believes it is better to maintain the set-back at 900 feet as a general rule. The commission also believes §330.1(b) of this

title (relating to Declaration and Intent) exempts currently permitted landfills, including those permitted for Type IV cells, from compliance with the set-back limit, since it is not required by the federal rules.

With respect to proposed §330.41(c) and proposed §330.41(d), two commenters stated that the inclusion of the designation of Type II and III facilities is meaningless and should be eliminated. Although, Type II and III facilities are required to upgrade to Type I standards on October 9, 1993, the commission believes that inclusion of these designations aid in the transition by providing historical information about these types of facilities. Furthermore, the sections provide direction to Type II and III operators, and instruct them to comply with Type I standards.

With respect to §330.41(e), several commenters stated that the section allowed Type IV facilities to receive household waste, which is not consistent with the Federal Subtitle D regulations. The commission disagrees with these comments. However, due to the confusion, this provision was reworded slightly to provide more clarity. Furthermore, two commenters asked the commission to require monthly cover instead of weekly cover for Type IV facilities. The commission disagrees with this comment and feels that weekly cover is required at Type IV facilities; however, the provision, as written, allows the commission to approve another schedule. Several commenters asked the commission to clarify the requirements for Type IV-AE sites, and Type IV sites. This provision has been reworded slightly to provide more clarity.

There were numerous comments regarding the local review committee and its qualifications and appointments, included in proposed §330.50. The commission notes that these requirements are mandated by statute; therefore, no changes have been made.

Several commenters pointed out that proposed §330.51(a) required the submission of all parts of the application prior to permit approval, noting that Part V consists of the construction documents, which are not available until after permit approval. The commission agrees with this comment and has changed this section to require only the submission of Parts I-IV prior to permit approval, with the stipulation that Part V shall be submitted upon completion of construction of the facility. Another commenter suggested this section be modified to clarify that Type I-AE MSWLFs are required to submit all parts of the application pertaining to groundwater protection design and operation, and groundwater monitoring and corrective action, but that they are not required to submit the geology report required by proposed §330.56(d). The commission agrees with this comment and the changes were made to this section.

Several commenters suggested modifying the language in proposed §330.51(b) (5) to require notification of these agencies, rather than coordination. The commission believes that mere notification is not sufficient and that it is appropriate for applicants to coordinate their applications with the affected agencies, in order to minimize problems in the permitting process, and after construction of a

facility. A large number of commenters objected to the use of the term "her seal" in proposed §330.51(d)(1), with one pointing out that section 330.2 does not define the feminine gender as also including the masculine gender. The commission agrees and a change has been made to proposed §330.2 of the regulations to equate all genders.

One commenter suggested that proposed §330.52(b)(9)(c) be modified to add the completion of an approved course as a means of establishing competency for site operation. The commission agrees with this comment and the section has been amended accordingly.

One commenter recommended changing "may" to "shall" in proposed §330.52(b) (11). The commission agrees with this comment and the section has been changed accordingly.

Several commenters suggested that the word "licensed" be added as a modifier to child care facility in proposed §330.53(b)(7). The commission agrees with this comment and this word was inserted to better define a child care facility.

One commenter requested clarification of proposed §330.53(b)(12)(B), concerning the Corps of Engineers permit for use of a wetlands area. The commission agrees with this suggestion and has modified this sentence to read "for the purpose of this rule, demonstration can be made by providing evidence that the facility has a Corps of Engineers permit for the use of any wetlands area." Two commenters suggested a change to proposed §330.55(a)(3), to broaden the purpose of the fencing to include all solid waste. The commission agrees with this change and the section has been changed accordingly.

One commenter suggested that proposed §330.55(b)(1)(B) and (D), pertaining to discharges, was not as stringent as the Federal Subtitle D. The commission agrees and additional language has been added to require that a facility shall not cause a discharge.

Several commenters requested that the commission add the word "channel" to proposed §330.55(b)(3). Since the current language is a direct quote from part 258 of the Federal Subtitle D, the commission does not agree that a change is appropriate. The commission does agree that channeling of run-off can be a legitimate collection or control method. The commission concurs in EPA's comment that "collect and control" does not necessarily require sampling or treatment, unless such is required to meet requirements of the Clean Water Act, including but not limited to the NPDES requirements.

Several commenters requested deletion of the words "or in an authorized manner" from proposed §330.55(b)(3). The commission disagrees with the comment and believes this section would be incomplete without this additional means of providing for a discharge under permitting programs or other authorizations not specifically enumerated in paragraph (1) of the subsection.

Numerous commenters stated that proposed §330.55(b)(5)(A) should be modified to retain the 20-minute lower limit for time of concen-

tration from the previous regulations. This change was made to be in conformance with the latest edition of the Texas Department of Transportation (TxDOT) Bridge Division hydraulic manual, which contains the 10-minute lower limit for time of concentration determinations. This section does not require the use of 10 minutes for the time of concentration, but merely establishes it as the lower limit, as provided in the TxDOT manual. The commission will retain this language.

Two commenters recommended changing the minimum required freeboard from 3 feet to 2 feet, in proposed §330.55(b)(7)(B). Three feet is the recommended freeboard for urban and developing areas in §301.34(6) of this title (relating to Criteria for Approval of Preliminary Plans), and governing levee districts, and the commission believes it is appropriate to retain it here.

There were numerous comments regarding proposed §330.55(b)(8)(B), which establishes a criteria for soil erosion loss. The commenters generally attacked the Soil Conservation Service universal soil loss equation as being inapplicable to landfills. The commission and EPA have been using this equation for some time to evaluate erosion control on landfills, and the commission disagrees with the comments and believes that by selecting the correct factors included in the equation, it is appropriate for use, and provides an objective means for evaluating soil erosion on landfill slopes. However, this section has been revised to a performance based requirement, and the use of the equation has been made optional.

With respect to proposed §330.55(b)(10), a number of commenters expressed concern that the landfill marking-system was too extensive, expensive, and rigid. Landfill markers received considerable support during the previous public meetings on the solid waste management concept paper dated June 1992, and the system described in the regulations is a result of comments and input from the regulated community. However, the commission recognizes that site-specific conditions may require adjustments, and has amended the section by adding a provision that the executive director may modify specific marker requirements to accommodate unique, site-specific conditions. The general requirements will be retained as written.

A number of commenters interpreted proposed §330.58(b)(4) to require perimeter toe berms for all above-ground waste disposal areas. The commission believes that this section merely requires a construction and design detail of such a berm to be included on this attachment, if it is being proposed as part of the design. In order to clarify this, the commission has replaced the words "to be built" with "which are proposed".

Several commenters suggested deletion of the word "any" from proposed §330.58(d)(3)(A), since Federal Subtitle D only relates to holocene faults. The commission disagrees with this comment and believes that it is important to identify any fault when siting a landfill. It is true that the location restrictions portion of the regulations does not apply to faults other than those in holocene time, but the presence of any fault

can impact the engineering design of a municipal solid waste facility.

A number of commenters questioned the need for borings to extend 30 feet below the deepest excavation of any facility, as required in proposed §330.56(d)(5)(A)(ii). The language regarding the depth to which borings should extend comes directly from the current municipal solid waste regulations, although it is true that the depth has been increased from 20 feet to 30 feet. Only one commenter objected to the increase in depth, while others supported it as being reasonable. The main question concerned the requirement for all borings to extend 30 feet below the deepest excavation on any site, with commenters pointing out that on large sites, the depth of excavation varies considerably and that it would be more appropriate to have the borings extend 30 feet below the excavation at the point of the boring. The commission believes that it is important to adequately characterize the geology of the site considering the potential for changes in the Site Development Plan over the life of the facility. However, the commission has added a provision to allow the executive director to approve different boring depths if the applicant can present site-specific information which justifies such variances. Furthermore, the commission has reworded the section slightly to improve clarity.

One commenter suggested allowing a .05N solution of Ca SO<sub>4</sub> to be used in permeability tests. The commission agrees with this comment and has revised proposed §330.56(d)(5)(B)(ii) accordingly. In addition, the commission has deleted subclause (V) of this clause, since it is inappropriate for permeability tests, and subclause (VI) has been renumbered to clause (V).

One commenter questioned the consistency of some requirements in proposed §330.56(e)(8). The commission agrees that there are inconsistencies and this section has been revised to be consistent with Subchapter I.

One commenter recommended a better definition for "contaminated water" in proposed §330.56(o). The commission agrees with this comment and additional language has been included to define contaminated water as water which has come in contact with waste, leachate, or gas condensate.

With respect to proposed §330.58, one commenter asked the commission to clarify this section. The commission has amended the section by adding the following sentence in order to clarify the requirements for submission of construction documents: "Part V is not required for permit approval."

In response to a comment, proposed §330.62(b) has been rewritten to require the owner or operator to retain the right of entry to the site until the end of the post-closure period, for inspection and maintenance of the site.

With respect to proposed §330.112, one commenter asked that the commission change this section to require a written response from the commission rather than a verbal response. The commission disagrees

with this comment. The commission feels it needs to retain the flexibility to respond verbally if necessary, although every effort will be made to respond in writing.

With respect to proposed §330.113, one commenter suggested the commission clarify where the operating record can be located. This provision was reworded slightly to provide more clarity. One commenter suggested that the inspection records also needed to contain procedures relating to excluding PCB waste. The commission agrees with this comment and the section has been amended accordingly. One commenter asked the commission to limit notifications of additions to the operating record to regular intervals. The commission disagrees with this comment and feels that the information is time-sensitive and notification should be made as soon as the operating record is modified. Furthermore, the Federal Subtitle D regulations require this notification.

With respect to proposed §330.114, one commenter stated that the operating records must be maintained during the 30-year post-closure period. The commission agrees with this comment and the language has been revised accordingly.

With respect to proposed §330.114(1), one commenter stated that the commission should specify back-up procedures if PCB wastes are identified in an incoming load. The commission feels that prescribing these procedures would duplicate existing standards for PCB and regulated hazardous waste management standards that are found in Chapter 335 of this title (relating to Industrial Solid Waste and Industrial Hazardous Waste) and the Toxic Substances Control Act (TSCA). One commenter stated that the requirement to include job descriptions and equipment lists in the Site Operating Plan was burdensome and would require constant updating. The commission feels that the requirement is necessary for staff review of the Site Operating Plan for adequacy. However, the commission has broadened the language to allow a description of functions to be provided instead of specific job descriptions, which may be more difficult to keep updated.

With respect to proposed §330.119, several commenters asked the commission to add the word "public" before entrances to the site. The commission partially agrees with this comment and has amended the subsection to require signs at entrances used for receipt of waste.

With respect to proposed §330.121, numerous commenters asked the commission to remove the prohibition of facility operations within an easement or buffer zone. The commission agrees that this requirement may prevent compatible facility activities (i.e. monitor wells) from being placed in a buffer zone. Therefore, the commission has amended the subsection accordingly.

With respect to proposed §330.122, a few commenters asked the commission to clarify the visibility requirements of landfill markers. The commission has amended the section to clarify that markers must be visible during operating hours.

With respect to proposed §330.123, several commenters objected to clean-up of waste along all public access roads serving the site for a distance of two miles in either direction from any entrance to the site. The two-mile standard has been in previous regulations and the commission is not considering a change at this time. However, the commission agrees in part with the comments and has amended the section to omit "all" before public access roads and has changed "any entrance" to the suggested language, "entrance used for the delivery of waste".

With respect to proposed §330.124, a few commenters asked the commission to clarify if recycling of large items is mandatory. The commission has reworded the provision slightly to clarify that recycling is not mandatory.

With respect to proposed §330.125, two commenters asked the commission to add provisions to clearly state that open burning is prohibited at a MSWLF. The commission agrees with this comment and the section has been amended by adding a reference to §330.5(d), which prohibits open burning.

With respect to proposed §330.127, several commenters asked the commission to consider changing the wording from "preventing" to "minimizing" depressions, ruts, and potholes on site access roads. The commission agrees with the commenters and has modified the subsection accordingly.

With respect to proposed §330.130, one commenter suggested adding a reference to proposed §330.56(h). The commission agrees and the language has been changed accordingly.

With respect to proposed §330.133(a), a few commenters suggested that weekly cover was too stringent for Type IV facilities. The commission disagrees with this comment and feels that weekly cover is required at Type IV facilities; however, proposed §330.41(c) allows the commission to approve another schedule. The commission has added the same provision to this section for consistency.

With respect to proposed §330.133(b), several commenters asked the commission to include areas that have received daily cover in the statement that run-off from these areas would not have to be handled as contaminated wastes. Run-off from an area covered only with daily cover, (six inches of earthen cover or approved alternative material) may or may not have come into contact with waste or leachate, thus producing contaminated run-off, depending on site and time-specific conditions. Therefore, run-off from daily cover can be only conditionally considered uncontaminated. TWC believes the present language should be retained and runoff from daily covered areas should not be defined as uncontaminated, although in some cases, run-off from properly graded and vegetated daily cover may be so classified.

With respect to proposed §330.133(c), two commenters suggested that the commission should replace the quarterly reporting requirement on the status of alternative material daily cover. The commission partially agrees,

and has amended this section to eliminate the status report after four quarters of successful use. One commenter suggested that the commission consider changing the 24-hour period to 72 hours. In response to this comment the commission has added a provision that an alternative length of time can be approved by the executive director.

With respect to proposed §330.134, a few commenters asked the commission to reword this section to make the filling in of depressions voluntary and to relax the time frames for correcting ponding and depressions. The commission disagrees with these comments since ponding of water over waste promotes the production of leachate due to percolation of waste through the cap and may increase the likelihood of groundwater contamination. Therefore, this requirement is reasonable and necessary to effectuate the purpose of this chapter.

With respect to proposed §330.137(d)(5), one commenter asked the commission to relax the standards for waste placed over dedicated Class I industrial trenches. The commission disagrees with the comment and believes the provisions of this section are necessary to protect human health and the environment.

With respect to proposed §330.139, a few commenters asked for clarification of which agency or department is responsible for authorizing the management and discharge of contaminated water. The Watershed Management Division, Permits Section, of the Texas Water Commission issues permits that govern the management and discharge of contaminated water. Permits are issued under Chapter 305 of this title (relating to Consolidated Permits) and Chapter 281 of this title (relating to Application Processing). Design criteria for containment ponds are located in Chapter 317 (relating to Design Criteria for Sewerage Systems). The commission has not amended the wording of this provision.

Several commenters suggested that the closure requirement for Type V and VI sites needed to be clarified. Proposed §330.159 has been amended to provide clarity.

With respect to proposed §330.200, one commenter asked the commission to clarify that arid exemption sites are exempt from this subchapter. The commission believes that proposed §330.41(b) and (c) is sufficient to define applicability. Another commenter asked the commission to add a coefficient of permeability performance standard for in-situ liners. This comment has been adopted and §330.200(e)(1) has been modified accordingly. Another commenter stated that the last sentence of proposed §330.200(e)(1) would impact Type I and II landfills. TWC disagrees, as this section relates only to Type IV landfills.

Several commenters suggested deletion of word "rigorous" as a description of the design modeling demonstration for alternative designs in proposed §330.202. TWC agrees that the word is superfluous, and it has been removed.

With respect to proposed §330.205(a), one commenter suggested that the commission

clarify that the SLOCP is the basis for the quality-control testing of the SLEP. The commission agrees with this comment and the language has been changed accordingly.

With respect to proposed §330.205(c), a few commenters asked the commission to clarify the soil testing standards concerning sieve analysis and laboratory permeability tests. The commission has changed the sieve analysis to require the # 1 sieve instead of # 40 sieve. The commission believes this requirement is necessary to implement the requirements of proposed §330.205(h), which prohibits rocks or stones larger than one inch in liner soil material. A reference to ASTM D422 and ASTM D1140 has been added to the provision. Furthermore, one commenter asked the commission to include a .05N solution of CaSO<sub>4</sub> to be used to run laboratory permeability tests. The commission agrees with this comment and the section has been changed accordingly.

With respect to proposed §330.205(d), two commenters asked the commission to modify this section to make it consistent with proposed §330.205(c), concerning the coefficient of permeability requirements. The commission agrees with the comments and the section has been revised accordingly.

With respect to proposed §330.206, one commenter asked the commission to change the requirement for making repairs to a constructed liner from "immediately" to "promptly." The commission agrees with this comment and the language has been changed accordingly.

One commenter was critical of the provisions of proposed §330.206(b), relating to TWC response-time to SLEP submissions. TWC believes this section provides reasonable response procedures and time-frames, and no changes have been made.

With respect to proposed §330.230, one commenter asked the commission to add a provision to allow a site to cease current groundwater monitoring and start Subtitle D monitoring earlier than the date required by the proposed regulations. The commission believes that proposed §330.230(d), referenced in the subject section, provides the flexibility to the executive director to allow a site to begin the Subtitle D monitoring sooner than required. One commenter asked the commission to clarify the effective dates of groundwater monitoring. The commission agrees that clarification is needed and has revised the wording accordingly.

With respect to proposed §330.231, one commenter asked the commission to specify that owners or operators must notify the executive director that the certification of the installation of the groundwater monitoring system has been placed in the operating record. The commission agrees with this comment and has changed the language of proposed §330.231(c) accordingly. The same commenter asked the commission to specify that computer modeling is to be used as a supplement to the design of a groundwater monitoring system. Furthermore, the same commenter asked the commission to clarify proposed §330.231(c) by adding "as specified in §330.231(a)" at the end of the section. The

commission agrees with this comment and the section has been amended accordingly. Another commenter asked the commission to clarify the use of off-site wells as background wells. The commission believes that the proposed rules do not prohibit the use of off-site background wells. Another commenter asked the commission to delete the specifications for groundwater modeling. The commission disagrees with this comment and believes that the specifications are necessary to ensure consistency.

With respect to proposed §330.233, one commenter suggested that the section was not consistent with Subtitle D. The commission agrees in part with the comment and has amended the section to make it consistent with Subtitle D.

With respect to proposed §330.234, a few commenters asked the commission to clarify the time-lines of the section. The commission has modified the language to provide more clarity and consistency with the Federal Subtitle D rules.

With respect to proposed §330.234(b)(3), one commenter stated that the substitution of historical background data for required background data is inconsistent with the Federal Subtitle D requirements. The commission agrees with this comment and has changed the section to allow historical background data to be used in addition to required background data to establish the background groundwater quality for detection and assessment monitoring programs.

With respect to proposed §330.235, a few commenters asked the commission to change the semiannual sampling requirement to annual to be consistent with the Federal Subtitle D rules. The commission agrees and proposed §330.235(b) has been changed accordingly.

With respect to proposed §330.238(b), one commenter asked the commission to clarify that an owner or operator cannot avoid implementing a remedy, even if the executive director does not approve of modifications to the remedy. The commission has modified language to provide more clarity.

With regard to proposed §330.239, one commenter suggested clarifying that the owner or operator is responsible for groundwater monitoring. The commission agrees with the comment and the section has been changed accordingly.

With regard to proposed §330.241, one commenter suggested replacing "possible" analytical procedures with "required" analytical procedures. The commission agrees with the comment and the language has been modified accordingly.

With regard to proposed §330.242, regarding monitor-well construction specifications, several commenters asked the commission to allow greater flexibility in the specifications. Proposed §330.242(a) allows the executive director to approve equivalent alternatives to the specifications and the commission believes that the language is sufficient to address the commenters' concerns. One commenter asked the commission to remove the requirement that wells must be drilled by

a Texas-licensed driller. Monitor wells are required to be drilled by a licensed driller under the rules of the commission contained in §287.91. One commenter asked the commission to address the size of the vent hole to prevent the contamination of the well. The commission agrees with the commenter's concern and has revised the language accordingly. One commenter asked the commission to delete the phrase "in order of preference" in proposed §330.242(a)(2)(D). The commission agrees with the comment and the section has been changed accordingly. One commenter stated that location of wells to the nearest tenth of a second of the latitude and longitude was in excess of Subtitle D. The commission disagrees with the comment since the section goes on to say that "or the wells shall be accurately located with respect to the landfill grid system." The commission believes that accurate location of wells, using either method, is necessary for the monitoring of MSWLF units. One commenter stated that the reference to a registered professional surveyor was incorrect. The commission agrees with this comment in part and has added that wells may be surveyed by a registered professional engineer. One commenter asked the commission to reference the plugging and abandonment rules. The commission agrees with the comment and has revised the language to include the reference §338.48 of this title (relating to Well Plugging and Capping).

Several commenters asked the commission to clarify the closure and post-closure care requirements for Type IV facilities. The commission agrees that clarification is necessary and has amended proposed §330.251 to include Type IV facilities, thereby clarifying that Type IV facilities are subject to a five-year post-closure care period.

The commission received numerous comments concerning proposed §§330.250-330.256, suggesting that the closure requirements do not apply to non-Subtitle D facilities. The commission agrees with this comment in part. Subtitle D closure and post-closure care maintenance requirements apply to MSWLF units that receive waste after October 9, 1991. However, current Municipal Solid Waste Regulations require closure and post-closure care maintenance for MSW sites, including Type IV, V, and VI facilities. The commission agrees that the proposed sections were not clear as to the specific requirements and has modified the language in proposed §§330.250-330.256, and 330.159 accordingly.

With respect to proposed §330.252(a), one commenter suggested the deletion of the word "design" in "cover design requirements" since units and facilities must comply with all closure requirements. The commission agrees with the comment and has changed the language accordingly.

One commenter asked the commission to clarify the requirements of proposed §330.253(d)(6). The commission has added a citation to proposed §330.280-§330.286 to clarify the section.

With respect to proposed §330.255(f), regarding the design and construction standards for on-site permanent enclosed structures, nu-

merous commenters asked the commission to reduce the 1,000-foot requirement to 100 feet. The commission disagrees with the comment and believes that the 1,000-foot requirement is protective of human health and the environment, since methane gas has been documented to move great distances in some situations. Other commenters seemed confused as to whether the design and construction standards apply to off-site structures. The section does not apply to off-site structures.

The commission received eight comments with specific questions related to proposed §330.280 and one related to proposed §330.280(g). The commission felt that the questions could be answered by a CPA knowledgeable of governmental accounting principles and did not feel that the State regulations were the means to answer or define individual terms for the local-government test.

The commission received one comment that applies to §330.281(a). The suggestion was to change the term "final closure" and to change the term "final cover" in the second statement. The commission has made the requested changes.

The commission received two comments that applied to proposed §330.281(a) (4), proposed §330.282(a)(4), proposed §330.283(a)(4) and proposed §330.284(a)(3). The suggestion was to change the term "may" allow a reduction in the amount of financial assurance to "should" allow a reduction, because the term "may" would give the commission the discretion not to allow for a reduction. The commission believes that using the term "may" is consistent with both Subtitle D and Subtitle C and has kept the rule as proposed. The second suggested that reductions in the amount of financial assurance should not be considered a permit modification because it only impedes an owner or operator from requesting a reduction and only penalizes a good owner or operator who closes units in a timely and proper manner. The suggested change is not adopted because the commission would like to reserve the right to see how the proposed process works. If experience shows the program functions well without the need for these permit modifications, then the commission will consider eliminating this process.

The commission received two comments on proposed §330.282, stating that the proposed TWC rules for process facilities exceed Subtitle D regulations for financial assurance. While Subtitle D does not address financial assurance for process facilities, the commission proposed such rules which place the financial responsibility for cleaning a closed site on the owner or operator of such a permitted facility. The commission does not feel the requirements are extreme and the options for the closure demonstration are the same as those identified for landfills.

The commission received three comments suggesting that the term "facility," that appears in proposed §330.283, be replaced with the term "unit," as it appears in Subtitle D. The commission agrees with this suggestion and has changed "facility" to "unit" in proposed §330.283, proposed §330.281, proposed §330.284, and proposed §330.285.

The commission has added the term "unit" or before the word "facility" under §330.285.

The commission received one comment concerning proposed §330.284, suggesting that the financial-assurance instrument for corrective action be submitted within 120 days after the executive director's approval of the plan, instead of 30 days as currently written. The commission agrees with this suggestion and has changed the statement to read as follows: "The cost estimate for financial assurance shall be submitted with the corrective action plan. The financial assurance instrument shall be submitted no later than 120 days after the corrective action remedy has been selected."

The commission received two comments on proposed §330.284(a), suggesting that the following statement should be clarified: "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." The comments suggested that this statement implies that any landfill that existed could be made to show financial assurance for corrective action when only those landfills that remain open and accept waste after October 9, 1993, should be required to show financial assurance. Since there was concern expressed regarding the above statement's implication that the Subtitle D regulations may be retroactive to include any site that may have existed, the commission has decided to revise the statement as follows: "Financial assurance shall be required for each separate corrective action program established for a municipal solid waste unit."

The commission received one comment concerning proposed §330.284(a)(1), suggesting that the first statement in this section be amended from "During the active life" to "During the corrective action program". The commission agrees that the term "active life" is too limited, concerning corrective action, and has changed the paragraph by replacing the term "active life" with "corrective action program".

The commission received one comment regarding proposed §330.285, suggesting that only bonds, letters of credit, or insurance be allowed for demonstrating financial assurance since only these mechanisms provide "ready funds". In order for the commission to be consistent with the proposed EPA municipal solid waste regulations, the commission will allow the financial test and corporate guarantee as mechanisms for demonstrating financial assurance. The suggested change will not be adopted.

The commission received one comment that applies to proposed §330.285(b) (5), proposed §330.285(c)(1), and proposed §330.285(f)(3), recommending that the 60-day timeframe used for establishing when the first payment into a trust is to be made or when an instrument is to become effective should be deleted since it will be more restrictive than Subtitle D. The commission disagrees with this comment because it is inconsistent with Subtitle D and Subtitle C. The suggested change will not be adopted.

The commission received one comment to §330.285 and 330.283 to add the word "and" before the word "corrective action." This change was made in order to be consistent with the sections of Subchapter K of this chapter.

The commission received two comments concerning proposed §330.285(b)(5) and (b)(1), proposed §330.285(c)(1), proposed §330.285(d)(1), proposed §330.285(e)(1), and proposed §330.285(j)(3). The comments suggested that the following phrase be added to the first sentence of each of these sections after "initial receipt of waste" to read "or before the effective date of this section, April 9, 1994, whichever is later". The commission agrees with this suggestion and the change has been made. janice

The commission received one comment to §§330.285(c)(4) and 330.285(d)(2) to change the specified sections relating to annual payments because they were incorrect referenced. The commission has changed the annual payments specified to §330.285(b)(2), (5), (10), and (15).

The commission received one comment to §§330.285-330.286 stating that the citations were incorrectly referenced. All of these have been corrected. The commission received one comment regarding proposed §330.285(c)(7),(8)(9) recommending that these sections should be deleted from the regulations so the language is consistent with Subtitle D and does not adversely constrain the owner or operator. The commission considers these sections to be consistent with Subtitle D and Subtitle C. Therefore these sections will remain as proposed. The commission added wording to §330.286(e) for clarity. In the first paragraph of the letter credit after "permit number" the following was added "and the amount for closure, post-closure and corrective action." The commission received two comments regarding proposed §330.285(e)(2) suggesting that the insurance requirement be consistent with Subtitle D. The commission considers this requirement to be consistent with Subtitle D and Subtitle C. This suggested change is not adopted. The commission received four comments on proposed §330.285(f) suggesting that the commission should avoid adopting a corporate financial test mechanism that is more stringent than the test which will be developed by the EPA pursuant to Subtitle D.

Another comment expressed opposition to the bond rating method prescribed in the financial test and corporate guarantee and another stated the test and guarantee were inadequate. The commission has taken the financial test and corporate guarantee from Subtitle C of the Code of Federal Regulations Title 40 Part 264. The test and guarantee are currently acceptable by EPA and the commission for use in demonstrating financial responsibility in the hazardous waste program. Therefore, the commission is utilizing this language in the municipal solid waste program while providing another mechanism for the regulated community until EPA recommends alternative mechanisms. The suggested comments will not be adopted.

One commenter also suggested that a statement be added to proposed §330.285(f)

which provides that the corporate financial test will be substituted with the final EPA test if it differs from the draft proposal. The commission has added a statement to this section that states: "The proposed corporate financial test may be substituted with the final EPA test."

The commission received one comment on proposed §330.285(f) stating that no requirement was made in the rules that required entities utilizing the corporate financial test to disclose their financial assurance obligations to EPA or other States concerning municipal solid waste facilities, hazardous waste facilities, underground petroleum storage tanks, underground injection control facilities, or PCB commercial storage facilities. The commission recognizes the oversight and has made the change to the proposed rule.

One commenter suggested that a section should be added to §330.285(f)(3) that requires audited financial statements be submitted to the commission in order to verify data on the corporate financial test. The commission recognizes this was an oversight and has added §330.285(f)(3)(B).

The commission received one comment on proposed §330.285(g) stating that the commission's rules should provide that the local government financial test will be substituted with the final EPA test if it differs from the draft proposal. The commission has added a statement to this section that states: "The proposed local government financial test may be substituted with the final EPA test."

The commission received one comment regarding proposed §330.285(g) suggesting that "local government" be defined. The commission agreed to add the following definition as proposed §330.28(f)(12): "Local government," as it pertains to Subchapter K and as defined by the Texas Constitution, means a city, county, district or authority created by or under state law.

The commission received one comment on proposed §330.285(g)(1)(A)(ii)(I) suggesting that revenue bonds should be considered in addition to the general obligation bonds outlined in this section. Both the EPA and the commission have determined that only general obligation bonds may be used to meet the local government financial test provisions because these bonds incorporate an evaluation of a local government's long term financial management practices. This suggested change is not adopted.

The commission received one comment regarding proposed §330.285(g)(a)(iii) II raising the concern that this requirement places a local government in an unfair hardship by restricting the local government from operating in a deficit equal to five percent or more of total annual revenue in either of the past two fiscal years. The commission has not seen any data to substantiate this comment and, therefore, will not make changes to the local government test.

The commission received one comment on proposed §330.285(h) suggesting deleting the following language: "except that mechanisms guaranteeing performance, rather than payment, may not be combined with other

instruments," because it constrains the ability of the owner or operator to meet his financial assurance obligation in the most cost effective manner. This language is consistent with Subtitle C, therefore it will remain as proposed. The commission has added to §330.286 the word "unit" before the word "facilities" in order to be consistent with §§330.281, 330.283-330.285.

The commission received one comment on proposed §330.286(c) recommending that the language regarding the "optional rider" should be deleted. The commission believes that since the language is optional it will not cause a burden on either the provider of the surety bond or the owner/operator and therefore will remain as proposed. The commission also received a comment to add the word "Regulations" to "Municipal Solid Waste." This change was made.

The commission recognized a typo to §330.286(f). The term "Insurer" was changed to the term "Insured."

The commission received one comment concerning proposed §330.286(j) suggesting that "A corporate guarantee" be changed to "A local government guarantee". The commission has made the change.

With respect to proposed §330.300(d), a few commenters stated that the statement that "all landfills within a 4-mile radius will be critically evaluated" exceeded Subtitle D. Others requested the radius be increased to 5 miles to conform to Subtitle D §258.10(b). TWC has changed the radius to 5 miles, and believes the language is appropriate, since it is included in current regulations.

With respect to proposed §330.302, a few commenters requested clarification concerning the Corps of Engineering permit for use of a wetlands area. The commission has clarified the use of the permit by modifying proposed §330.53(b)(12)(B) to allow the demonstration to be made by providing evidence that the facility has a Corps of Engineering permit for the use of any wetlands area.

With respect to proposed §330.304, one commenter suggested including the Subtitle D definition for lithified earth material to be consistent with Subtitle D. The commission agrees with the comment and has added the definition as it appears in Subtitle D to this section.

## Subchapter A. General Information

### • 31 TAC §§330.1-330.14

The repeals are adopted 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.

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 June 8, 1993.

TRD-9324049

Mary Ruth Holder  
Director, Legal Division  
Texas Water Commission

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For further information, please call: (512)  
908-6722

The new sections are adopted 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) facility 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 MSW unit, and the executive director, at 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 feminine gender also include the masculine 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 §§330.250-330.253 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 §§330.250-330.253 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 fluctuation, 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 processing and disposal activities adjacent to the site boundary.

**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 non-manufacturing 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 2-foot layer of compacted soil with a hydraulic conductivity of no more than  $1 \times 10^{-7}$  cm/sec. The FML component must be installed in direct and uniform contact with the compacted soil component.

**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 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 off-shore 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 in-

dustrial 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 terrain**—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 terrains 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 3 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 and 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 unchanneled 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 Title 25 Chapter 289 (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 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 on land owned by the owner of the permitted facility.

**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 less than 20 tons of municipal solid waste are disposed of daily based on an annual average.

**Solid waste-garbage, rubbish, refuse, sludge** from a wastewater 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 non-hazardous 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 capable of removing the contents 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 terrains.

Uppermost aquifer-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.

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 non-navigable, 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 6 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, arrange 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, and MSW Sites, only the provisions of §330.251 of this title (relating to Closure Requirements for MSWLF Units That Stop Receiving Waste prior to October 9, 1991, and MSW Sites) apply. If not previously submitted, owners or operators shall submit a closure report that documents that municipal solid waste landfill facility (MSWLF) units or MSW Site(s), 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 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 §§330.250-330.253 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 and MSW Sites 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 §§330.200-330.206 and §330.230-330.242 of this title (relating to Ground-Water Protection Design and Operation and Ground-Water Monitoring and Corrective Action respectively), so long as there is no evidence of existing ground-water contamination from the small MSWLF unit, the small MSWLF unit serves a community that has no practicable waste management alternative, and the small MSWLF unit is 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 Process) 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 Process) 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 to reduce the annual average to less than 20 tons per day within one year;

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

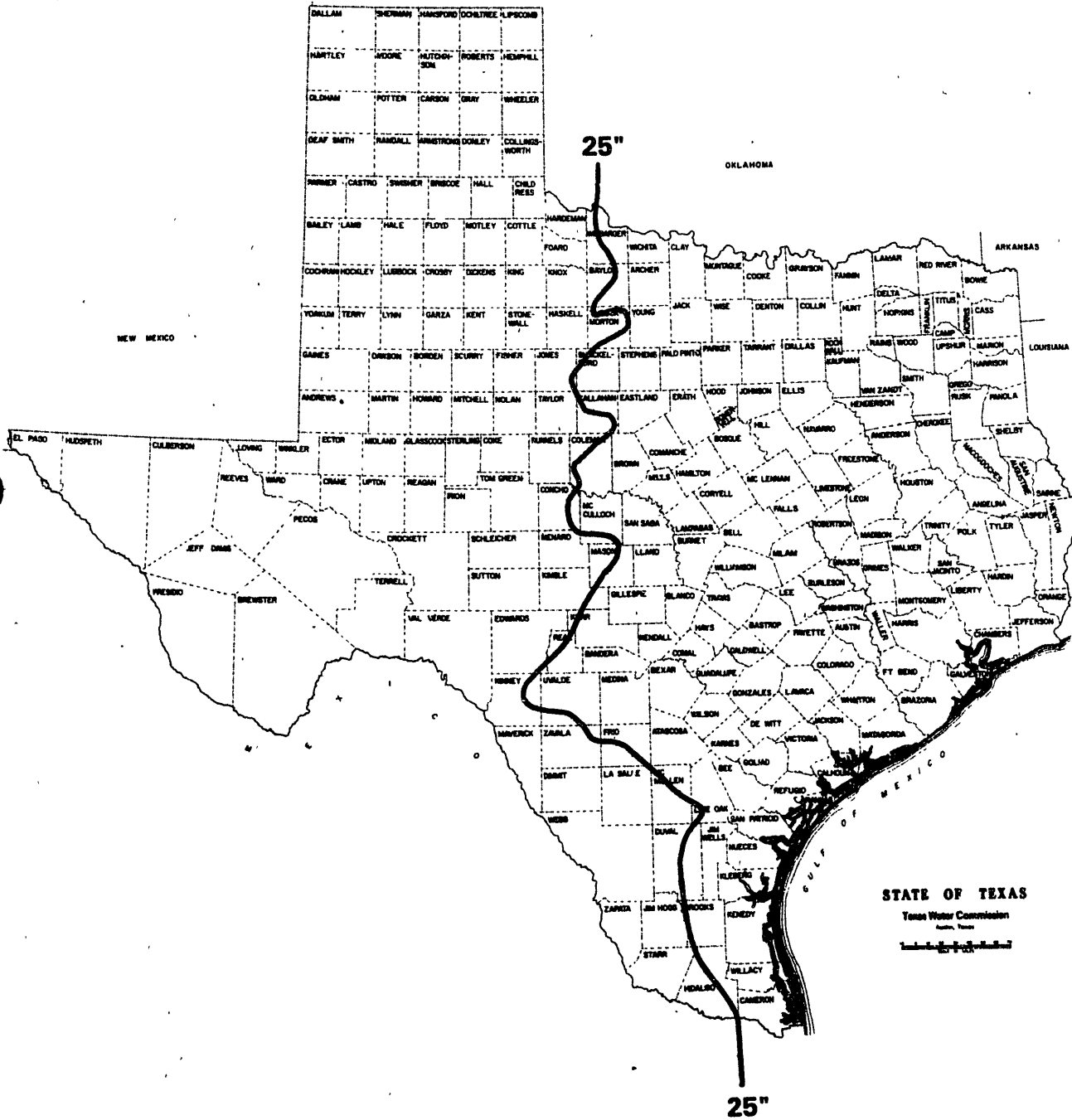
(A) additional costs of available alternatives are estimated to exceed 1.0% of the owner's or operating community's budget for all public services; or

(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 on 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, except as provided for specifically herein.

(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 5,000 persons or population equivalent as determined by the most recent federal decennial census. 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 on-site pathological incinerators used by a hospital, clinic, laboratory, or other similar type facility for incineration of only on-site generated infectious or pathological wastes.

(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.

(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) For materials extraction and gas recovery operations relating to municipal solid waste, a permit is required. However, exploratory and test operations for feasibility purposes may be conducted after approval of the operation by the executive director.

(o) Submission of a Soil and 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 §§330.200-330.206 of this title (relating to Ground-Water Protection Design and Operation) shall not require a permit amendment or modification.

#### §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 clo-

sure of the facility or site, 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 That Receive Waste on or after October 9, 1993 and MSW Sites).

**§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). 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 on April 9, 1994, the provisions of §§330.280-330.286 of this title (relating to Financial Assurance) will supercede this section.

#### §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 §§330.250-330.256 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 units and facilities 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(A), "FAA Guidance Concerning Waste Disposal Sites on or Near Airport's").

(e) Special districts. 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 and indispensable 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.

**§330.14. Arid Exemption Process.** The following process 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):

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

(2) 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:

(A) if no wells or springs exist within the site area, refer to paragraph

(7) of this section. Otherwise, refer to paragraph (2)(B) of this section;

(B) determine from appropriate records (for example, 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 paragraph (7) of this section. Otherwise, refer to paragraph (3) of this section;

(3) 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 paragraph (2) 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 long enough period to allow the water level to stabilize. Where no data exist or cannot be determined, the regional gradient can be used;

(4) 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 paragraph (3) 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.;

(5) sample the three selected wells/springs determined by paragraphs (3) and (4) 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:

(A) Chloride;

(B) Nitrate (as N);

(C) Sulfate;

(D) total dissolved solids;

(E) specific conductance;

(F) pH;

(G) Chromium;

(H) non-purgeable organic carbon;

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

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

(ii) 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;

(6) compile the data from paragraphs (1)-(5) of this section in a report comprising:

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

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

(C) chemical analyses, showing analytical methods used;

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

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

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

(7) where no wells or springs are present in the site area or the shallowest water level 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."

(8) the report shall be signed and, where appropriate, sealed by the qualified ground-water scientist who reviewed the data and reached the conclusions;

(9) if there is no evidence of groundwater 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;

(10) 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 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 June 8, 1993.

TRD-9324057 Mary Ruth Holder  
Director, Legal Division  
Texas Water Commission

Effective date: October 9, 1993

Proposal publication date: March 9, 1993

For further information, please call: (512) 908-6722

### Subchapter B. Municipal Solid Waste Storage

#### • 31 TAC §§330.21-330.25

The repeals are adopted 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.

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.

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TRD-9324044 Mary Ruth Holder  
Director, Legal Division  
Texas Water Commission

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Proposal publication date: March 9, 1993

For further information, please call: (512) 908-6722

The new sections are adopted 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.

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.

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TRD-9324060 Mary Ruth Holder  
Director, Legal Division  
Texas Water Commission

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For further information, please call: (512) 908-6722

### Subchapter C. Municipal Solid Waste Collection and Transportation

#### • 31 TAC §§330.31-330.34

The repeals are adopted 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.

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.

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TRD-9324153 Mary Ruth Holder  
Director, Legal Division  
Texas Water Commission

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Proposal publication date: March 9, 1993

For further information, please call: (512) 908-6722

The new sections are adopted 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.

#### §330.32. 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 on-site 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. Disposal of household waste is prohibited in Type IV facilities. 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, household, 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.

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 June 8, 1993.

TRD-9324059

Mary Ruth Holder  
Director, Legal Division  
Texas Water Commission

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Proposal publication date: March 9, 1993

For further information, please call: (512) 908-6722

## Subchapter D. Classification of Municipal Solid Waste Facilities

### • 31 TAC §330.41, §330.42

The repeals are adopted 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.

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.

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## Subchapter E. Permit Procedures

### • 31 TAC §330.41

The new section is adopted 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 (MSWLF). 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 Groundwater Protection Design and Operation), §§330.230-330.242 of this title (relating to Groundwater 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 all requirements pertaining to but not limited to §§330.200-330.206 and §§330.230-330.242 of this title (relating to Groundwater Protection Design and Operation and Groundwater 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; re-

ceiving 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 free of household wastes. A Type IV operation shall not be operated within 300 yards of a public road unless the executive director, 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 Groundwater Protection Design and Operation), §330.239 of this title (relating to Groundwater Monitoring at Type IV Landfills), §330.251 of this title (relating to Closure Requirements for MSWLF Units That Stop Receiving Waste prior to October 9, 1991 and MSW Sites), 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 and are exempt from §§330.200-330.206 and §§330.230-330.242 of this title (relating to Groundwater Protection Design and Operation and Groundwater Monitoring and Corrective Action, respectively).

(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 rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9324061 Mary Ruth Holder  
Director, Legal Division  
Texas Water Commission

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For further information, please call: (512) 908-6722

◆ ◆ ◆  
• 31 TAC §§330.50-330.65

The new sections are adopted 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. Permit Application for Municipal Solid Waste Facilities.*

(a) Permit application. The application for a municipal solid waste facility is divided into Parts I-V. Parts I-IV 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 parts I-IV, 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 parts I-IV 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. Part V shall be submitted upon completion of construction of the facility. 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 but not limited to §§330.200-330.206 of this title (relating to Groundwater Protection Design and Operation) and §§330.230-330.242 of this title (relating to Groundwater Monitoring and Corrective Action). Applicants for a Type I-AB facility are exempt from §330.56(d) of this title (relating to Attachments to the Site Development Plan).

(1) Part I of the application shall consist of the information required in §305.45 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 subchapter 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-inch 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 informa-

tion 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, §361.0635, 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, §361.0665, 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 completion of an approved course, 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 shall 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.

(E) 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, licensed 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 groundwater 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, demonstration can be made by providing evidence 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 biologist 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.

#### §330.55. 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 solid waste or 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 Groundwater 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 not cause:

(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 potential for 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 USGSDHT 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 groundwater 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, Chapter 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) The top surfaces and embankment slopes of MSWLF units shall be designed to minimize erosion and soil loss through the use of appropriate side slopes, vegetation, and other structural and non-structural controls, as necessary. Soil erosion loss (tons/acre) for the top surfaces and embankment slopes may be calculated using the Soil Conservation Service of United States Department of Agriculture's Universal Soil Loss Equation, in which case 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. The executive director may modify specific marker requirements to accommodate unique site specific conditions

(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 placed 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, where feasible.

(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 groundwater 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 which are proposed in conjunction with aboveground (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 groundwater 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 groundwater, 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, gulying, 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 groundwater flow;

(H) typical values or a range of values for total dissolved solids content of groundwater from the aquifers;

(I) identification of areas of recharge to the aquifers within five miles of the site; and

(J) the present use of groundwater 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 groundwater 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 sub-

surface 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, unless the executive director approves a different depth. 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, if sufficient data does not exist to accurately locate it. 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. 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 plus the estimated life of the site, need not be identified through borings.

TABLE OF BORINGS

Size of Area in Acres	Number of Borings	Min. No. of Borings 30 Feet below the Elev. of Deepest Excavation *
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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

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\* The executive director may approve different boring depths if site specific conditions justify variances.

(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 or .05 Normal solution of CaSO<sub>4</sub>, and 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 200, and less than 200 fraction per ASTM D1140;

(IV) Atterberg Limits per ASTM D4318;

(V) Moisture Content per ASTM D2216.

(C) A groundwater investigation report. This report shall include the following:

(i) the depth at which groundwater 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 groundwater was first encountered and the level of groundwater 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 groundwater 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 Groundwater 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 groundwater modeling data and results as described in §330.231(e)(2) of this title (relating to Groundwater Monitoring Systems) and shall consider changes in groundwater 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 Groundwater 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 groundwater; 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 groundwater); depth to the top and base of the screen; and depth to the top and base of the filter pack.

(e) Attachment 5—Groundwater characterization report. A groundwater characterization study and report is required from owners and operators of proposed MSWLF units or proposed lateral expansions except for SLERs and FMLERs covering previously permitted and approved designs. The report shall contain the following information:

(1) a tabulation of all relevant groundwater 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 groundwater flow direc-

tion 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 groundwater monitoring wells as required under §330.231 of this title (relating to Groundwater 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 groundwater from the 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 groundwater monitoring program to be implemented to meet the requirements of §330.231 of this title (relating to Groundwater Monitoring Systems);

(6) if the hazardous constituents listed in Table I of §330.200 of this title (relating to Design Criteria) have not been detected in the groundwater 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 groundwater 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 groundwater monitoring data;

(7) if the presence of hazardous constituents listed in Table I of §330.200 of this title (relating to Design Criteria) has been detected in the groundwater 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). 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 groundwater, including concentration 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 Groundwater 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 groundwater monitoring system, in accordance with the requirements of §330.233 of this title (relating to Groundwater Sampling and Analysis Requirements); and

(E) a description of proposed sampling, analysis, and statistical comparison procedures to be utilized in evaluating groundwater monitoring data; and

(8) if hazardous constituents have been measured in the groundwater that exceed the concentration limits established in Table I of §330.200 of this title (relating to Design Criteria), 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 groundwater, 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 groundwater;

(C) detailed plans and an engineering report describing the corrective action to be taken;

(D) a description of how the groundwater 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—Groundwater and surface 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 groundwater 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 Groundwater Protection Design and Operation).

(k) Attachment 11—Groundwater sampling and analysis plan (GWSAP). The GWSAP shall be prepared in accordance with §§330.230-330.242 of this title (relating to Groundwater 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 explosive gases in air that will propagate 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) 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.

(c) Attachment 15-Leachate and contaminated water plan.

(1) The plan shall provide the details of the storage, collection, treatment, and disposal of the contaminated water, leachate and/or gas condensate from the leachate collection system and/or the gas monitoring and collection system, where used. Contaminated water is water which has come into contact with waste, leachate or gas condensate. 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(a)(2) of this title (relating to Design Criteria). Contaminated surface water and groundwater may not be placed in or on the MSWLF unit.

(3) Leachate, gas condensate, contaminated surface water, and contaminated groundwater 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.

**§330.58. 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. Part V is not required for permit approval.

**§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 until the end of the post-closure care period for inspection and maintenance of the site.

(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.

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 June 8, 1993.

TRD-8324052

Mary Ruth Holder  
Director, Legal Division  
Texas Water Commission

Effective date: October 9, 1993

Proposal publication date: March 9, 1993

For further information, please call: (512) 908-6722

**Subchapter E. Permit Procedures and Design Criteria**

**• 31 TAC §§330.51-330.67**

The repeals are adopted 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.

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.

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Texas Water Commission

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**Subchapter F. Operational Standards for Solid Waste Land Disposal Sites**

**• 31 TAC §§330.111-330.139**

The new sections are adopted 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.

**§330.113. 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, or an alternate location approved by the executive director. 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 the following information:

(1) any and all location-restriction demonstrations;

(2) inspection records, training procedures, and notification procedures relating to excluding the receipt of regulated hazardous waste and PCB 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 groundwater 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 groundwater 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. The SOP shall be retained during the active life of the site and throughout the post-closure care maintenance period. As a minimum, the SOP shall include specific guidance, procedures, instructions, and schedules on the following:

(1) a description of functions 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.

**§330.119. Site Sign.** Each site shall conspicuously display at all entrances to the site through which wastes are received, a sign measuring at least 4 by 4 feet with letters at least 3 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.

**§330.121. Easements and Buffer Zones.**

(a) Easement Protection. No solid waste unloading, storage, disposal, or processing 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 6 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 solid waste processing and disposal activities 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 during operating hours. 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 owner or operator shall be responsible for the cleanup of waste materials spilled along and within the right-of-way of public access roads serving the site for a distance of 2 miles in either direction from any entrances used for the delivery of waste 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 should 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, and §330.5(d) of this title (relating to General Prohibitions) which prohibits the open burning of waste at any MSWLF unit.

(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.

**§330.127. 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 minimize depressions, ruts, and potholes.

**§330.130. Landfill Gas Control.** All landfill gases shall be monitored in accordance with a Landfill Gas Management Plan in accordance with §330.56(n) of this title (relating to Attachments to the Site Development Plan). The required reports and other submittals shall be included in the operating record of the facility and submitted to the executive director.

**§330.133. Landfill Cover.**

(a) **Daily Cover.** All landfills, with the exception of Type IV landfills, shall provide 6 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, 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, unless the commission approves another schedule.

(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 6 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 Data 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. If no problems occur within four consecutive quarters of use, status reports will no longer be required.

(3) ADC shall not be allowed when the landfill is closed for a period greater than 24 hours, unless the executive director approves an alternative length of time.

(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.

**§330.135. 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 or household 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 as defined in §330.2 of this title (relating to Definitions) which is not specifically identified in subsections (b) or (c) 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 industrial 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 2 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 3 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 I 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 paragraph (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.

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 June 8, 1993.

TRD-9324062 Mary Ruth Holder  
Director, Legal Division  
Texas Water Commission

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For further information, please call: (512) 908-6722

◆ ◆ ◆  
• 31 TAC §§330.112-330.114,  
330.121-330.124, 330.131-330.155

The repeals are adopted 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.

§330.112. 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. Vector 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.

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.

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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 adopted 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; and

(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 Pooled 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).

**§330.159. Facility Completion and Closure Procedures.** The Facility Completion and Closure Plan shall control the closure and completion requirements of a processing or experimental facility and shall meet the requirements of §330.253(d) and (e) of this title (relating to Closure Requirements for MSWLF Units That Receive Waste on or after October 9, 1993, and MSW Sites); §330.254(a) of this title (relating to Post-

Closure Care Maintenance Requirements); §330.255 of this title (relating to Post-Closure Land Use); and §330.256 of this title (relating to Completion of Post-closure Care Maintenance).

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.

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◆ ◆ ◆  
• 31 TAC §§330.171-330.180

The repeals are adopted 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.

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.

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◆ ◆ ◆  
Subchapter H. Groundwater  
Protection Design and Operation

• 31 TAC §§330.200-330.206

The new sections are adopted 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 compli-

ance, 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  $1 \times 10^{-7}$  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 groundwater;

(4) the proximity and withdrawal rate of the groundwater users;

(5) the availability of alternative drinking water supplies;

(6) the existing quality of the groundwater, including other sources of contamination and their cumulative impacts on the groundwater and whether groundwater 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

<u>Chemical</u>	<u>MCL (mg/l)</u>
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 groundwater 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 groundwater. 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 primary or secondary physical features such as jointing, fractures, bedding planes, solution cavities, root holes, desiccation shrinkage cracks etc. that have a coefficient of permeability greater than  $1 \times 10^{-7}$  cm/sec.

(2) There shall be at least a three-foot thick compacted clay liner between the deposited waste and groundwater. 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 Flexible Membrane Liner Evaluation Report (FMLER)).

*§330.202. Alternate Design.* Alternate liner designs may be authorized by the executive director if the owner or operator provides a 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 alternate design.

*§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, and it shall be the basis for the type and rate of quality control testing performance and reported in the Soil and Liner Evaluation Report (SLER) as required in §330.206 of this title (relating to Soils and Liner Evaluation Report (SLER) and Flexible Membrane Liner Evaluation Report (FMLER)). The SLQCP must be included in the Site Development Plan to provide operating personnel adequate procedural guidance for assuring continuous compliance with groundwater 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 groundwater 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  $1 \times 10^{-7}$  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 or .05N solution of CaSO<sub>4</sub> 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 +1, 200, -200 sieves; (ASTM D422 or ASTM D1140, as applicable);

(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 inch screen-100%; Coefficient of permeability less than or equal to  $1 \times 10^{-7}$  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 and liner density shall be expressed as a percentage of the maximum dry density and at the corresponding optimum moisture content specified as appropriate by a registered professional engineer experienced in geotechnical engineering. These soils so compacted must upon testing either in the laboratory or as a test pad in the field demonstrate a coefficient of permeability no greater than  $1 \times 10^{-7}$  cm/sec.

(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 promptly. 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 rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## Subchapter I. Groundwater Monitoring and Corrective Action

### • 31 TAC §§330.230-330.231, 330.233-330.242

The new sections are adopted 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 Groundwater Monitoring at Type IV Landfills), in §330.240 of this title (relating to Groundwater Monitoring at Other Types of Landfills and Facilities), and in subsection (b) of this section.

(b) Groundwater monitoring requirements under §§330. 231-330.235 of this title (relating to Groundwater 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 groundwater 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 groundwater 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 Groundwater 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 groundwater 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 earliest of the effective dates of paragraphs (2), (3), or (4) of this subsection, §330.230(d) of this title (relating to Applicability), or the effective date of the Groundwater Sampling and Analysis Plan described in §330.233 of this title (relating to Groundwater Sampling and Analysis Requirements).

(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 groundwater scientist that the facility is in compliance with the groundwater monitoring requirements specified in §§330.231-330.235 of this title (relating to Groundwater 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 groundwater scientist that the facility is in compliance with the groundwater monitoring requirements specified in §§330.231-330.235 of this title (relating to Groundwater 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 groundwater scientist that the facility

is in compliance with the groundwater monitoring requirements specified in §§330.231-330.235 of this title (relating to Groundwater 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 groundwater scientist that the facility is in compliance with the groundwater monitoring requirements specified in §§330.231-330.235 of this title (relating to Groundwater 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 groundwater monitoring requirements specified in §§330.231-330.235 of this title (relating to Groundwater Monitoring and Corrective Action). This schedule will ensure that 50% 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 must 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 groundwater quality and quantity.

(e) Once established at a MSWLF unit, groundwater 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. *Groundwater Monitoring Systems.*

(a) A groundwater monitoring system shall be installed that consists of a sufficient number of monitoring wells, installed at appropriate locations and depths, to yield representative groundwater 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 qual-

ity 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 groundwater quality than is possible from upgradient wells.

(2) The downgradient monitoring system shall include monitoring wells installed to allow determination of the quality of groundwater 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 groundwater contamination in the uppermost aquifer. When physical obstacles preclude installation of the groundwater 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 groundwater contamination of the uppermost aquifer.

(b) The executive director may approve a multi-unit groundwater monitoring system instead of separate groundwater 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 groundwater monitoring system that uses other means in conjunction with monitoring wells to ensure detection of groundwater 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 as specified in §330.231(a) of this title (relating to Groundwater Monitoring Systems).

(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 groundwater samples from the water-bearing zone(s) of concern, and prevention of migration of groundwater 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 groundwater monitoring system shall be operated and maintained so that they perform at least to design specifications through the life of the groundwater monitoring program.

(e) A groundwater monitoring system, including the number, spacing, and depths of monitoring wells or other sampling points, shall be designed and certified by a qualified groundwater scientist. Within 14 days of the certification, the owner or operator must submit the certification to the executive director and place a copy of the certification in the operating record. 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; groundwater flow rate; groundwater flow direction including seasonal and temporal fluctuations in flow; effect of site construction and operations on groundwater 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) Groundwater modeling may be used to supplement the determination of the spacing of monitoring wells or other sampling points and shall consider site-specific characteristics of groundwater 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 groundwater flow and contaminant transport, as needed;

(B) have a sound set of equations based on accepted theory representing groundwater 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 groundwater flow and the potential for detecting groundwater 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. *Groundwater Sampling and Analysis Requirements.*

(a) The groundwater monitoring program shall include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of groundwater quality at the background and downgradient wells, or other monitoring system, installed in compliance with §330.231(a)-(c) of this title (relating to Groundwater Monitoring Systems).

(b) The owner or operator shall submit a groundwater 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 Development Plan (SDP); if necessary, the owner or

operator shall obtain a modification of the SDP 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, quality assurance, and quality control;

(2) provide for measurement of groundwater 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 unless an alternative procedure is approved by the executive director; and

(3) include sampling and analytical methods that are appropriate for groundwater sampling and that accurately measure hazardous constituents and other monitoring parameters in groundwater samples. The number of samples to be collected to establish groundwater 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) Groundwater samples shall not be field-filtered prior to laboratory analysis for the constituents listed in §330.241 of this title (relating to Constituents for Detection Monitoring). 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 groundwater quality in hydraulically upgradient wells or in background wells for each of the monitoring parameters or constituents required in the groundwater 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 Groundwater Monitoring Systems). Downgradient groundwater data shall not be adjusted by subtracting background groundwater data.

(f) The owner or operator shall specify in the GWSAP one or more of the following statistical methods to be used in evaluating groundwater monitoring data for each parameter or 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) of this section shall comply with the following performance standards, as appropriate.

(1) The statistical method used to evaluate groundwater 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 groundwater 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 groundwater 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 groundwater 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) 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 within a reasonable period of time after completing sampling and analysis whether or not there is evidence of a statistically significant change from background values for each constituent required in the groundwater 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 groundwater 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 Groundwater Monitor-

ing 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 groundwater monitoring wells defined under §231.231(a)(1)-(2) of this title (relating to Groundwater 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 groundwater. 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, concentrations, 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 groundwater 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 each 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, groundwater flow rates, minimum distance of travel from waste to monitoring wells, and resource value of the uppermost aquifer.

(3) For the purpose of establishing background groundwater quality, the executive director may agree to consider analytical data acquired prior to the effective date of this title in addition to the data required in this subsection and in subsection §330.235(b) of this title (relating to Assessment Monitoring Program).

(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 es-

tablish 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 groundwater 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 groundwater scientist and submitted to the executive director for review and approval not later than 90 days after the sampling event. If no such demonstration satisfactory to the executive director has been made within 90 days after 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 in accordance with §330.234(d) of this title (relating to Detection Monitoring Program), and not less than annually thereafter, the owner or operator shall sample and analyze the groundwater 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 ana-



lyzed for the assessment constituents during each new 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.

(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, groundwater 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, re-sample all wells specified by §330.231(a) of this title (relating to Groundwater 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 of 40 CFR Part 258 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 Monitoring), 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 groundwater protection standards for all constituents in downgradient wells detected pursuant to subsection (b) of this section or paragraph (1) of this subsection. The groundwater 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 Groundwater Sampling and Analysis Requirements) for two consecutive sampling events, the owner or operator must 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 groundwater protection standard established under subsection (h) or (i) of this section, using the statistical procedures in §330.233(g) of this title (relating to Groundwater 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 groundwater 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 groundwater 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) all within 90 days of the notice to the executive director.

(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 groundwater quality. A report documenting this demonstration shall be prepared and certified by a qualified groundwater 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 groundwater protection standard for each assessment constituent detected in the down-gradient monitoring wells. The groundwater 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 groundwater protection standard for assessment constituents for which MCLs have not been established. These groundwater 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 1 inch by 10<sup>-4</sup> to 1 inch by 10<sup>-6</sup> 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 groundwater protection standards under subsection

(i) of this section, the executive director may consider multiple contaminants in the groundwater, exposure threats to sensitive environmental receptors, and other site-specific exposure or potential exposure to groundwater.

#### *§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 groundwater 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 groundwater 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 groundwater 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) is 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. Failure to obtain approval from the executive director for the other methods and techniques does not relieve the owner or operator of the burden to implement an acceptable remedy.

(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 groundwater 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;

(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; and

(4) place a copy of all approved alternate measures in the operating record.

(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 groundwater 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 lies within or beyond the groundwater monitoring system established under §330.231(a) of this title (relating to Groundwater Monitoring Systems);

(2) compliance with the groundwater 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 groundwater 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 Groundwater 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 groundwater 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 groundwater;

(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 groundwater.

(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 groundwater 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).

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.

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Director, Legal Division  
Texas Water Commission

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For further information, please call: (512) 908-6722

### Subchapter I. Variances

#### • 31 TAC §330.231

The repeal is adopted 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.

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.

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### Subchapter J. County Governments With Licensing Authority

#### • 31 TAC §§330.241-330.243

The repeals are adopted 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.

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### Subchapter J. Closure and Post-Closure

#### • 31 TAC §§330.250-330.256

The new sections are adopted 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 Municipal Solid Waste Landfill Facilities units or Municipal Solid Waste sites as defined in §330.41 of this title (relating to Types of Municipal Solid Waste Facilities), except as provided in §330.3(b) and (c) of this title (relating to Applicability), in §330.251 of this title (relating to Closure Requirements for MSWLF Units That Stop Receiving Waste prior to October 9, 1991 and MSW Sites), in §330.252 of this title (relating to Closure Requirements for MSWLF Units 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 site 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 MSW site 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 un-closed MSWLF unit or MSW site.

#### §330.251. Closure Requirements for MSWLF Units That Stop Receiving Waste Prior to October 9, 1991, and MSW Sites.

(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 MSW sites 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 MSW sites 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 sites.

*§330.252. Closure Requirements for MSWLF Units 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 shall comply with all final cover requirements as specified in §330.253 of this title (relating to Closure Requirements for MSWLF Units That Receive Waste on or after October 9, 1993 and MSW Sites).

(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 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 That Receive Waste on or after October 9, 1993, and MSW Sites.*

(a) The owner or operator of these MSWLF units or MSW sites 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, 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  $1 \times 10^{-5}$  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  $1 \times 10^{-5}$  cm/sec, even though the coefficient of permeability of the constructed bottom liner or natural subsoil is greater than  $1 \times 10^{-5}$  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 MSW sites at any point during the active life of the unit or MSW site 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 MSW site ever requiring a final cover at any time during the active life of the unit or MSW site;

(3) an estimate of the maximum inventory of wastes ever on-site over the active life of the unit or MSW site;

(4) a schedule for completing all activities necessary to satisfy the closure criteria;

(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; and

(6) a detailed written estimate, in current dollars, of the cost of hiring a third party to close the largest area of all MSWLF units 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 in accordance with §§330.280-330.286 of this title (relating to Financial Assurance). 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 MSW sites, 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 MSW site, the owner or operator of the unit or MSW site shall provide written notification to the executive director of the intent to close the unit or MSW site 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 or of a MSW site shall begin final closure activities for each unit or site no later than 30 days after the date on which the unit or site receives the known final receipt of wastes or, if the unit or site has remaining capacity and there is a reasonable likelihood that the unit or site 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 site 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 MSW site.

(5) The owner or operator of a MSWLF unit or MSW site shall complete final closure activities for the unit or site 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 or MSW site.

(6) Following completion of all final closure activities for the MSWLF unit or MSW site, 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 MSW site 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 or site of the date of closing for the entire facility or site 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 facility or site.

(8) Within 10 days after completion of final closure activities of a facility or site, 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 facility or site shall record a certified notation on the deed to the facility or site 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 MSW site may request permission from the executive director to remove the notation from the deed if all wastes are removed from the facility or site 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 facility or site according to the approved final closure plan, the executive director may acknowledge the termination of operation and closure of the facility or site 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, and MSW Sites.

(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 MSW site in order to conduct periodic inspections of the closed unit or site. 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 site. 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. The executive director may reduce the post-closure maintenance period for MSW sites if all wastes and waste residues have been removed during closure.

(2) Any monitoring programs (groundwater monitoring, resistivity surveys, methane monitoring, etc.) in effect during the life of the MSWLF unit or MSW site 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 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 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 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 groundwater in accordance with the requirements of §§330.230-330.242 of this title (relating to Groundwater Monitoring and Corrective Action) and maintain the groundwater 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 certification, 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, 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, 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 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 estimate and the amount of financial assurance for inflation in accordance with §§330.280-330.286 of this title (relating to Financial Assurance). 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 MSW sites 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 MSW site 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 MSW site 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 MSW site 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 MSW site 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% volume in air are detected shall be installed in all buildings and structures constructed on a closed MSWLF unit or MSW site.

(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 MSW site 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 MSW site 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 MSW site, 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 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 rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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### Subchapter L. Hazardous Household Waste

#### • 31 TAC §§330.271-330.282

The repeals are adopted 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.

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### Subchapter K. Financial Assurance

#### • 31 TAC §§330.280-330.286

The new sections are adopted 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.

#### **§330.281. 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 unit in accordance with the final closure plan shall be provided. For any landfill this means the completion of the final closure 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 unit, 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 unit.

(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 unit 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 unit shall establish financial assurance for closure of the unit 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 unit, 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 unit, 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 unit 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 unit shall establish financial assurance for the costs of post-closure care of the unit 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 unit 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. The financial assurance instrument shall be submitted no later than 120 days after the corrective action remedy has been selected. Financial assurance shall be required for each separate corrective action program established for a municipal solid waste unit.



(1) During a corrective action program, 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 unit 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 unit 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 or before the effective date of this

section, April 9, 1994, whichever is later. 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) 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(b) 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 unit or 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 (b)(2) of this section. The amount of subsequent payments shall be determined by the following formula:

$$\text{Next Payment} = \frac{\text{CE} - \text{CV}}{\text{Y}}$$

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 dem-

onstrate 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 (b)(2) of this section. The amount of subsequent payments shall be determined by the following formula:

$$\text{Next Payment} = \frac{\text{RB} - \text{CV}}{\text{Y}}$$

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 in the pay-in period.

(5) The initial payment into the trust fund shall be made 60 days before the initial receipt of waste or before the effective date of this section, April 9, 1994, whichever is later, 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, and/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 reimbursements from the trust fund for partial closure, post-closure, and/or corrective action, only if sufficient funds are remaining in the trust fund to cover the

maximum costs of closing the unit or 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 or before the effective date of this section, April 9, 1994, whichever is later. 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(c) 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(d) 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, and/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), (5), (10), and (15) 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 unit or 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 unit or 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 payment or performance 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, and/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 unit or 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 or before the effective date of this section, April 9, 1994, whichever is later, 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(e) 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), (5), (10), and (15) 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 unit or 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, and/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/or corrective action by obtaining 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 unit or 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 or before the effective date of this section, April 9, 1994, whichever is later, 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(f) of this title (relating to Wording of the Instruments).

(2) The closure, post-closure, and/or corrective action insurance policy shall guarantee that funds shall be available to close the unit or facility whenever final closure occurs or to provide post-closure care for the unit or 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, and/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, and/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, and/or corrective action, may request reimbursements for expendi-

tures 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, and/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 unit or 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, and/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(g) 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(g); and

(B) a copy of the owner's or operator's independently audited year-end financial statements for the latest fiscal year including the "unqualified opinion" of the auditor; 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 at-

tention 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(h). 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, and/or corrective action of a unit or 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.

(11) The proposed corporate financial test may be substituted with the final EPA test.

(12) A local government as it pertains to this section is defined as follows: A city, town county, district, association, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created by or under State law; an Indian tribe or an authorized Indian tribal organization having jurisdiction over solid waste management. This definition includes a special district created under State law.

(g) Local Government Financial Test and Government Guarantee.

(1) A local government may demonstrate financial assurance for closure, post-closure, and/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 subchapter, 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 record-keeping 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 as-

sured 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 unit or 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) Record-keeping 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(i) 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 previously.

(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 paragraph (1)(A), (B), and (C) 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 §330.286(j). 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, and/or corrective action of a municipal solid waste unit or 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 alternate 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.

(3) The proposed local government financial test may be substituted with the final EPA test.

(h) Use of Multiple Mechanisms. An owner or operator may satisfy the requirements of this section by establishing more than one financial mechanism per unit or 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)-(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 or before the effective date of this section, April 9, 1994, whichever is later, 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, and/or corrective action,

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the unit(s) or 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) Unit or facility 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 Units or Facilities and Cost Estimates.** This Agreement pertains to the units or facilities and cost estimates identified on attached Schedule A [on Schedule A, for each unit or facility list the permit or registration identification number, name, address, and the closure, post-closure, and/or 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 units or facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 USC §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 USC §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 consti-



tuting 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 ten 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 amendment 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 ten 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 ex-

penses 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 of 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 Finan-

cial 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/or corrective action amount(s) for each unit or 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 Regulations, 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/or 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/or 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/or 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, §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 unit(s) or 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/or 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(c) 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/or corrective action amount(s) for each landfill and process facility guaranteed by this bond [indicate closure, post-closure, and/or 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/or 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/or corrective action, whenever required to do so, of each landfill and process facility for which this bond guarantees closure, post-closure, and/or corrective action, in accordance with the closure, post-closure, and/or 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, §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, §330:285, for a landfill and process facility which this bond guarantees performances of closure, post-closure, and/or corrective action, the Surety(ies) shall either perform closure, post-closure, and/or corrective action in accordance with the closure, post-closure, and/or 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/or 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, §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 unit(s) or 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/or cor-

rective 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/or 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(d) 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 and the amount for closure, post-closure, and/or corrective action] 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(e) 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/OR CORRECTIVE ACTION**

Name and Address of Insurer (herein called the "insurer"):

\_\_\_\_\_

Name and Address of Insured (herein called the "insured"):

\_\_\_\_\_

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/or 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/or 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(f), 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:

placed 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, §330.285(f). [Fill out the following three paragraphs regarding municipal solid waste units or facilities and associated cost estimates. If your firm has no units or facilities that belong in a particular paragraph, write "None" in the space indicated. For each unit or facility, include its TWC permit number, name, address, and current closure, post-closure care, and/or corrective action cost estimates.]

1. This firm is the owner or operator of the following units or facilities for which financial assurance for closure, post-closure care, and/or corrective action is being demonstrated through the financial test specified in Subchapter K of 31 Texas Administrative Code, §330.285(f). The current closure, post-closure, and/or corrective action cost estimates covered by the test are shown for each unit or facility: -----.

2. This firm guarantees, through the corporate guarantee specified in Subchapter K of 31 Texas Administrative Code, §330.285(f), closure, post-closure care, and/or corrective action of the following units or 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 care, and/or corrective action of the following units or facilities through the use of a test equivalent or substantially equivalent to the financial test. The current closure, post-closure care, and/or corrective action cost estimates covered by such a test are shown for each unit or 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 §330.285(f)(1)(A) of this title are used. Fill in Alternative II if the criteria of §330.285(f)(1)(B) of this title are used.]

**ALTERNATIVE I**

1. Sum of current closure, post-closure care, and/or corrective action cost estimates [total of all cost estimates shown in the three paragraphs above] \$. .....

\*2. Total liabilities [if any portion of the closure, post-closure care, and/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 United States (required only if less than 90% of firm's assets are located in United States) \$.....

10. Assured environmental costs to demonstrate financial responsibilities in the following amounts under Code of Federal Regulations and TWC regulations: MSWLF under 31 TAC Part 330 and 40 Code of Federal Regulations, Part 258 \$... ..

Hazardous waste treatment, storage, and disposal facilities under 31 TAC Part 335 and 40 Code of Federal Regulations, Parts 264 and 265 \$.....

Petroleum underground storage tanks under 31 TAC Part 334 and 40 Code of Federal Regulations, Part 280 \$.....

Underground Injection Control System facilities under 31 TAC Part 331 and 40 Code of Federal Regulations, Part 144 \$.....

PCB commercial storage facilities under 40 Code of Federal Regulations, Part 761 \$.....

Total assured environmental costs \$.....

Circle either "yes" or "no" to the following questions.

11. Is line 3 at least \$10 million? yes/no

12. Is line 3 at least 6 times line 1? yes/no

13. Is line 7 at least 6 times line 1? yes/no

\*14. Are at least 90% of firm's assets located in the U.S.? yes/no

If not, complete line 15

15. Is line 9 at least 6 times line 1? yes/no

16. Is line 2 divided by line 4 less than 2.0? yes/no

17. Is line 8 divided by line 2 greater than 0.1? yes/no

18. Is line 5 divided by line 6 greater than 1.5? yes/no

**ALTERNATIVE II**

1. Sum of current closure, post-closure care, and/or 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 United States (required only if

less than 90% of firm's assets are located in United States) \$.....

7. Assured environmental costs to demonstrate financial responsibilities in the following amounts under Code of Federal Regulations and TWC regulations:

MSWLF under 31 TAC Part 330 and 40 Code of Federal Regulations, Part 258 \$.. ..

Hazardous waste treatment, storage, and disposal facilities under 31 TAC Part 335 and 40 Code of Federal Regulations, Parts 264 and 265 \$.....

Petroleum underground storage tanks under 31 TAC Part 334 and 40 Code of Federal Regulations, Part 280 \$.....

Underground Injection Control System facilities under 31 TAC Part 331 and 40 Code of Federal Regulations, Part 144 \$.....

PCB commercial storage facilities under 40 Code of Federal Regulations, Part 761 \$.....

Total assured environmental costs \$.....

Circle either "yes" or "no" to the following questions.

8. Is line 5 at least \$10 million? yes/no

9. Is line 5 at least 6 times line 1? yes/no

\*10. Are at least 90% of the firm's assets located in the U.S.? yes/no

If not, complete line 11.

11. 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(g) 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/OR 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 unit(s) or facility(ies) covered by this guarantee: [List for each unit or facility: TWC permit number, name, and address. Indicate for each whether guarantee is for closure, post-closure care, and/or corrective action.]

3. "Closure Plans", "Post-Closure Care Plans", and/or "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 of the units or 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/or corrective action"] of the above unit(s) or 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, United States Code, naming guarantor as debtor, within ten 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/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, the amendment or modification of the permit, the extension or reduction of the time of performance of closure, post-closure care, and/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 previously-listed units or 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 the Executive Director, 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 unit or 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(h).

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, §330.285(g).

[Fill out the following three paragraphs regarding the municipal solid waste units or facilities and associated cost estimates. If there are no units or facilities that belong in a particular paragraph, write "None" in the space indicated. For each unit or facility, include its permit number, name, address and current closure, post-closure care, and/or corrective action cost estimates. Identify each cost estimate as to whether it is for closure, post-closure care, and/or corrective action.]

1. This local government is the owner or operator of the following units or facilities for which financial assurance for closure, post-closure care, and/or corrective action is demonstrated through the financial test specified in Subchapter K of 31 Texas Administrative Code, §330.285(g). The current closure, post closure care, and/or corrective action cost estimates covered by the test are shown for each unit or facility: -----

2. This local government guarantees, through the guarantee specified in 31 Texas Administrative Code, §330.285(g), the closure, post-closure care, and/or corrective action care of the following units or facilities owned or operated by [insert

owner's name or operator's name]. The current cost estimates for the closure, post-closure care, and/or corrective action so guaranteed are shown for each unit or 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 §330.285(g)(1)(A)(i) of this chapter are used. Fill in Bond Rating Indicator of Financial Strength section if the criteria of §330.285(g)(1)(A) (ii) of this chapter are used.]

**RATIO INDICATORS OF FINANCIAL STRENGTH**

1. Sum of current closure, post-closure care, and/or 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 Code of Federal Regulations, and TWC regulations:

MSWLF under 31 TAC Part 330 and 40 Code of Federal Regulations, Part 258 \$.. .....

Hazardous waste treatment, storage and disposal facilities under 31 TAC Part 335 and 40 Code of Federal Regulations, Parts 264 and 265 \$.....

Petroleum underground storage tanks under 31 TAC Part 334 and 40 Code of Federal Regulations, Part 280 \$.....

Underground Injection Control System facilities under 31 TAC Part 331 and 40 Code of Federal Regulations, Part 144 \$.....

PCB commercial storage facilities under 40 Code of Federal Regulations, 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 care, and/or 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 S. ....

3. Date of issuance bond .....

4. Date of maturity of bond .....

5. Assured environmental costs to demonstrate financial responsibility in the following amounts under Code of Federal Regulations, and TWC regulations:

MSWLF under 31 TAC Part 330 and 40 Code of Federal Regulations, Part 258 S. ....

Hazardous waste treatment, storage and disposal facilities under 31 TAC Part 335 and 40 Code of Federal Regulations, Parts 264 and 265 S. ....

Petroleum underground storage tanks under 31 TAC Part 334 and 40 Code of Federal Regulations, Part 280 S. ....

Underground Injection Control System facilities under 31 TAC Part 331 and 40 Code of Federal Regulations, Part 144 S. ....

PCB commercial storage facilities under 40 Code of Federal Regulations, Part 761 S. ....

Total assured environmental costs S. ....

\*6. Total Annual Revenue S. ....

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(i) as such regulations were constituted on the date shown immediately below. I further certify the following: that the local government's financial statements are prepared in conformity with GAAP for governments; 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; that the local government is not in default on any outstanding general obligations bonds; and that the local government does not have outstanding general obligations rated less than investment grade.

[Signature]

[Name]

[Title]

[Date]

(j) A local government 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/OR 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 unit(s) or facility(ies) covered by this guarantee: [List for each unit or facility: TWC permit number, name, and address. Indicate for each whether guarantee is for closure, post-closure care, and/or for corrective action.]

3. "Closure Plans," "Post-Closure Care Plans," and/or "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/or corrective action of units or 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," and/or "corrective action"] of the above unit(s) or 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 care, and/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, United States Code, naming guarantor as debtor, within ten 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 care, and/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 previously-listed units or 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 unit or 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(j).

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 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 June 8, 1993.

TRD-9324051

Mary Ruth Holder  
Director, Legal Division  
Texas Water Commission

Effective date: April 9, 1994

Proposal publication date: March 9, 1993

For further information, please call: (512) 908-6722



## Subchapter L. Location Restrictions

### • 31 TAC §§330.300-300.305

The new sections are adopted 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 only by 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 five miles of an airport shall be critically evaluated to determine if an incompatibility exists.

§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. Lithified earth material is defined as all rocks, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of

older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface. 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.

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 June 8, 1993.

TRD-9324056

Mary Ruth Holder  
Director, Legal Division  
Texas Water Commission

Effective date: October 9, 1993

Proposal publication date: March 9, 1993

For further information, please call: (512) 908-6722

## TITLE 34. PUBLIC FINANCE

### Part IV. Employees Retirement System of Texas

#### Chapter 81. Insurance

### • 34 TAC §81.5

The Employees Retirement System of Texas (ERS) adopts an amendment to §81.5, concerning eligibility, without changes to the proposed text as published in the April 13, 1993, issue of the *Texas Register* (18 TexReg 2468).

The amendment was necessary in order to provide guidelines for eligibility of Optional Retirement Program (ORP) participants who incur permanent disability to participate in the Texas Employee Uniform Group Insurance Program.

Higher education employees who participate in the ORP administered by the Teacher Retirement System of Texas, and who incur a permanent disability, will now be eligible to enroll in the Texas Employees Uniform Group Insurance Program.

No comments were received regarding adoption of the amendment.

The amendment is proposed under the Insurance Code, Article 3.50-2, §4, which provides the ERS with the authority to promulgate all

rules, regulations, plans, procedures, and orders reasonably necessary to implement and carry out the purposes and provisions of the Texas Employees Group Insurance Benefits Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 9, 1993.

TRD-9324108

Charles D. Travis  
Executive Director  
Employees Retirement  
System of Texas

Effective date: July 1, 1993

Proposal publication date: April 13, 1993

For further information, please call: (512) 867-3336

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 33. Early and Periodic Screening, Diagnosis, and Treatment

#### Subchapter J. Medical Phase

### • 40 TAC §33.140

The Texas Department of Human Services (DHS) adopts an amendment to §33.140, concerning Early and Periodic Screening, Diagnosis, and Treatment-Comprehensive Care Program Providers (EPSDT-CCP), in its EPSDT rule chapter, without changes to the proposed text as published in the April 6, 1993, issue of the *Texas Register* (18 TexReg 2292).

The justification for the amendment is to clarify the reimbursement methodology for licensed dietitians and durable medical equipment.

The amendment will function by ensuring that Medicaid providers have the methodology used to reimburse them for covered services under the EPSDT-CCP Medicaid Program.

During the public comment period, DHS received comments from the Driscoll Foundation Children's Hospital; R.D. Enterprises, Food and Nutrition Services Consultants; Citizens General Hospital, Greenville; National Medical Care, Inc.; Dialysis Services Division; the Nueces County MHMR Community Center; a nutrition consultant; a registered and licensed dietitian; and two individuals.

All commenters were unanimous in their approval of the proposed amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413(502), §16, which pro-

vides 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 June 10, 1993.

TRD-9324116

Nancy Murphy  
Section Manager, Policy  
and Document Support  
Texas Department of  
Human Services

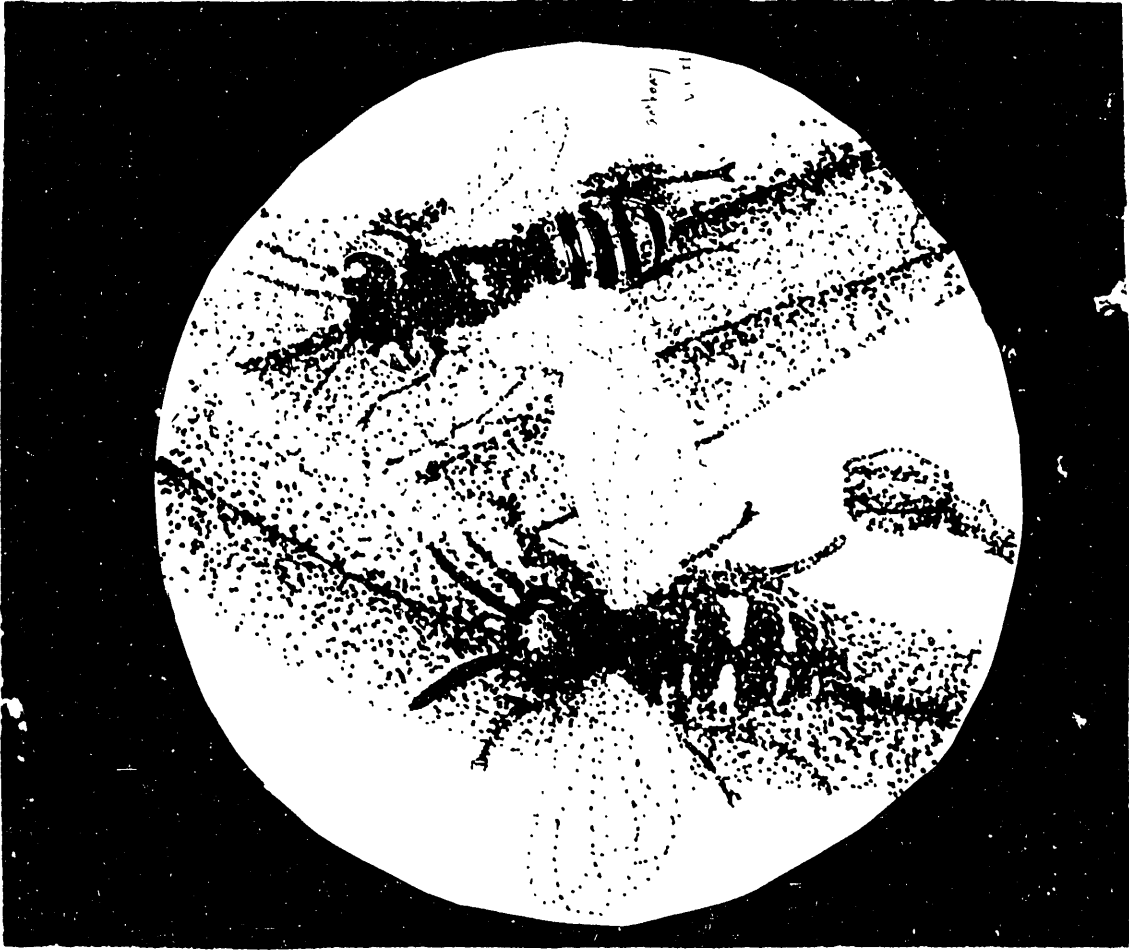
Effective date: July 1, 1993

Proposal publication date: April 6, 1993

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

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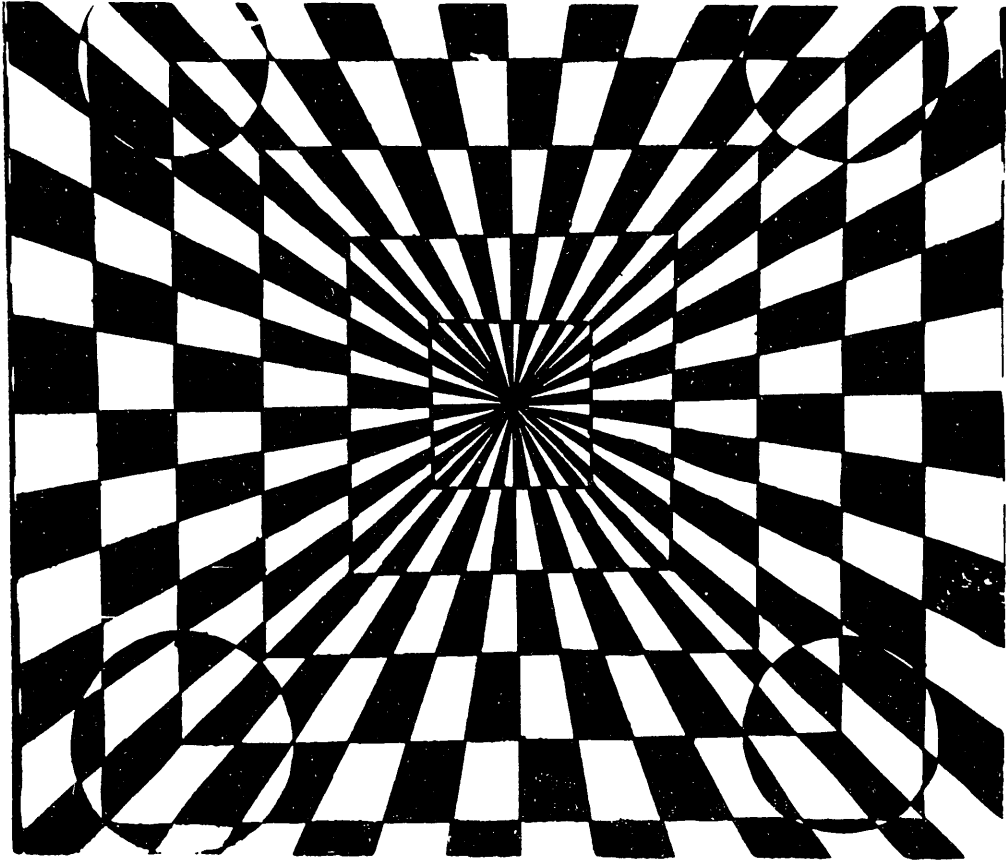




Name: Anthony Vasser

Grade: 7

School: Hendrick Middle School, Plano ISD



Name: Kay Kimbrough

Grade: 7

School: Hendrick Middle School, Plano 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 Commission on Alcohol and Drug Abuse

**Tuesday, June 22, 1993, 8:30 a.m.** The Board of Commissioners of the Texas Commission on Alcohol and Drug Abuse will meet at 720 Brazos Street, Suite 800, Perry Brooks Building, Eighth Floor Conference Room, Austin. According to the complete agenda, the board will call the meeting to order; discuss approval of the March 23, 1993 minutes; hear report on implementation of Criminal Justice In-Prison Therapeutic Community Program; report on Criminal Justice Substance Abuse Felony Punishment Facility Program; report on Criminal Justice Continuum of Care; report on Treatment Alternatives to Incarceration Program; action by consent on adoption of treatment alternatives to incarceration rules and drug offender education program rules, and proposed amendments to DWI Education Program rules, DWI Repeat Offender Program rules, and Alcohol Awareness Program rules; action on replacement on Counselor Licensure Committee; appointments of Advisory Council Ex-Officio members, audit committee, and offender credentialing committee; presentation of special recognition award; agency response to internal audit on Human Resources; report on Harris County Chemical Dependency Provider Group Activities; report on deinstitutionalizing treatment services; report on Houston Recovery Campus Project; hear public comments; executive director's report to include legislative update, management performance audit, funding distribution information, third quarter expenditure report, third quarter performance report; audit review board activity; hear chairman's report; and adjourn.

Contact: Becky Davis or David P. Tatum, 720 Brazos Street, Suite 403, Austin, Texas 78701, (512) 867-8700.

Filed: June 14, 1993, 9:39 a.m.

TRD-9324263

## Texas Alcoholic Beverage Commission

**Tuesday, June 22, 1993, 9:30 a.m.** The Texas Alcoholic Beverage Commission will meet at 5806 Mesa Drive, Travis County, Room 180, Austin. According to the complete agenda, the commission will discuss approval of the minutes of May 25, 1993, meeting; hear administrator's report on agency activity; recognize TABC employees with twenty and above years of service; hear legislative update; discuss new 16 TAC §§51.1-51.28 as published in the *Texas Register*; discuss and possibly adopt (setting out rules for operation under Limousine Service Beverage Permit); retailer advisory committee; hear public testimony; discussion, questions and answers, possible action; update on "Cops in Shops"; public announcement and viewing; hear public comment; and meet in executive session to discuss and review personnel actions.

Contact: Dick Durbin, P.O. Box 13127, Austin, Texas 78711, (512) 458-2500.

Filed: June 14, 1993, 10:15 a.m.

TRD-9324258

## The State Bar of Texas

**Thursday-Friday, June 17-18, 1993, 10:00 a.m. and 8:00 a.m. respectively.** The Commission for Lawyer Discipline of the State Bar of Texas will meet at the Fort Worth/Tarrant County Convention Center, 1111 Houston Street, Room W-112, Fort

Worth. According to the complete emergency revised agenda, the commission will discuss the case of the State Bar of Texas versus Paul Lockman. The emergency status is necessary as case is set for court-ordered mediation prior to next scheduled meeting of Commission for Lawyer Discipline.

Contact: Anne Dorris, 400 West 15th Street, Austin, Texas 78701, (512) 463-1381.

Filed: June 14, 1993, 3:03 p.m.

TRD-9324283

## Coastal Coordination Council

**Friday, June 18, 1993, 3:00 p.m.** The Executive Committee of the Coastal Coordination Council will meet at the Corpus Christi City Hall, Council Chambers, 1201 Leopard Street, Corpus Christi. According to the complete agenda, the committee will call the meeting to order; discuss approval of the minutes of the May 21, 1993 meeting; hear report on the Coastal Management Program (CMP) Federal Agency Task Force; status of public hearings on the proposed CMP boundary; status of the CMP policy development process; status of the state consistency review process; discuss the J. F. Kennedy Causeway project; public comment period (public will be given opportunity to comment on any agenda item with a three-minute time limit); and adjourn.

Contact: Janet L. Fatheree, 1700 North Congress Avenue, #730, Austin, Texas 78701, (512) 463-5385.

Filed: June 10, 1993, 3:10 p.m.

TRD-9324154

## Texas Cosmetology Commission

**Saturday, June 26, 1993, 10:00 a.m.** The Oversight Committee of the Texas Cosmetology Commission will call the meeting to order; make introductions; discuss rule changes; and adjourn.

**Contact:** Alicia C. Ayers, 5717 Balcones Drive, P.O. Box 26700, Austin, Texas 78755-0700, (512) 454-4674.

**Filed:** June 14, 1993, 9:38 a.m.

TRD-9324262

**Saturday, June 26, 1993, 1:30 p.m.** The Rule Change Committee of the Texas Cosmetology Commission will meet at the Doubletree Hotel, 6505 North IH-35, Austin. According to the complete agenda, the committee will call the meeting to order; make introductions; present proposed rule changes; discuss rule changes; and adjourn.

**Contact:** Alicia C. Ayers, 5717 Balcones Drive, P.O. Box 26700, Austin, Texas 78755-0700, (512) 454-4674.

**Filed:** June 14, 1993, 9:38 a.m.

TRD-9324261

**Sunday, June 27, 1993, 9:00 a.m.** The Texas Cosmetology Commission will meet at the Doubletree Hotel, 6505 North IH-35, Austin. According to the complete agenda, the commission will call the meeting to order; make introductions; discuss approval of the minutes of the March 28, 1993 meeting; hear executive director's report; Debra Green regarding open meetings; Darlene Braockett regarding Senate Bill 1094; Texas Professional Salon Owners Group-Marsha Sechrist, regarding independent contractors; discuss rule changes; and adjourn.

**Contact:** Alicia C. Ayers, 5717 Balcones Drive, P.O. Box 26700, Austin, Texas 78755-0700, (512) 454-4674.

**Filed:** June 14, 1993, 9:38 a.m.

TRD-9324260

## Texas State Board of Dental Examiners

**Thursday, June 17, 1993, 5:30 p.m.** The Texas State Board of Dental Examiners met at the Baylor College of Dentistry, 3302 Gaston Avenue, Dallas. According to the complete emergency revised agenda, the board called the meeting to order; took roll call; discussed approval of sedation/anesthesia permits; approval of settlement orders; heard report on specialty examinations; considered and final determination of proposal for decision in: TSBDE versus Irish #504-92-514; TSBDE versus Troegle, #92-

476-721M; considered TSBDE-motion for extension of time and objections to consideration of motions for rehearing in TSBDE versus Tuffiash #92-043-1004S; considered motions for rehearing in TSBDE versus Dorsey #91-0729-324K; elected officers; appointed WREB Representative; credentials review committee; made announcements; and adjourned. The emergency status was necessary as additional information was presented to the TSBDE office that needed to be reviewed by the full board at the earliest possible time, and was rescheduled to accommodate the examination cycle at Baylor exams.

**Contact:** C. Thomas Camp, 333 Guadalupe Street, Tower Three, Suite 3800, Austin, Texas 78701, (512) 463-6400.

**Filed:** June 10, 1993, 1:55 p.m.

TRD-9324137

## Texas Diabetes Council

**Friday, June 18, 1993, 9:30 a.m.** The Texas Diabetes Council will meet at the Texas Department of Health, Room G-107, 1100 West 49th Street, Austin. According to the complete agenda, the council will discuss adoption of the minutes of the previous meeting; discuss and possibly act on: recognition of senators and representatives and staff; budget allocations for fiscal years 1994-1995; projected end of year budget expenditures; appointment of advisory boards; and hear staff reports.

**Contact:** Richard Kropp, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7534. For ADA assistance, call Richard Butler at (512) 458-7488 or T.D.D. at (512) 458-7708 at least two days prior to the meeting.

**Filed:** June 10, 1993, 4:09 p.m.

TRD-9324162

## Texas State Board of Examiners of Dietitians

**Thursday, June 17, 1993, 10:30 a.m.** The Rules Committee of the Texas State Board of Examiners of Dietitians held an emergency meeting at the Exchange Building, Room S-402, 8407 Wall Street, Austin. According to the complete agenda, the board discussed and possibly acted on adoption of proposed amendments to Chapter 711; and set the next meeting date. The emergency status was necessary due to unforeseeable circumstances.

**Contact:** Becky Berryhill, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6601. For ADA assistance, call Richard Butler at (512) 458-7488 or T.D.D. at (512)

458-7708 at least two days prior to the meeting.

**Filed:** June 10, 1993, 4:48 p.m.

TRD-9324172

**Friday, June 18, 1993, 9:00 a.m.** The Program Approval Committee of the Texas State Board of Examiners of Dietitians will meet at the Exchange Building, Room N-456, 8407 Wall Street, Austin. According to the complete agenda, the board will discuss and possibly act on ratification of program of Antonio Elefano; and set the next meeting date.

**Contact:** Becky Berryhill, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6601. For ADA assistance, call Richard Butler at (512) 458-7488 or T.D.D. at (512) 458-7708 at least two days prior to the meeting.

**Filed:** June 10, 1993, 4:48 p.m.

TRD-9324173

**Friday, June 18, 1993, 10:30 a.m.** The Texas State Board of Examiners of Dietitians will meet at the Exchange Building, Room N-456, 8407 Wall Street, Austin. According to the agenda summary, the board will discuss approval of the minutes of the January 15, 1993 meeting; discuss and possibly act on: board resolutions in memoriam of Alana Davis Webb; hear chairman's report; executive secretary's report (ratification of applications approved by the executive secretary); standing committee reports (rules committee, complaint, program committee, consumer information committee); special committee report; consideration and action on board policy regarding personnel; review and action on applications for licensure, provisional licensure, examination eligibility, preplanned professional experience program, and license renewal; consideration and action on orders; examination contract with Commission on Dietetic Registration for 1993-1996; action on 1993 Council on Licensure Enforcement and Regulation; election of officers; announcement and comments; and setting of next meeting date.

**Contact:** Becky Berryhill, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6601. For ADA assistance, call Richard Butler at (512) 458-7488 or T.D.D. at (512) 458-7708 at least two days prior to the meeting.

**Filed:** June 10, 1993, 4:41 p.m.

TRD-9324171

## Texas Education Agency

**Monday, June 21, 1993, 8:30 a.m.** The Texas Center for Educational Technology (TCET) Board of Directors of the Texas Education Agency will hold an emergency

meeting at the Diamond Eagle Room, Student Union Building, University of North Texas, Denton. According to the complete agenda, the board will discuss legislative update; strategic planning for 1993-1994; and discuss the hiring of an executive director. This discussion will be held in executive session in accordance with provisions of Texas Civil Statutes, Article 6252-17, §2(g), regarding personnel matters. The emergency status is necessary as the agency finds it of urgent public necessity for this meeting to be held on an emergency basis to enable the board of directors to be apprised of recent legislation actions and how these actions will impact the TCET, and proceed with the search for an executive director.

Contact: Delia Duffey, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9092.

Filed: June 14, 1993, 2:26 p.m.

TRD-9324279

Monday-Tuesday, June 21-22, 1993 7:00 p.m. and 7:45 a.m. respectively. The State Panel on Student Skills and Knowledge of the Texas Education Agency will meet in the Austin Room, Omni Austin Hotel, 700 San Jacinto Street, Austin. According to the complete agenda, the panel will make introductions; define and discuss the problem: The Need to Raise Expectations; brief overview of the process; and on Tuesday, make introductions; charge to the panel; panel dialogue with the commissioner; simulation of the process; reactions and proposals; and finalize the process.

Contact: Marvin Veselka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9533.

Filed: June 11, 1994, 4:05 p.m.

TRD-9324226

## Texas Department of Health

Friday, June 18, 1993, 11:00 a.m. The Environmental Health Committee of the Texas Board of Health of the Texas Department of Health will meet in the Board Room, Parkland Memorial Hospital, 5201 Harry Hines Boulevard, Dallas. According to the agenda summary, the committee will discuss approval of the minutes of the May 22, 1993 meeting; discuss and possibly act on: final adoption of amendments to the Texas Regulations for Control of Radiation; final adoption of amendments to the fees for drinking water systems; final adoption of amendments to rules concerning licensing of wholesale distributors of drugs; registration of manufacturers of food; final adoption of amendments to rules concerning minimum standards for approved narcotic drug treatment programs; and hear com-

ments and announcements not requiring committee action.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. For ADA assistance, call Richard Butler at (512) 458-7488 or T. D.D. at (512) 458-7708 at least two days prior to the meeting.

Filed: June 10, 1993, 3:58 p.m.

TRD-9324158

Friday, June 18, 1993, 11:00 a.m. The Executive Committee of the Texas Board of Health of the Texas Department of Health will meet at Dr. Ron Anderson's Office, Parkland Memorial Hospital, 5201 Harry Hines Boulevard, Dallas. According to the complete agenda, the committee will discuss and possibly act on items of procedure for the June 18, 1993 Texas Board of Health meeting.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. For ADA assistance, call Richard Butler at (512) 458-7488 or T. D.D. at (512) 458-7708 at least two days prior to the meeting.

Filed: June 10, 1993, 3:58 p.m.

TRD-9324159

Friday, June 18, 1993, 1:00 p.m. The Texas Board of Health Budget and Finance Committee of the Texas Department of Health will meet in the Board Room, Parkland Memorial Hospital, 5201 Harry Hines Boulevard, Dallas. According to the complete agenda, the committee will discuss approval of the minutes of the May 21, 1993 meeting; and discuss and possibly act on approval of fiscal year 1993 budget revisions.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. For ADA assistance, call Richard Butler at (512) 458-7488 or T. D.D. at (512) 458-7708 at least two days prior to the meeting.

Filed: June 10, 1993, 3:58 p.m.

TRD-9324157

Friday, June 18, 1993, 1:30 p.m. The Disease Control Committee of the Texas Board of Health of the Texas Department of Health will meet in the Board Room, Parkland Memorial Hospital, 5201 Harry Hines Boulevard, Dallas. According to the complete agenda, the committee will discuss approval of the minutes of the May 21, 1993, meeting; discuss and possibly act on: final adoption of amendments to the rules concerning Texas HIV Medication Program to expand the formulary to include Atovaquone.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512)

458-7484. For ADA assistance, call Richard Butler at (512) 458-7488 or T. D.D. at (512) 458-7708 at least two days prior to the meeting.

Filed: June 10, 1993, 3:57 p.m.

TRD-9324165

Friday, June 18, 1993, 2:00 p.m. The Health Provider, Licensure and Certification Committee of the Texas Department of Health will meet in the Board Room, Parkland Memorial Hospital, 5201 Harry Hines Boulevard, Dallas. According to the complete agenda, the committee will discuss approval of the minutes of the April 24, 1993, meeting; and discussion concerning Therapy Advisory Council recommendations.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. For ADA assistance, call Richard Butler at (512) 458-7488 or T. D.D. at (512) 458-7708 at least two days prior to the meeting.

Filed: June 10, 1993, 4:09 p.m.

TRD-9324163

Friday, June 18, 1993, 2:30 p.m. The Texas Board of Health of the Texas Department of Health will meet in the Board Room, Parkland Memorial Hospital, 5201 Harry Hines Boulevard, Dallas. According to the agenda summary, the board will discuss approval of the minutes of the May 22, 1993 meeting; discuss and possibly act on: commissioner's report; rules (Texas HIV medication program; Texas regulations for control of radiation; fees for services for drinking water systems; licensing of wholesale distributors of drugs; registration of manufacturers of food; minimum standards for approved narcotic drug treatment programs); hear committee reports (budget/finance; disease control; emergency and disaster; environmental health; family health services; health provider, licensure and certification; hospital and ambulatory care services; long term care; public health promotion; legislative committee; strategic planning; and personnel); and hear announcements and comments. The board will discuss in executive session employment matters concerning the Commissioner of Health.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. For ADA assistance, call Richard Butler at (512) 458-7488 or T. D.D. at (512) 458-7708 at least two days prior to the meeting.

Filed: June 10, 1993, 3:58 p.m.

TRD-9324156

Monday, June 21, 1993, 2:00 p.m. The Hospice Task Force of the Texas Department of Health will hold an emergency

meeting at the Exchange Building, Room S-400, 8407 Wall Street, Austin. According to the complete agenda, the task force will discuss and possibly act on: new home, hospice and community care law (What implications are there? Where do we go from here?); advisory council membership (Will present members serve their appointed term? When will new members be appointed? What is the most appropriate action, if any, that the Texas Hospice Organization Board should take?); update on justice of the peace complaints on registered nurse pronouncements of death (Are there fewer complaints? Texas Hospice Organization response); exchange of provider lists; and 1993-1994 Texas Hospice Organization Board of Directors. The emergency status is necessary due to unforeseeable circumstances.

Contact: Nance Stearman, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6650. For ADA assistance, call Richard Butler at (512) 458-7488 or T.D.D. at (512) 458-7708 at least two days prior to the meeting.

Filed: June 14, 1993, 3:45 p.m.

TRD-9324292

Wednesday, June 23, 1993, 10:30 a.m. The Advisory Committee on Mental Retardation Facilities of the Texas Department of Health will meet at the Exchange Building, Room S-400, 8407 Wall Street, Austin. According to the complete agenda, the committee will discuss and possibly act on: nominees for mental retardation chairperson; review comments, make recommendations on mental retardation administrative penalties; update on informed consent legislation; and next scheduled meeting.

Contact: Maurice Shaw, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6650. For ADA assistance, call Richard Butler at (512) 458-7488 or T.D.D. at (512) 458-7708 at least two days prior to the meeting.

Filed: June 14, 1993, 3:44 p.m.

TRD-9324286

Friday, June 25, 1993, 10:00 a.m. The Rules Committee of the Massage Therapy Registration Program of the Texas Department of Health will meet at the Exchange Building, Room S-402, 8407 Wall Street, Austin. According to the complete agenda, the committee will discuss and possibly act on: proposed amendments to massage therapy rules, §§141.1-141.22; and setting of the next meeting.

Contact: Becky Berryhill, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6616. For ADA assistance, call Richard Butler at (512) 458-7488 or T.D.D. at (512) 458-7708 at least two days prior to the meeting.

Filed: June 14, 1993, 3:44 p.m.

TRD-9324287

Saturday, June 26, 1993, 9:00 a.m. The Continuing Education Committee of the Medical Radiologic Technologist Advisory Board of the Texas Department of Health will meet at the Exchange Building, Room S-403, 8407 Wall Street, Austin. According to the complete agenda, the committee will discuss and possibly act on correspondence concerning continuing education for state certification versus national registration.

Contact: Donna Hardin, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6617. For ADA assistance, call Richard Butler at (512) 458-7488 or T.D.D. at (512) 458-7708 at least two days prior to the meeting.

Filed: June 14, 1993, 3:45 p.m.

TRD-9324290

Saturday, June 26, 1993, 10:00 a.m. The Credentials Committee of the Medical Radiologic Technologist Advisory Board of the Texas Department of Health will meet at the Exchange Building, Room S-402, 8407 Wall Street, Austin. According to the complete agenda, the committee will discuss and possibly act on applications recommended for disapproval by the program administrator; legal opinion concerning specialty certificates; and request to add agencies to list of continuing education approval organizations.

Contact: Donna Hardin, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6617. For ADA assistance, call Richard Butler at (512) 458-7488 or T.D.D. at (512) 458-7708 at least two days prior to the meeting.

Filed: June 14, 1993, 3:44 p.m.

TRD-9324289

Saturday, June 26, 1993, 11:00 a.m. The Medical Radiologic Technologist Advisory Board of the Texas Department of Health will meet at the Exchange Building, Room S-400, 8407 Wall Street, Austin. According to the complete agenda, the board will discuss approval of the minutes of the February 20, 1993 meeting; discuss and possibly act on: chairman's report and committee appointments; program administrator's report; ethics advisory opinions and memorandum regarding acceptance of gifts by public servants; continuing education committee report; credentialing committee report; applications disapproved by the program administrator; presentation by Susan Ladymon, R.T. (R)(T), President, North Texas Society of Radiation Therapists; legal opinion pertaining to specialty certificates; legislative update; rules relating to the certification of Medical Radiologic Technologists, 25 TAC, §§143.1-143.15; publication entitled "Things You Need to Know About

Amendments to Rules Relating to the Certification of Medical Radiologic Technologists"; and announcement of next meeting dates.

Contact: Donna Hardin, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6617. For ADA assistance, call Richard Butler at (512) 458-7488 or T.D.D. at (512) 458-7708 at least two days prior to the meeting.

Filed: June 14, 1993, 3:45 p.m.

TRD-9324291

Wednesday, June 30, 1993, 10:00 a.m. The HIV Services Advisory Committee of the Texas Department of Health will meet at the Texas Department of Health, Room T-607, 1100 West 49th Street, Austin. According to the complete agenda, the committee will discuss approval of the minutes of the January 26-27, 1993 meetings; discuss and possibly act on: program review and regional positions; conference update and evaluation; future conference information; second year Housing Opportunities for People With AIDS overview; update on the state budget; annual legislative report; client services issues (increasing insurance cap; and financial criteria eligibility); and hear public comments.

Contact: Betty Cooper, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7207. For ADA assistance, call Richard Butler at (512) 458-7488 or T.D.D. at (512) 458-7708 at least two days prior to the meeting.

Filed: June 14, 1993, 3:44 p.m.

TRD-9324288

## Texas Department of Insurance

Tuesday, June 22, 1993, 10:00 a.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby I, 13th Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider whether disciplinary action should be taken against Richard Gomez Gutierrez, Houston, who holds a Group I, Legal Reserve Life Insurance Agent's license, a Group II Insurance Agent's license and a Local Recording Agent's license.

Contact: Melissa Slusher, 333 Guadalupe Street, Hobby II, Austin, Texas 78701, (512) 475-2983.

Filed: June 14, 1993, 1:52 p.m.

TRD-9324269

Wednesday, June 23, 1993, 9:00 a.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby I, 13th Floor,

Austin. According to the complete agenda, the section will conduct a public hearing to consider whether disciplinary action should be taken against Fidelity Security Life Insurance Company, Kansas City, Missouri, which holds a Certificate of Authority.

Contact: Melissa Slusher, 333 Guadalupe Street, Hobby II, Austin, Texas 78701, (512) 475-2983.

Filed: June 14, 1993, 1:52 p.m.

TRD-9324267

**Wednesday, June 23, 1993, 9:00 a.m.** The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby I, 13th Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider whether disciplinary action should be taken against Employers Casualty Company, Dallas, which holds a Certificate of Authority.

Contact: Melissa Slusher, 333 Guadalupe Street, Hobby II, Austin, Texas 78701, (512) 475-2983.

Filed: June 14, 1993, 1:52 p.m.

TRD-9324268

**Thursday, June 24, 1993, 9:00 a.m.** The State Board of Insurance of the Texas Department of Insurance will meet at the William P. Hobby Building, Room 100, 333 Guadalupe Street, Austin. According to the complete revised agenda, the board will consider whether a meeting or hearing will be granted regarding a petition filed by Texas Workers' Compensation Insurance Facility, requesting to amend the Tabular Surcharge Plan (Article 5.96); consideration of extension of time to consider a filing submitted by Great American Insurance Company consisting of amendments and endorsements to the Foreign Credit Insurance Association's Export Credit Insurance policy forms. (Article 5.15(b)).

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: June 11, 1993, 4:42 p.m.

TRD-9324233

**Wednesday, July 21, 1993, 9:00 a.m.** The State Board of Insurance of the Texas Department of Insurance will meet at the William P. Hobby Building, Room 100, 333 Guadalupe Street, Austin. According to the complete agenda, the board will hold a public hearing: continuation of public hearing under Docket Number 2004, to consider a petition filed by the Office of Public Insurance proposing to amend the Personal Auto Policy, Part E, "Duties after an accident or Loss" (Article 5.96).

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: June 14, 1993, 4:15 p.m.

TRD-9324294

### Judicial Districts Board

**Friday, June 25, 1993, 10:00 a.m.** The Judicial Districts Board will meet in Room 205, Texas Law Center, 1414 Colorado Street, Austin. According to the complete agenda, the board (pursuant to Article 5, §7a(e), Texas Constitution) will continue work on a statewide reapportionment of the judicial districts of the state; discuss recent federal court cases and legislative proposals regarding judicial redistricting considered by the Texas Legislature during the 73rd Regular Session; other matters pertaining to the duties of the Board; and matters relating to redistricting criteria.

Contact: C. Raymond Judice, 205 West 14th Street, Sixth Floor, Austin, Texas 78701, (512) 463-1625.

Filed: June 10, 1993, 2:08 p.m.

TRD-9324144

### Lamar University System

**Sunday, June 13, 1993, 3:00 p.m.** The Lamar University System met at the John Gray Institute, System Conference Room, 855 Florida, Beaumont. According to the complete agenda, the board called the meeting to order; met in executive session held under provisions of Vernon's Texas Statutes, Article 6252-17, §2(g)-unemployment contract for men's head basketball coach at Lamar University-Beaumont; reconvened in open meeting; considered approval of employment contract for men's head basketball coach at Lamar-Beaumont.

Contact: James A. (Dolph) Norton, P.O. Box 11900, Beaumont, Texas 77705, (409) 880-2304.

Filed: June 10, 1993, 1:39 p.m.

TRD-9324136

### Texas Department of Licensing and Regulation

**Thursday, July 8, 1993, 9:00 a.m.** The Inspections and Investigations: Boxing 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 department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension or revocation of the license for Maurice Bolton for violation of Texas Civil Statutes Annotated, Article

8501-1, §10(a), 16 TAC, §61.109, Article 6252-13a, and Article 9100.

Contact: Paula Hamje, 920 Colorado Street, Austin, Texas 78701, (512) 463-3192.

Filed: June 10, 1993, 4:25 p.m.

TRD-9324165

**Thursday, July 15, 1993, 9:00 a.m.** The Inspections and Investigations: Tow Trucks 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 department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension or revocation of the license for Jose Sanchez doing business as Sanchez Towing for violation of Texas Civil Statutes Annotated, Article 6687-9b, Sections 2 and 8, 16 TAC, §80.20, Article 6252-13a.

Contact: Paula Hamje, 920 Colorado Street, Austin, Texas 78701, (512) 463-3192.

Filed: June 10, 1993, 4:25 p.m.

TRD-9324166

**Friday, July 16, 1993, 9:00 a.m.** The Inspections and Investigations: Tow Trucks 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 department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension or revocation of the license for Eleazar Morin doing business as Morin's Auto Repair for violation of Texas Civil Statutes Annotated, Article 6687-9b, Sections 2 and 8, 16 TAC, Section 80.20, Article 6252-13a.

Contact: Paula Hamje, 920 Colorado Street, Austin, Texas 78701, (512) 463-3192.

Filed: June 10, 1993, 4:25 p.m.

TRD-9324167

**Thursday, July 29, 1993, 9:00 a.m.** The Inspections and Investigations: Tow Trucks 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 department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension or revocation of the license for D. M. Stone doing business as Stone Wrecking Yard for violation of Texas Civil Statutes Annotated, Article 6687-9b, Sections 2 and 8, 16 TAC, Section 80.20, Article 6252-13a.

Contact: Paula Hamje, 920 Colorado Street, Austin, Texas 78701, (512) 463-3192.

Filed: June 10, 1993, 4:26 p.m.

TRD-9324168

### Texas State Board of Medical Examiners

Monday, June 14, 1993, 8:30 a.m. The Disciplinary Process Review Committee of the Texas State Board of Medical Examiners held an emergency meeting at 1812 Centre Creek Drive, Suite 300, Austin. According to the agenda summary, the committee considered a request by Emmanuel Amayo, M.D., for a rehabilitation permit. The emergency status was necessary as information had come to the attention of the agency and required prompt consideration.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-4502.

Filed: June 10, 1993, 12:59 p.m.

TRD-9324134

Monday-Tuesday, June 14-15, 1993, 11:00 a.m. and 8:30 a.m. respectively. The Texas State Board of Medical Examiners held an emergency meeting at 1812 Centre Creek Drive, Suite 300, Austin. According to the agenda summary, the committee considered the approval of more orders. Executive session under authority of Article 4495b, 2.07(b), 3.05(d), 4.05 (d), 5.06(s)(1) and Opinion of Attorney General 1974, Number H-484. The emergency status was necessary as information had come to the attention of the agency and required prompt consideration.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-4502.

Filed: June 11, 1993, 3:42 p.m.

TRD-9324220

Tuesday, June 15, 1993, 3:00 p.m. The Texas State Board of Medical Examiners held an emergency meeting at 1812 Centre Creek Drive, Suite 300, Austin. According to the complete agenda, the board called the meeting to order; took roll call; special called meeting for the purpose of electing an interim vice president pursuant to §2.07, Article 4495b, Texas Civil Statutes and Board Rule 161.1(b), 22 TAC §161.1(b). The emergency meeting was necessary due to imminent threat to public health and safety and a reasonably unforeseeable situation requiring immediate action. The board member serving as vice president of the board has been replaced and the position of vice president is vacant. In order to ensure a quorum of the executive committee for temporary suspensions of licensees under §4.13 of the Medical Practice Act, the election of a vice president is necessary.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-4502.

Filed: June 15, 1993, 8:27 a.m.

TRD-9324299

### Texas Board of Pardons and Paroles

Monday-Tuesday, June 21-22, 1993, 9:00 a.m. The Parole Board Panel(s) of the Texas Board of Pardons and Paroles will meet at 202 Airport Plaza, Midland. According to the agenda summary, the panel(s) of the board (composed of three board members) will receive, review and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: June 11, 1993, 10:18 a.m.

TRD-9324191

Monday-Tuesday, June 21-22, 1993, 9:30 a.m. The Parole Board Panel(s) of the Texas Board of Pardons and Paroles will meet at 2821 Guadalupe, Suite 106, San Antonio. According to the agenda summary, the panel(s) (composed of three board members) will receive, review and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: June 11, 1993, 10:18 a.m.

TRD-9324190

Monday-Friday, June 21-25, 1993, 1:30 p.m. The Parole Board Panel(s) of the Texas Board of Pardons and Paroles will meet at 2503 Lake Road, Suite Two, Huntsville. According to the agenda summary, the panel(s) of the board (composed of three board members) will receive, review and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions

of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: June 11, 1993, 10:18 a.m.

TRD-9324189

Tuesday, Wednesday, June 22-23, 1993, 1:30 p.m. The Parole Board Panel(s) of the Texas Board of Pardons and Paroles will meet at 1550 East Palestine, Suite 100, Palestine. According to the agenda summary, the panel(s) of the board (composed of three board members) will receive, review and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: June 11, 1993, 10:17 a.m.

TRD-9324187

Thursday, June 24, 1993, 9:00 a.m. The Parole Board Panel(s) of the Texas Board of Pardons and Paroles will meet at 1212 North Velasco, Suite 201, Angleton. According to the agenda summary, the panel(s) of the board (composed of three board members) will receive, review and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: June 11, 1993, 10:18 a.m.

TRD-9324188

Thursday-Friday, June 24-25, 1993, 9:00 a.m. The Parole Board Panel(s) of the Texas Board of Pardons and Paroles will meet at 1550 East Palestine, Suite 100, Palestine. According to the agenda summary, the panel(s) of the board (composed of three board members) will receive, review and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: June 11, 1993, 10:17 a.m.

TRD-9324186

Friday, June 25, 1993, 12:30 p.m. The Parole Board Panel(s) of the Texas Board of Pardons and Paroles will meet at Route 5, Box 258-A, Gatesville. According to the agenda summary, the panel(s) of the board (composed of three board members) will receive, review and consider information and reports concerning prisoners/inmates and administrative releases subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: June 11, 1993, 10:18 a.m.

TRD-9324192

### Texas State Board of Podiatry Examiners

Friday, June 11, 1993, 1:00 p.m. The Texas State Board of Podiatry Examiners met at the Stouffer Austin Hotel, 9721 Arboretum Boulevard, Austin. According to the complete emergency revised agenda, the board discussed proposal of nitrous oxide rule changes; and proposal of student loan default rules. The emergency status was necessary as these two items were inadvertently overlooked when preparing the original notice, and must be completed due to upcoming deadline dates.

Contact: Janie Alonzi, 3420 Executive Center Drive, Suite 305, Austin, Texas 78731, (512) 794-0145.

Filed: June 10, 1993, 11:24 a.m.

TRD-9324131

### Texas Public Finance Authority

Monday, June 21, 1993, 3:00 p.m. The Board of the Texas Public Finance Authority will meet at the William P. Clements Building, 300 West 15th Street, Committee Room Five, Austin. According to the complete agenda, the board will call the meeting to order; discuss approval of the May 13, 1993, board meeting minutes; consider request for proposal for: certified public accountant; building insurance; financial advisor; consider draft for arbitrage calculation

and penalty calculations; consider whether to direct staff to prepare an RFP to hire bond counsel and co-bond counsel for a stated term; abbreviated form for use by underwriters in responding to request for proposals; consider a request for financing for \$215,403,417 from the Texas Department of Criminal Justice; consider whether to issue fixed-rate long-term revenue bonds to take out outstanding commercial paper or to increase the commercial paper program bank liquidity amount; request from the Texas Department of Criminal Justice to move money from one project to another; discuss other business; set date and time for next meeting of the Board of Directors; and adjourn.

Contact: Michell Frazier, 300 West 15th Street, Austin, Texas 78701, (512) 463-5544.

Filed: June 11, 1993, 3:55 p.m.

TRD-9324225

### Public Utility Commission of Texas

Tuesday, June 22, 1993, 9:00 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 11950-joint application of GTE Southwest Incorporated and Contel of Texas, Inc. for approval of new 800 data base query service pursuant to PUC Substantive Rule 23.26.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 10, 1993, 2:44 p.m.

TRD-9324151

Monday, July 1, 1993, 10:00 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 12065-complaint of Kenneth D. Williams against Houston Lighting and Power Company.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 10, 1993, 2:44 p.m.

TRD-9324152

Thursday, July 1, 1993, 10:00 a.m. (Rescheduled from Tuesday, June 1, 1993, 10:00 a.m.). The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete

agenda, the division will hold a prehearing conference in Docket Number 11975-application of Southwestern Bell Telephone Company for approval of pricing flexibility for Megalink III Service in the Dallas-Fort Worth and Houston market areas pursuant to PUC Substantive Rule 23.27.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 11, 1993, 3:53 p.m.

TRD-9324223

Monday, July 5, 1993, 10:00 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 11624-complaint of Lizzie J. Lovall and Keeble Lovall against Southwestern Bell Telephone Company.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 11, 1993, 3:53 p.m.

TRD-9324224

Tuesday, July 6, 1993, 9:00 a.m. (Rescheduled from June 21, 1993, 1:00 p.m.). The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a hearing on the merits in Docket Number 11000-application of Houston Lighting and Power Company to amend Certificate of Convenience and Necessity for the Dupont Project Generating Unit.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 11, 1993, 3:52 p.m.

TRD-9324221

Monday, August 30, 1993, 10:00 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a hearing on the merits in Docket Number 10831-application of Southwestern Bell Telephone Company to revise its tariff to redefine the Point of Demarcation ("DEMARC") and the location of the network interface (NI).

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 11, 1993, 3:52 p.m.

TRD-9324222



## Railroad Commission of Texas

Monday, June 14, 1993, 9:30 a.m. The Railroad Commission of Texas will meet in the First Floor Conference Room 1-111, 1701 North Congress Avenue, Austin. According to the complete emergency revised agenda, the commission considered an application by the Sabine Mining Company for adjustment of reclamation performance bond for Permit Number 33B, South Hallsville Number One Mine, in Harrison County. The emergency status was necessary as an unexpected shortfall in fuel availability (50,000-70,000 tons) requires increasing bond and extension of coverage to meet coal delivery requirements for June power demands from H. R. Pirkey Power Plant.

Contact: John King, P.O. Box 12967, Austin, Texas 78701, (512) 463-6843.

Filed: June 10, 1993, 11:24 a.m.

TRD-9324130

Wednesday, June 23, 1993, 1:30 p.m. The Railroad Commission of Texas will meet at 1701 North Congress Avenue, 12th Floor Conference Room 12-126, Austin. According to the complete agenda, the commission will consider complaint against B-Line Delivery Service, Inc., Transportation Docket Number 001389RND91, for oral argument and final decision.

Contact: Gary W. Elkins, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7094.

Filed: June 11, 1993, 1:31 p.m.

TRD-9324206

## Texas County and District Retirement System

Thursday, June 24, 1993, 1:00 p.m. The Board of Trustees of the Texas County and District Retirement System will meet at 400 West 14th Street, Austin. According to the agenda summary, the chairman will open meeting; discuss approval of the minutes of March 25-26, 1993, regular board meeting; consider and pass on applications for service and disability retirement benefits; discuss approval of financial statements; consider independent auditors report; appointment of auditor for 1994; report on annual actuarial valuation; discuss approval of 1992 annual report; chairman's report; receive reports from director, legal counsel, actuary, and investment counsel; set date of September 1993 meeting; and adjourn.

Contact: Terry Horton, 400 West 14th Street, Austin, Texas 78701, (512) 476-6651.

Filed: June 14, 1993, 4:16 p.m.

TRD-9324295

Friday, June 25, 1993, 9:00 a.m. The Board of Trustees of the Texas County and District Retirement System will meet at 9721 Arboretum Boulevard (Stouffer Hotel), Austin. According to the agenda summary, the chairman will open meeting; discuss approval of the minutes of March 25-26, 1993, regular board meeting; consider and pass on applications for service and disability retirement benefits; discuss approval of financial statements; consider independent auditors report; appointment of auditor for 1994; report on annual actuarial valuation; discuss approval of 1992 annual report; chairman's report; receive reports from director, legal counsel, actuary, and investment counsel; set date of September 1993 meeting; and adjourn.

Contact: Terry Horton, 400 West 14th Street, Austin, Texas 78701, (512) 476-6651.

Filed: June 14, 1993, 4:16 p.m.

TRD-9324296

## School Land Board

Tuesday, June 15, 1993, 10:00 a.m. The School Land Board met at the General Land Office, Stephen F. Austin Building, 1700 North Congress Avenue, Room 831, Austin. According to the complete emergency revised agenda, the board discussed miscellaneous easement for use of submerged lands to Port of Corpus Christi/U.S. Navy, Gulf of Mexico, Nueces and Kleberg Counties. The emergency status was necessary due to urgent public necessity to meet federal deadlines and emergencies.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: June 14, 1993, 4:22 p.m.

TRD-9324297

## Texas State Soil and Water Conservation Board

Monday, June 21, 1993, 1:00 p.m. The Texas State Soil and Water Conservation Board will meet at 311 North Fifth Street, Conference Room, Temple. According to the complete revised agenda, the board will consider new subdivision boundaries for King Soil and Water Conservation District #168.

Contact: Robert G. Buckley, P.O. Box 658, Temple, Texas 76503, (817) 773-2250, TEX-AN 820-1250.

Filed: June 11, 1993, 1:31 p.m.

TRD-9324207

## Texas State Technical College

Tuesday, June 15, 1993, 2:30 p.m. The Board of Regents of the Texas State Technical College held a teleconference meeting in the TSTC System Conference Room, 3801 Campus Drive, Waco. According to the complete agenda, the board discussed lease agreement between the State of Texas and the Marshall Economic Development Corporation.

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (817) 867-4890.

Filed: June 11, 1993, 3:37 p.m.

TRD-9324218

Friday, June 18, 1993, 2:30 p.m. (Rescheduled from Tuesday, June 15, 1993, 2:30 p.m.): The Board of Regents of the Texas State Technical College will hold a teleconference meeting in the TSTC System Conference Room, 3801 Campus Drive, Waco. According to the complete agenda, the board will discuss lease agreement between the State of Texas and the Marshall Economic Development Corporation.

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (817) 867-4890.

Filed: June 11, 1993, 3:37 p.m.

TRD-9324259

## University Interscholastic League

Thursday, June 17, 1993, 10:00 a.m. The State Executive Committee of the University Interscholastic League met at the Red Lion Hotel, IH-35 North at Highway 290, Austin. According to the agenda summary, the committee discussed alleged abuse of officials in violation of Athletic Code by Rio Grande City High School and district personnel; and case transferred from District 30 AAAA executive committee for Coach Alfredo Cardona, Mercedes High School.

Contact: C. Ray Daniel, 2622 Wichita Street, Austin, Texas 78705, (512) 471-5883.

Filed: June 11, 1993, 10:28 a.m.

TRD-9324195

## University of Texas MD Anderson Cancer Center

Tuesday, June 15, 1993, 9:00 a.m. The Institutional Animal Care and Use Committee of the MD Anderson Cancer Center of

the University of Texas will meet at the MD Anderson Cancer Center Conference Room AW7.707, Seventh Floor, 1515 Holcombe Boulevard, Houston. According to the agenda summary, the committee will review protocols for animal care and use and modifications thereof.

Contact: Anthony Mastromarino, Ph.D., MD Anderson Cancer Center, 1515 Holcombe Boulevard, Box 101, Houston, Texas 77030, (713) 792-3220.

Filed: June 11, 1993, 10:23 a.m.

TRD-9324193

## University of Texas System

**Wednesday, June 23, 1993, 10:00 a.m.** The Board for Lease of University Lands of the University of Texas System will meet at the Midland Hilton Hotel, Midland. According to the agenda summary, the board will discuss approval of the minutes of the February 11, 1993 board for lease meeting; approval of tracts offered and opening of bids received on or before Wednesday, June 23, 1993, at 10:00 a.m.; reorganization of the board for lease of university lands; discuss future lease sale; and approval of lease awards to highest bidders.

Contact: Linward Shivers, 201 West Seventh Street, Austin, Texas 78701, (512) 499-4462.

Filed: June 14, 1993, 1:56 p.m.

TRD-9324270

## On-site Wastewater Treatment Research Council

**Friday, June 25, 1993, 1:00 p.m.** The On-site Wastewater Treatment Research Council will meet at the Center for Environmental Research, Wastewater and Treatment Facility, 2210 South FM 973, Austin. According to the complete agenda, the council will call the meeting to order; take roll call of members; act on minutes of previous meetings; hear chairman, executive secretary and technical review committee reports; hear comments from TWC staff; discuss current projects; act on new and pending proposals and responses to RFP's; discuss annual conference and demonstration projects; Fiscal Year 1993-1994 budget; Subchapter A-The Council Rules; schedule ensuing meetings; make other announcements as necessary; and hear and respond to public comments.

Contact: Theodore H. Johns, 1700 North Congress Avenue, Austin, Texas 78711, (512) 463-3109.

Filed: June 14, 1993, 9:39 a.m.

TRD-9324264

## Texas Water Commission

**Thursday, June 17, 1993, at 6 p.m.** The Sayle Creek Sediment Remediation Committee of the Texas Water Commission met at the Fire Sub-station, Corner of Ross and Pritchard Road, Commerce. According to the agenda summary, the committee met to discuss appropriate responses to the contamination in Sayle Creek.

Contact: Barbara Ferguson, P.O. Box 13087, Austin, Texas 78711-3087, 1 (800) 633-9363.

Filed: June 11, 1993, 9:19 a.m.

TRD-9324175

**Monday, June 21, 1993, 8:30 a.m.** The Texas Water Commission will meet at the River Place Country Club, 4207 River Place Boulevard, Austin. According to the agenda summary, the commissioners will meet with the executive committee and division directors of the Texas Water Commission and the Texas Air Control Board to review each agency's Fiscal Year 1994 operating budget plans.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: June 11, 1993, 5:12 p.m.

TRD-9324236

**Wednesday, June 23, 1993, 9:00 a.m.** The Texas Water Commission will meet at 1700 North Congress Avenue, Stephen F. Austin Building, Room 118, Austin. According to the agenda summary, the commission will consider approving the following matters: municipal solid waste permits; transfer of municipal solid waste; Class 3 modifications to hazardous waste permit; Class 2 modifications to hazardous waste permit; amendments to Uranium Mine; proposed hazardous waste permit; proposed water quality permits; amendments to water quality permits; renewal of water quality permits; water right permits; water district matters; water rate matters; agreed enforcement order; superfund authorization; emergency order; budget; hearing examiner's matters; 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: June 11, 1993, 5:12 p.m.

TRD-9324237

**Wednesday, June 23, 1993, 9:00 a.m.** The Texas Water Commission will meet at 1700 North Congress Avenue, Stephen F. Austin

Building, Room 118, Austin. According to the agenda summary, the commission will consider approving the following matters: water quality enforcement; hazardous waste enforcement; rate matters; bankruptcy; petroleum storage tank enforcement; rules; authorization to construct; proposal for decisions; 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: June 11, 1993, 5:13 p.m.

TRD-9324238

**Wednesday, June 23, 1993, 9:00 a.m.** The Texas Water Commission will meet at 1700 North Congress Avenue, Stephen F. Austin Building, Room 118, Austin. According to the agenda summary, the commission will consider motions for rehearing on an application by the City of Corpus Christi for renewal of Permit Number 10401-03 which authorizes a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 8,000,000 gallons per day from the Westside Wastewater Treatment Facilities.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: June 14, 1993, 2:34 p.m.

TRD-9324281

**Wednesday, June 23, 1993, 9:00 a.m.** The Texas Water Commission will meet at 1700 North Congress Avenue, Stephen F. Austin Building, Room 118, Austin. According to the revised agenda summary, the commission will consider all motions for rehearing and replies to those motions on an application by the City of Corpus Christi for renewal of Permit Number 10401-03 which authorizes a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 8,000,000 gallons per day from the Westside Wastewater Treatment Facilities.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: June 14, 1993, 3:46 p.m.

TRD-9324293

**Monday, June 28, 1993, 8:30 a.m.** The Texas Water Commission will meet at the River Place Country Club, 4207 River Place Boulevard, Austin. According to the agenda summary, the commissioners will meet with the executive committee and division directors of the Texas Water Commission and the Texas Air Control Board to review each

agency's Fiscal Year 1994 operating budget plans.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: June 11, 1993, 5:11 p.m.

TRD-9324235

Thursday-Friday, July 1-2, 1993, 8:30 a.m. The Texas Water Commission will meet at the River Place Country Club, 4207 River Place Boulevard, Austin. According to the agenda summary, the commissioners will meet with the executive committee and division directors of the Texas Water Commission and the Texas Air Control Board to review each agency's Fiscal Year 1994 operating budget plans.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: June 11, 1993, 5:11 p.m.

TRD-9324234

## Regional Meetings

### Meetings Filed June 7, 1993

The Elm Creek WSC Board met at the Willow Grove Baptist Church, Moody, June 14, 1993, at 7:00 p.m. Information may be obtained from Paulette Richardson, Route 1, Box 564, Moody, Texas 76557, (817) 853-2339. TRD-9324939.

### Meetings Filed June 10, 1993

The Bastrop Central Appraisal District Board of Directors met at the Bastrop Central Appraisal District, 1200 Cedar Street, Bastrop, June 17, 1993, at 7:30 p.m. Information may be obtained from Dana Ripley, P.O. Box 578, Bastrop, Texas 78602, (512) 321-3925. TRD-9324161.

The Blanco County Central Appraisal District Appraisal Review Board met at Avenue G and Seventh Street, Blanco County Annex, Johnson City, June 15, 1993, at 1:00 p.m. Information may be obtained from Hollis Boatright, P.O. Box 338, Johnson City, Texas 78636, (210) 868-4013. TRD-9324150.

The Central Appraisal District of Johnson County Appraisal Review Board met at 109 North Main, Suite 201, Room 202, Cleburne, June 15-17, 1993, at 9:00 a.m. Information may be obtained from Jim Hudspeth, 109 North Main, Cleburne, Texas 76031, (817) 645-3986. TRD-9324147.

The Central Appraisal District of Johnson County Appraisal Review Board will meet at 109 North Main, Suite 201, Room 202, Cleburne, July 7-8, 1993, at 9:00 a.m. Information may be obtained from Jim

Hudspeth, 109 North Main, Cleburne, Texas 76031, (817) 645-3986. TRD-9324146.

The Coastal Bend Quality Workforce Planning Association met at Chela's Restaurant, 9840 Leopard, Corpus Christi, June 17, 1993, at 7:45 a.m. Information may be obtained from Baldomero Garcia, 5110 Wilkinson Drive, Corpus Christi, Texas 78415, (512) 853-4545. TRD-9324145.

The Deep East Texas Regional Mental Health Mental Retardation Services Board of Trustees met in the Ward R. Burke Community Room-Administration Facility, 4101 South Medford Drive, Lufkin, June 15, 1993, at 5:30 p.m. Information may be obtained from Sandra J. Vann, 4101 South Medford Drive, Lufkin, Texas 75901, (409) 639-1141. TRD-9324139.

The East Texas Council of Governments East Texas Private Industry Council met at the ETCOG Offices, Kilgore, June 17, 1993, at noon. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9324164.

The Education Service Center, Region XI Board of Directors will meet at the Education Service Center, Region XI, 3001 North Freeway, Fort Worth, June 22, 1993, at noon. Information may be obtained from R.P. Campbell, Jr., 3001 North Freeway, Fort Worth, Texas 76106, (817) 625-5311. TRD-9324149.

The Guadalupe-Blanco River Authority (Revised agenda.) Board of Directors met at 933 East Court Street, Seguin, June 17, 1993, at 10:00 a.m. Information may be obtained from John H. Specht, P.O. Box 271, Seguin, Texas 78156-0271, (210) 379-5822. TRD-9324132.

The Jack County Appraisal District Appraisal Review Board met at 210 North Church Street, Jacksboro, June 16, 1993, at 8:30 a.m. Information may be obtained from Gary L. Zeitler or Vicky L. Easter, P.O. Box 958, Jacksboro, Texas 76458, (817) 567-6301. TRD-9324170.

The Jack County Appraisal District Appraisal Review Board met at 210 North Church Street, Jacksboro, June 17, 1993, at 8:30 a.m. Information may be obtained from Gary L. Zeitler or Vicky L. Easter, P.O. Box 958, Jacksboro, Texas 76458, (817) 567-6301. TRD-9324169.

The Lometa Rural Water Supply Corporation Board of Directors met at 506 West Main, Lometa, June 14, 1993, at 7:00 p.m. Information may be obtained from Levi G. Cash or Tina L. Hodge, P.O. Box 158, Lometa, Texas 76853, (512) 752-3505. TRD-9324135.

The North Central Texas Council of Governments Regional Transportation Council

met at Centerpoint Two, 616 Six Flags Drive, Suite 200, Arlington, June 17, 1993, at 9:00 a.m. Information may be obtained from Michael Morris, P.O. Box 5888, Arlington, Texas 76005-5888, (817) 640-3300. TRD-9324128.

The Region VIII Education Service Center Board of Directors will meet at the Region VIII ESC, FM 1734, Mt. Pleasant, June 24, 1993, at 7:00 p.m. Information may be obtained from Scott Ferguson, P.O. Box 1894, Mt. Pleasant, Texas 75456, (903) 572-8551. TRD-9324143.

The Rio Grande Council of Governments Board of Directors will meet at 1100 North Stanton, Main Conference Room, El Paso, June 18, 1993 at 9:30 a.m. (MST). Information may be obtained from Lidia Flynn, 1100 North Stanton, Suite 610, El Paso, Texas 79902, (915) 533-0998. TRD-9324129.

The West Central Texas Council of Governments Big Country Development Corporation met at 1025 E North Tenth Street, Abilene, June 14, 1993, at 10:30 a.m. Information may be obtained from Brad Helbert, P.O. Box 3195, Abilene, Texas 79604, (915) 672-8544. TRD-9324160.

The Wood County Appraisal District Board of Directors met at 217 North Main, Conference Room, Wood County Appraisal District, June 17, 1993, at 7:00 p.m. Information may be obtained from W. Carson Wages or Lou Brooke, P.O. Box 951, Quitman, Texas 75783-0951, (903) 763-4891. TRD-9324148.

### Meetings Filed June 11, 1993

The Archer County Appraisal District Appraisal Review Board-Real Estate Hearing met at the Appraisal District Office, 101 South Center Street, Archer City, June 16, 1993, at 9:00 a.m. Information may be obtained from Edward H. Trigg, III, P.O. Box 1141, Archer City, Texas 76351, (817) 574-2172. TRD-9324231.

The Archer County Appraisal District Board of Directors met at the Appraisal District Office, 101 South Center Street, Archer City, June 16, 1993, at 5:00 p.m. Information may be obtained from Edward H. Trigg, III, P.O. Box 1141, Archer City, Texas 76351, (817) 574-2172. TRD-9324216.

The Burnet County Appraisal District Board of Directors met at 223 South Pierce, Burnet, June 17, 1993, at noon. Information may be obtained from Barbara Ratliff, P.O. Drawer E, Burnet, Texas 78611, (512) 756-8291. TRD-9324232.

The Concho Valley Council of Governments Concho Valley Private Industry Council met at 4850 Knickerbocker Road,

San Angelo, June 16, 1993, at 3:00 p.m. Information may be obtained from Monette Molinar, 5002 Knickerbocker Road, San Angelo, Texas 76904, (915) 944-9666. TRD-9324196.

The Dallas Area Rapid Transit (DART) Administrative Committee met at 1401 Pacific Avenue (DART Headquarters), Board Conference Room C, Dallas, June 15, 1993, at 11:00 a.m. Information may be obtained from Nancy McKethan, 1401 Main Street, Dallas, Texas 75202, (214) 749-3347. TRD-9324200.

The Dallas Area Rapid Transit (DART) Operations Development Committee met at 1401 Pacific Avenue (DART Headquarters), Conference Room C, Dallas, June 15, 1993, at 1:00 p.m. Information may be obtained from Nancy McKethan, 1401 Main Street, Dallas, Texas 75202, (214) 749-3347. TRD-9324199.

The Dallas Area Rapid Transit (DART) Rail Committee met at 1401 Pacific Avenue (DART Headquarters), Conference Room C, Dallas, June 15, 1993, at 3:00 p.m. Information may be obtained from Nancy McKethan, 1401 Main Street, Dallas, Texas 75202, (214) 749-3347. TRD-9324201.

The Dallas Area Rapid Transit (DART) Rail Committee met at 1401 Pacific Avenue (DART Headquarters), Conference Room C, Dallas, June 15, 1993, at 3:00 p.m. (Revised agenda). Information may be obtained from Nancy McKethan, 1401 Main Street, Dallas, Texas 75202, (214) 749-3347. TRD-932427.

The Edward Central Appraisal District Board of Directors will meet at the New County Annex Building, Rocksprings, June 18, 1993, at 10:00 a.m. Information may be obtained from Natalie McNealy, P.O. Box 378, Rocksprings, Texas 78880, (210) 683-4189. TRD-9324185.

The Ellis County Appraisal District Appraisal Review Board met at 406 Sycamore Street, Waxahachie, June 15, 1993, at 9:00 a.m. Information may be obtained from Dorothy Phillips, P.O. Box 878, Waxahachie, Texas 76165, (214) 937-3552. TRD-9324230.

The Erath County Appraisal District Appraisal Review Board met at 1390 Harbin Drive, Board Room, Stephenville, June 15-16, 1993, at 9:00 a.m. Information may be obtained from Mitzi Moekins, 1390 Harbin Drive, Stephenville, Texas 76401, (817) 965-5434. TRD-9324203.

The Erath County Appraisal District Appraisal Review Board met at 1390 Harbin Drive, Board Room, Stephenville, June 17, 1993, at 9:00 a.m. Information may be obtained from Mitzi Moekins, 1390 Harbin Drive, Stephenville, Texas 76401, (817) 965-5434. TRD-9324204.

The Golden Crescent Private Industry Council Oversight Committee met at 2401 Houston Highway, Victoria, June 14, 1993, at 6:30 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9324213.

The Golden Crescent Private Industry Council Planning Committee met at 2401 Houston Highway, Meeting Room #1, Victoria, June 15, 1993, at 11:45 a.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9324219.

The Golden Crescent Private Industry Council Executive Committee met at 2401 Houston Highway, Victoria, June 16, 1993, at 6:30 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9324214.

The Gonzales County Appraisal District Appraisal Review Board met at 928 St. Paul Street, Gonzales, June 15, 1993, 9:00 a.m. Information may be obtained from Glenda Strackbein, P.O. Box 867, Gonzales, Texas 78629, (210) 672-2879. TRD-9324228.

The Gonzales County Appraisal District Board of Directors met at 928 St. Paul Street, Gonzales, June 17, 1993, at 6:00 p.m. Information may be obtained from Glenda Strackbein, P.O. Box 867, Gonzales, Texas 78629, (210) 672-2879. TRD-9324229.

The Gray County Appraisal District Board of Directors held an emergency meeting at 815 North Sumner, Pampa, June 14, 1993, at 7:30 a.m. The emergency meeting was necessary as proposed budget had to be present before June 15, 1993. Information may be obtained from Sherri Schaible, P.O. Box 836, Pampa, Texas 79066-0836, (806) 665-0791. TRD-9324174.

The Gregg Appraisal District Appraisal Review Board will meet at the Gregg Appraisal District Office, Board Room, 2010 Gilmer Road, Longview, June 22, 1993, at 9:00 a.m. Information may be obtained from William T. Carroll, P.O. Box 6700, Longview, Texas 75608, (903) 759-0015. TRD-9324210.

The Gregg Appraisal District Appraisal Review Board will meet at the Gregg Appraisal District Office, Board Room, 2010 Gilmer Road, Longview, June 23, 1993, at 9:00 a.m. Information may be obtained from William T. Carroll, P.O. Box 6700, Longview, Texas 75608, (903) 759-0015. TRD-9324209.

The Gregg Appraisal District Appraisal Review Board will meet at the Gregg Appraisal District Office, Board Room, 2010 Gilmer Road, Longview, June 24, 1993, at

9:00 a.m. Information may be obtained from William T. Carroll, P.O. Box 6700, Longview, Texas 75608, (903) 759-0015. TRD-9324211.

The Guadalupe-Blanco River Authority (Revised agenda.) Board of Directors met at 933 East Court Street, June 17, 1993, at 10:00 a.m. Information may be obtained from John H. Specht, P.O. Box 271, Seguin, Texas 78156-0271. TRD-9324194.

The Hockley County Appraisal District Board of Directors met 1103-C Houston Street, Levelland, June 14, 1993, at 7:00 p.m. Information may be obtained from Nick Williams, P.O. Box 1090, Levelland, Texas 79336, (806) 894-9654. TRD-9324202.

The Northeast Texas Quality Workforce Planning met at the Lone Star Steel Company, Training Center, Highway 259, Lone Star, June 16, 1993, at 10:00 a.m. Information may be obtained from Walter York, P.O. Box 1307, Mt. Pleasant, Texas 75456-1307, (903) 572-1911. TRD-9324197.



#### Meetings Filed June 14, 1993

The High Plains Underground Water Conservation District Number One Board of Directors met at the Railroad Crossing Steakhouse, 14th Avenue and Lubbock Highway, Canyon, June 17, 1993, at 7:00 p.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, (806) 762-0181. TRD-9324280.

The Lamb County Appraisal District Appraisal Review Board will meet at 330 Phelps Avenue, Littlefield, July 1, 1993, at 8:00 a.m. Information may be obtained from Vaughn E. McKee, P.O. Box 552, Littlefield, Texas 79339, (806) 385-6474. TRD-9324272.

The Lamb County Appraisal District Appraisal Review Board will meet at 330 Phelps Avenue, Littlefield, July 7, 1993, at 8:00 a.m. Information may be obtained from Vaughn E. McKee, P.O. Box 552, Littlefield, Texas 79339, (806) 385-6474. TRD-9324273.

The Lamb County Appraisal District Appraisal Review Board will meet at 330 Phelps Avenue, Littlefield, July 13, 1993, at 8:00 a.m. Information may be obtained from Vaughn E. McKee, P.O. Box 552, Littlefield, Texas 79339, (806) 385-6474. TRD-9324274.

The Lampasas County Appraisal District Board of Directors met at 109 East Fifth Street, Lampasas, June 17, 1993, at 7:00 p.m. Information may be obtained from Janice Henry, P.O. Box 175, Lampasas, Texas 76550, (512) 556-8058. TRD-9324299.

The Sabine River Authority of Texas Executive Committee will meet at the Fredonia Hotel, Nacogdoches, June 23, 1993, at 10:00 a.m. Information may be obtained from Sam F. Collins, P.O. Box 579, Orange, Texas 77630, (409) 746-3200. TRD-9324275.

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**Meetings Filed June 15, 1993**

The Bexar-Medina-Atascosa Counties Water Control and Improvement District Number One Board of Directors will meet at 226 Highway 132, Natalia, June 21, 1993, at 8:00 a.m. Information may be obtained from John W. Ward III, P.O. Box 170, Natalia, Texas 78059, (210) 663-2132. TRD-9324308.

The Dawson County Central Appraisal District Appraisal Review Board will meet at the Lamesa Branch Howard College,

1810 Lubbock Highway, Lamesa, June 21-22, 1993, at 9:00 a.m. Information may be obtained from Tom Anderson, P.O. Box 797, Lamesa, Texas 79331, (806) 872-7060. TRD-9324311.

The Education Service Center, Region XVI Board of Directors will meet at the Texas Empire Room, Amarillo Club, Seventh and Tyler, Amarillo, June 25, 1993, at 1:00 p.m. Information may be obtained from Jim Holmes, 1601 South Cleveland, Amarillo, Texas 79120, (806) 376-5521. TRD-9324313.

The Grayson Appraisal District Board of Directors will meet at 205 North Travis, Sherman, June 23, 1993, at 7:15 a.m. Information may be obtained from Angie Keeton, 205 North Travis, Sherman, Texas 75090, (003) 893-9673. TRD-9324312.

The Liberty County Central Appraisal District Board of Directors will meet at 315 Main Street, Liberty, June 23, 1993, at 9:30

a.m. Information may be obtained from Sherry Greak, 315 Main Street, Liberty, Texas 77575, (409) 336-5722. TRD-9324307.

The Region V Education Service Center Board of Directors will meet at the ESC Boardroom, Delaware Street, Beaumont, June 23, 1993, at 1:00 p. m. Information may be obtained from Robert E. Nicks, 2295 Delaware Street, Beaumont, Texas 77703, (409) 835-5212. TRD-9324309.

The Region IX Education Service Center Board of Directors will meet at the Region IX Education Service Center, 301 Loop 11, Wichita Falls, June 24, 1993, at 12:30 p.m. Information may be obtained from Jim O. Rogers, 301 Loop 11, Wichita Falls, Texas 76305, (817) 322-6928. TRD-9324314.

# 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.

## State Aircraft Pooling Board Notification of Rates for Aircraft Use

The following rates, indicated in bold type, are now in effect for the various types of aircraft operated by the State Aircraft Pooling Board. These rates have been established in accordance with procedures developed by the Legislative Budget Board.

Also listed are approximate charges for a round trip flight to various cities in Texas. The charges have been calculated based on estimated flying times, and may differ from actual flight times due to weather conditions or alternate routing by traffic controllers.

Round trip:						
Austin to and return	Waco	Hunts- ville	Del Rio	Wichita Falls	Amarillo	
Type of Aircraft Rate* Capacity**	190 Miles	260 Miles	408 Miles	517 Miles	824 Miles	
King Air 200 \$545/hr. 7 to 10	\$616	\$709	\$1,052	\$1,199	\$1,799	
King Air 90 \$495/hr. 5 to 8	\$644	\$693	\$1,025	\$1,203	\$1,832	
Cessna 425 \$425/hr. 5 to 7	\$497	\$582	\$850	\$1,020	\$1,500	
Cessna 402 \$275/hr. 4 to 5	\$377	\$448	\$679	\$762	\$1,147	
Cessna 310 \$195/hr. 3 to 4	\$267	\$318	\$482	\$540	\$813	

\* Rates may change without notice due to increased fuel prices.

\*\* The higher capacity for passengers allows minimal luggage and requires the use of the copilot's seat and/or jump seat(s).

Issued in Austin, Texas, on June 11, 1993.

TRD-9324208

Bob DuLaney  
Executive Director  
State Aircraft Pooling Board

Filed: June 11, 1993

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**Texas Department of Commerce**  
**Request for Information**

On April 15, 1993, Governor Richards asked the Texas Department of Commerce to lead the Texas effort to establish a Texas Manufacturing Assistance Center (TMAC) Network and build the network by taking advantage of federal funds available through the White House's Technology Reinvestment Project. The TMAC Network project was identified by Governor Richards as a top priority of her defense transition strategy

The Texas Department of Commerce in cooperation with the Department of Information Resources is soliciting expressions of interest in participation from private industry, non-profit organizations, higher education institutions, and other state agencies to develop the Texas Open Network Enterprise (TEXAS-ONE) Network to support the TMAC Network project and proposals. If developed, TEXAS-ONE will link a statewide network of manufacturing assistance centers and their clients to a user-friendly electronic information network. TEXAS-ONE will initially include E-Mail, manufacturing forums, and access to existing online services. Future enhancements will likely include electronic funds transfer, computer aided logistics standard (CALs), multimedia, and other advanced features aimed at stimulating electronic commerce. Interested parties are asked to submit their intent to participate and include details of any cash or in-kind contribution. Responses may be incorporated in a State supported proposal to the Technology Reinvestment Project (TRP).

If implemented the TEXAS-ONE network will evolve in stages with basis services and existing electronic information resources being provided in the initial stages and more elaborate features and services being added once the infrastructure is in place.

The intent is to achieve the following goals: electronically link manufacturing assistance resources across the state; link the TMAC to national and international manufacturing resources; demonstrate to small and medium sized manufacturers the value of electronic commerce and other online resources; including state government information systems and services; create a foundation for future expansion and privatization of electronic resources to all industries within Texas.

Features of the TEXAS-ONE project will include: a single-point of access to existing systems through various medium such as; 1-800 or N11 services, commercial and public networks, and Internet; a standard, user-friendly, graphical user interface; links to other national and international electronic resources; a focus on information and capabilities that will result in business transactions and/or enhance a manufacturer's abilities; business-to-business communication and exchange of files and documents; the latest software advances in user interfaces, connectivity, and access to information across multiple hardware platforms; a foundation for growth and connectivity to other information systems that would benefit manufacturers in

the future. It is anticipated that the TEXAS-ONE network will be phased in over a five year period.

Organizations interested in participating in this project should submit written expressions of interest to the Texas Department of Commerce. The expression of interest should include any cash or in-kind contributions your organization is interested in offering to the project. The number of years and the dollar value of contribution for each year would be helpful. Also include contact information (name, address, phone, fax, and E-Mail).

Contributions might include cash, subsidized or full donation of goods or services, personnel and overhead, and the offering of existing programs that will add value to the project.

The Texas Department of Commerce's proposals to the TRP are due no later than July 23, 1993. Therefore, expressions of interest in response to this request for information should be submitted by 5:00 p.m. on July 2, 1993. Any statements received after July 2, 1993, may be reviewed for incorporation into the proposal if time permits.

Please submit to: TEXAS-ONE, Office of Advanced Technology, Texas Department of Commerce, P.O. Box 12728, Austin, Texas 78711-2728. For questions or further information, please call David Riggins at (512) 320-9561 (voice), (512) 320-9698 (TDD), (512) 320-9544 (fax).

Issued in Austin, Texas, on June 11, 1993.

TRD-9324198

Michael Regan  
Chief Administrative Officer  
Texas Department of Commerce

Filed: June 11, 1993

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**Comptroller of Public Accounts**  
**Correction of Error**

The Comptroller of Public Accounts published a Request for Proposals, concerning a performance review of the Texas Department of Criminal Justice. The notice appeared in the May 21, 1993, *Texas Register* (18 TexReg 3318).

Due to errors in the agency's submission the date to begin the project should read July 20, 1993, not July 15, 1993, as published.

The closing date is June 28, 1993.

The Schedule of events should read as follows. "Issuance of RFP-May 21, 1993 at 1:00 p.m.; Proposals Due - June 28, 1993 by 4:00 p.m.; Contract Execution-July 14, 1993."

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**Texas Department of Health**  
**Emergency Medical Services (EMS)**  
**Local Projects Specialty Training for**  
**Rural EMS Providers, Nurses and**  
**Physicians Application Packet**

**I. General Information.**

The Texas Department of Health (TDH) is attempting to improve the quality of emergency medical care to reduce death and disability as a result of trauma and reduce the death and disability of pediatric patients.

One step in improving the quality of emergency medical care involves specialized training of EMS providers, nurses and physicians in the recognition and treatment of trauma patients and recognition and treatment of injuries and illnesses specific to pediatric patients. A number of nationally recognized and standardized programs that provide this training are available, including, Advanced Trauma Life Support (ATLS), PreHospital Trauma Life Support (PHTLS), Basic Trauma Life Support (BTLIS), Emergency Nurse Pediatric Course (ENPC), Pediatric Prehospital Provider Course (PPPC), Trauma Nurse Core Course (TNCC), and Pediatric Advanced Life Support (PALS).

The TDH is accepting applications from public or private non-profit entities to provide any one of, or combination of, the courses listed above. All courses must be approved through the appropriate credentialing agency and must be offered tuition free to the students attending the course. Funding can be requested for a basic, advanced or instructor level course. Each of the TDH funded classes may be monitored by a TDH staff member. For the PPPC, a minimum of one TDH core PPPC instructor/coordinator must be used.

The applicant shall provide in the project application submitted to TDH a budget based upon a minimum enrollment of 24 students per ATLS course and 30 students for each of the other courses. All courses must be completed by September 30, 1993.

Potential contractors must provide assurances that they have the capability and all required special resources readily available to satisfactorily perform the services identified in their proposal. All contractors must provide documentation of ability to have the course(s) approved by the appropriate credentialing agency.

## II. Project Funding.

The funding period will end on September 30, 1993. The applicant(s) whose proposal(s) is(are) approved for funding will be notified no later than July 16, 1993. If the total budget of the approved applicant(s) exceeds available monies, the TDH will negotiate with the contractor(s) regarding a lesser number of students to take the course. After the award has been granted, a contract will be negotiated between TDH and the selected provider(s). The dates for notification and start may vary slightly as circumstances and conditions dictate. Funding for this training is contingent upon availability of funding to the TDH. Funding for the pediatric courses are supported in part by Project Number MCH 484001 from the Emergency Medical Services for Children program (Section 1910, United States Public Health Service Act), Health Resources and Services Administration, Department of Health and Human Services.

## III. Proposal Content.

The applicant shall provide in the project proposal submitted to TDH a budget based upon a minimum enrollment of 24 students for ATLS and 30 students for all other courses. All costs (including books, etc.) should be listed in the proposal as there can be no charge to the students for this course. Food and refreshments are not an allowable expense under this funding. Equipment (individual items costing greater than \$500 including shipping costs) is not an allowable expense. The applicant shall identify the amount of financial support needed to conduct the required course.

The purpose of this proposal is to develop a summary description of the training to be provided and a general plan of operation. The summary description should provide a clear description of the proposed project so that the uninformed reader could clearly understand the project's benefits.

The work plan should describe the course(s) that is to be provided, including timelines and responsible persons. The work plan should also outline the recruitment of target student populations. At least 80% of the students must be from rural areas of the state per the federal definition of rural counties.

The proposal should include a project schedule. If circumstances beyond the control of the contractor result in the contractor not meeting project performance requirements, it is the responsibility and obligation of the contractor to make the details known immediately to TDH. The contractor will be reimbursed only for the portions of the project that are completed.

In an organization description potential contractors must provide assurances that they have the capability and all required resources readily available to satisfactorily perform the services identified in their proposal. Applicants shall provide the following information: description of the organization; documentation of the ability to perform the specified project; and names and qualifications of the project director and staff persons to be responsible for the project.

Potential contractors should describe the methods of self-evaluation and monitoring necessary for measuring course quality management.

## IV. Review Process.

Application materials can be obtained by contacting Rhonda Blackmore, EMS Local Projects Coordinator, Texas Department of Health, Bureau of Emergency Management, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6740. Completed proposals from eligible providers must be received in the offices of the Bureau of Emergency Management, Texas Department of Health, no later than the close of business on July 9, 1993. Completed proposals should be mailed to Gene Weatherall, Chief Bureau of Emergency Management, Training Grant Application, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. If hand delivered, the proposals should be delivered to 8407 Wall Street, Suite S-220, Austin. TDH reserves the right to accept or reject any or all proposals submitted. The Department is under no legal requirement to execute a resulting contract on the basis of this advertisement. Each application will be evaluated independently on the following criteria: experience of the applicant; demonstrated ability to perform the obligations of the proposal; quality of the work plan; and budget. Review of the proposals will be completed by staff at the TDH with final approval given by the Commissioner of Health.

Should conditions prevent final execution of a contract between TDH and the selected provider, TDH may revert to other applicants in descending order, or may elect not to fund the training. Also, the award will not necessarily be made to the applicant offering the lowest price, but to the applicant with the best proposal for the lowest price, considering the results of TDH's evaluation (e.g., Applicant B's ability to train a greater number of students at a lower cost per student than Applicant A, whose application requests less money).



Issued in Austin, Texas, on June 9, 1993.

TRD-9324257

Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of Health

Filed: June 14, 1993

## Epilepsy Services Request for Proposal

The Texas Department of Health (TDH) is soliciting proposals for the provision of epilepsy services to eligible individuals in selected areas of the state. Epilepsy means a variable symptom complex characterized by recurrent paroxysmal attacks of unconsciousness or impaired consciousness, usually with a succession of clonic or tonic muscular spasms or other abnormal behavior. The purpose of the Epilepsy Program is to assist individuals to achieve effective control of epilepsy and reduce the negative consequences for individuals, their families, and their community.

Epilepsy services will be reimbursed through contractual arrangements with TDH's Bureau of Chronic Disease Prevention and Control, Epilepsy Program. Contracts will be awarded for a one year period from September 1, 1993 through August 31, 1994. Contract awards will be based on available funding. Contracts will be in accordance with Texas law, TDH policies, Epilepsy Program policies, and the Uniform Grant and Contract Management Standards (UGCMS) manual, which is available from TDH, Grants Management Division, 1100 West 49th Street, Austin, TX 78756-3184.

Contracts will be awarded on the basis of the most cost-effective and professionally appropriate plan of operation. Proposals must contain service delivery systems that promote family-centered, community-based, culturally competent, coordinated care for persons with epilepsy and their families. Proposals will be evaluated on: the extent to which the proposal will meet identified needs, specifically unserved or underserved areas of the State, geographic diversity, and comprehensive care in a culturally competent environment; the quality of the proposal's written statement of goals (operating plan), especially with regard to measurable and obtainable objectives; the cost of initiating or operating a program (cost effectiveness, allocation of direct services, elimination of duplication of services); the availability of other funding sources including patient payment, third-party reimbursement, contributions, in-kind match and other grant monies; the assurance of community support as exhibited by letters of support, coordination of services among local agencies and resources, and community volunteers; and equal distribution of resources across the State.

Proposal work plans will include: a defined service area with a comprehensive needs assessment, and identification of available existing resources within the area; a detailed plan for the provision of cost-effective, culturally competent services, (including, but not limited to the following: defined goals with objectives and performance standards for meeting these goals; specific professional responsibilities of staff members in providing epilepsy services; a description of how the contractor will coordinate, or possibly subcontract, with existing resources in order to provide comprehensive services without duplicating existing services; a description of the client-assessment process, treatment/service plan development, and the follow-up/monitoring of client needs; and priorities for service to

be rendered and the basis for stated priorities); demonstrated ability based on staff, experience, and organizational structure to provide quality care; projected annual cost per client served, the number of individuals to be served, the number of client encounters by type of service, and the frequency of services provided each individual; documented support of local medical providers, whose written input must accompany the proposal; and an evaluation plan to assess process and outcome measures of the program's performance objectives.

All income generated from third-party payments and client fees must be utilized by the contract recipient in accordance with TDH policy interpreting the UGCMS regulations. Proposal packets may be obtained by contacting Maria Salinas, Texas Department of Health, Kidney Health Care Division, 1100 West 49th Street, Austin, Texas 78756-3184 (512/458-7796). Proposals must be received in the Kidney Health Care office by 5:00 p.m. on Friday, July 30, 1993, or postmarked on or before Thursday, July 29, 1993.

Issued in Austin, Texas, on June 9, 1993.

TRD-9324258

Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of Health

Filed: June 14, 1993

## Notice of Intent to Revoke Certificates of Registration

Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13, (25 TAC §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following registrants: Bernard I. Wise, D.D.S., Houston, R05290; Micro Quality Semiconductor, Inc., Garland, R13385; Advanced Electro Finishing, Inc., Plano, R14271; Dessau Vet Clinic, Austin, R15339; Moses Chiropractic Center, Conroe, R16167; Eddie L. Summers, D.D.S., Houston, R18292; John D. Morgan, D.D.S., Beeville, R18432; Airline Imaging Center, Houston, R18450; Bandera Chiropractic, San Antonio, R18780; Pebble Hills Animal Clinic, El Paso, R18701; United Chiropractic, Austin, R18772; Medical Care Clinic, Inc., Garland, R18189; Moti Enterprises International, Sterling Heights, Michigan, R17573.

The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation machine(s); order the registrants to divest themselves of such equipment; and order the registrants to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day period of notice.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on June 8, 1993.

TRD-9324102 Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of Health

Filed: June 9, 1993

### Notice of Intent to Revoke Radioactive Material Licenses

Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13, (25 TAC §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following licensees: Non-Destructive Testing and Engineering, Grand Prairie, L01008; Perfojet Services, Inc., Midland, L01112; Assay Services, Inc., Nassau Bay, L03459; Veterinary Reference Laboratory, Dallas, G01337; Hydar Zafer, M.D., P. A., El Paso, G01560; Petro/Chem Environmental Services, Dallas, L04351; Texas West Wireline, Midland, L03992; Lake Whitney Memorial Hospital, Whitney, L03348.

The department intends to revoke the radioactive material licenses; order the licensees to cease and desist use of such radioactive materials; order the licensees to divest themselves of the radioactive material; and order the licensees to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the licensees for a hearing to show cause why the radioactive material licenses should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the radioactive material licenses will be revoked at the end of the 30-day period of notice.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on June 8, 1993.

TRD-9324103 Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of Health.

Filed: June 9, 1993

### Notice of Rescission of Order

Notice is hereby given that the Bureau of Radiation Control, Texas Department of Health, rescinded the following orders: Emergency Cease and Desist Order issued June 23, 1992, to Marvin W. Polson, D.C., Highway 2123, Bridge-

port, Texas 76026, holder of Certificate of Registration Number R03810; and Emergency Cease and Desist Order issued June 23, 1992, to Ronald J. Smith, D.D.S., 110 South Avenue E, Humble, Texas 77347, holder of Certificate of Registration Number R10694.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on June 9, 1993.

TRD-9324104 Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of Health.

Filed: June 9, 1993

### Public Hearings for Proposed Grants for HIV Education Programs

The Texas Department of Health will hold public hearings at each of the department's public health regions regarding proposed grants that are available for HIV education programs. A request for proposal was published in the Texas Register May 14, 1993, concerning the availability of funds for grants to support HIV education/prevention projects. The HIV Services Act, Texas Civil Statutes, Article 4419b-4 (Chapter 1194, Acts of the 71st Legislature, Regular Session, 1989) (Senate Bill Number 959) requires the Texas Department of Health to hold hearings in each Public Health Region to allow the public to comment on specific HIV education proposals for state funding.

The public hearings are scheduled as follows:

at 9:00 a.m., Friday, July 2, 1993, at the Texas Department of Health, Public Health Region 1, 1921 Cedar Bend Drive, Suboffice, Building #200, Temple, (Jennifer Smith-(817) 778-6744);

at 9:00 a.m., Tuesday, June 29, 1993, at the Texas Department of Health, Public Health Region 2, Conference Room, 1109 Kemper Street, Lubbock, (Billie Ray-(806) 744-3577, extension 299);

at 10:00 a.m., Wednesday, June 30, 1993, at the Texas Department of Health, Public Health Region 2, 411 South Austin Street, (Auditorium) Northwest Texas Hospital Public Health Services, Amarillo, (Billie Ray-(806) 744-3577, extension 299);

at 9:30 a.m., Tuesday, July 6, 1993, at the Texas Department of Health, Public Health Region 3, 2301 North Big Spring, Suite 300, Conference Room, Midland, (Sarana Savage-(915) 683-9492);

at 9:00 a.m., Tuesday, July 13, 1993, at the Texas Department of Health, Public Health Region 4, 10500 Forum Place, Suite 200, Conference Room #4, Houston, (Judy Spong-(713) 995-1112);

at 9:00 a.m., Tuesday, July 13, 1993, at the Texas Department of Health, Public Health Region 5, 2561 Matlock Road, Room #75, Arlington, Texas (Deborah Springer-(817) 792-7213);

at 9:00 a.m., Tuesday, June 29, 1993, at the Texas Department of Health, Public Health Region 6, 1015 Jackson-Keller Road, Second Floor Conference Room, San Antonio, (Mary Martinez-(512) 534-8857 extension 464);

at 10:00 a.m., Monday, June 28, 1993, at the Texas Department of Health, Public Health Region 7, 1517 West Front Street, Conference Room #257, Tyler, (Toni Kelley-(903) 595-3585); and

at 1:00 p.m., Tuesday, June 29, 1993, at the Texas Department of Health, Public Health Region 8, 601 West Sesame Drive, Conference Room, Harlingen, (Griselda Puell-Mata-(512) 423-0130).

Issued in Austin, Texas, on June 9, 1993.

TRD-9324217 Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of Health

Filed: June 11, 1993

◆ ◆ ◆  
**Texas Department of Human Services**  
**Correction of Error**

The Texas Department of Human Services submitted proposed amendments to 40 TAC §48.2904 and §48.2924, in its Community Care for Aged and Disabled chapter. The rules appeared in the June 1, 1993, *Texas Register* (18 TexReg 3497).

The amendments contained an incorrect statutory authority. On page 3497 the statutory authority should read as follows. "The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 35, which provides the department with the authority to administer public and support services for persons with disabilities programs."

◆ ◆ ◆  
**Notice of Public Hearing**

The Texas Department of Human Services (TDHS) will conduct a public hearing to receive comments on the department's proposed reimbursement rates for the following programs: Medically Dependent Childrens' Waiver Program; and the Nursing Facility Waiver Program.

The hearing is held in compliance with 40 TAC §24.102(j), which requires a public hearing on proposed reimbursement rates for medical assistance programs.

The public hearing will be held on July 2, 1993 at 9:00 a.m. in the Public Hearing Room of the John H. Winters Center (701 West 51st Street, Austin, First Floor, East Tower).

Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed reimbursement rates on or after June 18, 1993, by contacting Sherri Williams, MC E-601, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-4817.

Issued in Austin, Texas, on June 11, 1993

TRD-9324212 Nancy Murphy  
Agency Liaison, Policy and Document  
Support  
Texas Department of Human Services

Filed: June 11, 1993

**Texas Department of Insurance**  
**Notice of Hearing**

The State Board of Insurance, of the Texas Department of Insurance at a continuation of public hearing under Docket Number 2004, scheduled for July 21, 1993, at 9:00 a.m. in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe in Austin, Texas will consider a petition filed by the Office of Public Insurance (OPIC) proposing to amend the Personal Auto Policy, Part E, "DUTIES AFTER AN ACCIDENT OR LOSS," Section B.4., which requires a person seeking coverage to authorize the company to obtain medical reports. The proposed amendment would read in part: "4. Authorize us to obtain: a. medical records necessary for the evaluation of the claim; and ..."

OPIC's petition indicates that some companies are requiring an absolute release of all medical records, even when not relevant to the claim involved. OPIC's proposals states that the amendment will protect the privacy interests of Texas consumers, prohibit harassment of claimants, and still protect the company's right to obtain the information it needs to evaluate the claim.

Copies of the full text of OPIC's petition regarding the Personal Auto Policy are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin. For further information or to request copies of the text, please contact Ms. Angie Arizpe, at (512) 322-4147, (refer to Reference Number A-0593-10).

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

Issued in Austin, Texas, on June 14, 1993.

TRD-9324250 Linda K. von Culinus-Dorn  
Chief Clerk  
Texas Department of Insurance

Filed: June 14, 1993

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**Nortex Regional Planning Commission**  
**Notice of Contract Award**

The Nortex Regional Planning Commission publishes this Notice of Contract Award pursuant to Texas Civil Statutes, Article 664-4. The request for proposal appeared in the May 11, 1993, issue of the *Texas Register* (18 TexReg 3069). The contract effort will be for assisting in public education efforts to increase awareness of and participation in solid waste reduction efforts by the 11 counties and 32 cities comprising the region. Communication and education shall be by means of public meetings, literature distribution, and media transmission.

The firm selected to perform these services is Keep Texas Beautiful, Inc., P.O. Box 2251, Austin, Texas 78768. The value of the contract proposal is \$5, 748. The contract period starts June 1, 1993 and ends August 31, 1993.

Issued in Wichita Falls, Texas, on June 7, 1993.

TRD-9324110 Dennis Wilde  
Executive Director  
Nortex Regional Planning Commission

Filed: June 10, 1993

## Texas Parks and Wildlife Department Notice of Public Hearing

Notice is hereby given that Mobile ESTE Pipeline Company, whose address is P.O. Box 900, Dallas, Texas 75221, on June 9, 1993, filed an administratively complete application with the Texas Parks and Wildlife Department for a permit to lay a pipeline across the North Fork Double Mountain Fork Brazos River approximately four miles northeast of Post, Texas and approximately 1/4 mile northwest of Highway FM 651 adjacent to the properties of W. C. Graves and Gladys Huddleston.

This permit is requested under the authority granted to the Texas Parks and Wildlife Commission in Chapter 86 of the Parks and Wildlife Code and will not authorize the crossing of any private property.

The hearing to receive public comment on this application will be conducted: July 6, 1993, 1:00 p.m., Room A-200, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Travis County, at which time all interested persons may appear and be heard. Comments may be mailed to the Department at the address listed below, or presented orally or in writing at the hearing.

In addition, any person who can demonstrate a justiciable interest may request a formal contested case hearing pursuant to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252.13a, §18(a). Any person wishing to request such a hearing should submit a written request to Catherine Livingston at the address listed below. Such a request should include a short statement of the nature of any objections to the requested permit and a description of the potential adverse impact that may be suffered by the requestor. Requests for formal contested case hearings must be received by the Department no later than 30 days after the date of issuance of this notice as listed below.

Further information concerning any aspect of the application or hearing may be obtained by contacting Catherine Livingston, Environmental Counsel, Legal Services Division.

Issued in Austin, Texas, on June 11, 1993.

TRD-9324205 Paul M. Shinkawa  
General Counsel  
Texas Parks and Wildlife Department

Filed: June 11, 1993

## State Securities Board Correction of Error

The State Securities Board adopted new 7 TAC §§124.1-124.6, concerning administrative guidelines for registration of periodic payment plans. The rules appeared in the May 11, 1993, *Texas Register* (18 TexReg 3045).

The heading for Chapter 124 should read as follows. "Chapter 124. Administrative Guidelines for Registration of Periodic Payment Plans".

In §124.4 the words "Broker's Statement" was omitted from the signature block immediately before "I have discussed the above statement with the applicant and believe that he or she understands it."

## Texas Water Commission 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 June 7-11, 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.

Archer Daniels Midland Company, Southern Cotton Oil Division; which is an oil extraction plant; the plant is on the east side of Avenue A at the intersection of 17th Street and Avenue A in the City of Lubbock, Lubbock County; renewal; 02618.

King's Colony, Incorporated; the Midway Plaza Wastewater Treatment Facilities. The plant site is on the southern bank of Turkey Creek, approximately 1,500 feet north of FM Road 1960, approximately 1.5 miles east of Aldine Westfield Road in Harris County; renewal; 12455-01.

Pine Trails Utility Company, Inc.; the Pine Trails Wastewater Treatment Facilities; the plant site is on Sulphur Gully, approximately 1/2 mile north of Wallisville Road and one mile east of C. E. King Parkway in Harris County; renewal; 11701-01.

City of Presidio; the wastewater treatment facility, evaporation and irrigation site are approximately two miles northwest of the northern intersection of U.S. Highway 67 and FM Road 170 in Presidio County; amendment; 12955-01.

Quixx Corporation doing business as Amarillo Railcar Services; a facility for the general maintenance, contract repair and washing of railcars; the plant site is approximately 147 acres and is located 1/2 mile east of Pullman Road and 1/8 mile north of Interstate Highway 40 on the east side of the City of Amarillo, Potter County; new; 03581.

The Settlement Improvement Association Water Supply Corporation; the wastewater treatment facilities are approximately five miles/south southwest of the City of Lufkin central business district, 4,550 feet north of the intersection of FM Road 324 and U.S. Highway 59 and

650 feet east of Daniel McCall Drive in Angelina County; renewal; 12483-01.

Stantrans, Inc.; a bulk liquid storage facility; the plant site is on the east side of the main dock road and adjacent to Dock 16 at the Texas City harbor in the City of Texas City, Galveston County; renewal; 02109.

Syntech Chemicals, Inc.; a facility which manufactures specialty chemicals; the plant site is on Hooper Road, approximately one quarter mile south of Beltway 8 (Sam Houston Parkway) and about three miles west of Texas Highway 288 in the City of Houston, Harris County; new; 03593.

Windy Hill Utilities, Inc.; the Woodlands Acres Subdivision Wastewater Treatment Facilities; the plant site is south of Woodland Lane, approximately 1,000 feet west of FM Road 1409 and approximately 500 feet north of Old River in Chambers County; renewal; 11720-01.

Issued in Austin, Texas, on June 11, 1993.

TRD-8324247

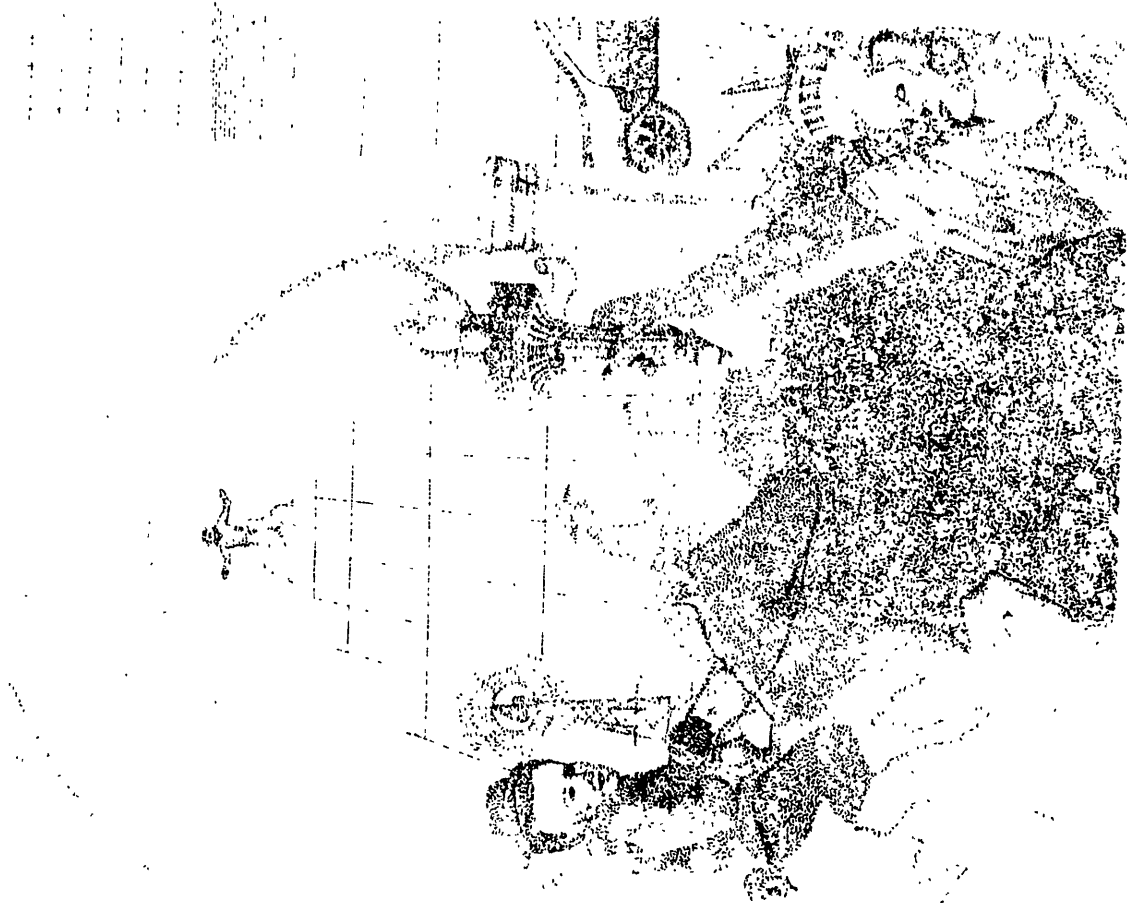
Gloria A. Vazquez  
Chief Clerk  
Texas Water Commission

Filed: June 14, 1993





Name: Carie Clouse  
Grade: 12  
School: Plano East Senior High, Plano ISD



Name: Kris Ardis  
Grade: 11  
School: Plano East Senior High, Plano ISD

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