
TEXAS REGISTER

Volume 21 Number 52 July 16, 1996

Pages 6541-6738



This month's front cover artwork:

Artist: Ashley Spangler

8th grade

Hendrick Middle School, Plano ISD

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***Texas Register*, ISSN 0362-4781**, is published twice weekly 100 times a year except February 23, March 15, November 8, December 3, and December 31, 1996. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78701. Subscription costs: printed, one year \$95, six month \$75. Costs for diskette and online versions vary by number of users (see back cover for rates). Single copies of most issues for the current year are available at \$7 per copy in printed or electronic format.

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The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodical Postage is paid at Austin, Texas.

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

a section of the
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PROPOSED RULES

Texas Department of Agriculture

Seed Quality

4 TAC §§ 9.8–9.11.....6551

Citrus

4 TAC §§21.20–21.23.....6552

Nursery Products and Floral Items

4 TAC §§22.1–22.6.....6553

Rose Grading

4 TAC §§23.1–23.6.....6555

Texas Department of Licensing and Regulation

Architectural Barriers

16 TAC §68.91.....6556

Texas Department of Health

Emergency Medical Care

25 TAC §157.25.....6557

Food and Drug

25 TAC §§229.81-229.88.....6558

Texas Natural Resource Conservation Commission

Edwards Aquifer

30 TAC §§213.1-213.14.....6562

On-Site Sewage [Wastewater Treatment] Facilities

30 TAC §§285.1-285.7.....6583

30 TAC §§285.10, §285.11.....6588

30 TAC §§285.20-285.22.....6590

30 TAC §§285.30-285.39.....6591

30 TAC §285.40.....6601

30 TAC §§285.50-285.63.....6601

30 TAC §285.70.....6606

30 TAC §285.80.....6607

30 TAC §§285.90, §285.91.....6607

On-Site Wastewater Treatment Facilities

30 TAC §§285.11-285.18.....6608

30 TAC §§285.51-285.63.....6608

30 TAC §§285.101-285.109.....6609

Edwards Aquifer

30 TAC §§313.1-313.6, 313.8-313.15.....6611

30 TAC §§313.21-313.27.....6611

Spill Prevention and Control

30 TAC §327.1, §327.5.....6612

Texas Department of Human Services

Primary Home Care

40 TAC §47.2902.....6613

Texas Commission on Alcohol and Drug Abuse

Facility Licensure

40 TAC §148.1186614

WITHDRAWN RULES

Texas Racing Commission

Pari-mutuel Wagering

16 TAC §321.38.....6617

ADOPTED RULES

Texas Department of Licensing and Regulation

Boiler Division

16 TAC §§65.10, 65.20, 65.50, 65.80.....6619

Industrialized Housing and Buildings

16 TAC §§70.50, 70.51, 70.60, 70.61, 70.70, 70.73, 70.75, 70.77
6619

16 TAC §70.100, §70.101.....6620

Texas Department of Health

Primary Health Care Services Program

30 TAC §§39.61-39.756621

Communicable Diseases

25 TAC §§97.1, 97.3, 97.11, and 97.136624

25 TAC §97.11, §97.13.....6625

Radiation Control

25 TAC §289.258.....6628

Texas Natural Resource Conservation Commission

Control of Certain Activities By Rule

§§321.151-321.1596646

30 TAC §§321.211-321.2206649

30 TAC §§321.231-321.240.....6652

30 TAC §§321.251-321.2596655

TABLES AND GRAPHICS

Tables and Graphics

Tables and Graphics6665

OPEN MEETINGS

Advisory Board of Athletic Trainers

Wednesday, July 24, 1996, 8:30 a.m.....6707

Wednesday, July 24, 1996, 10:00 a.m.....6707

Texas Board of Chiropractic Examiners

Wednesday, July 17, 1996, 9:00 a.m.....6707

State Employee Charitable Campaign

Tuesday, July 16, 1996, 10:30 a.m.....6708

Thursday, July 18, 1996, 3:00 p.m.....6708

Texas Commission on Fire Protection

Thursday, July 18, 1996, 9:00 a.m.....6708

General Land Office

Tuesday, July 16, 1996, 10:00 a.m.....6708

Office of the Governor

Tuesday, July 16, 1996, 3:00 p.m.6709

Wednesday, July 24, 1996, 3:00 p.m.....6709

Tuesday, July 16, 1996, 9:00 a.m.....6709

Thursday, August 1, 1996, 9:00 a.m.....6709

Thursday, July 18, 1996, 8:30 a.m.....6709

Wednesday, July 17, 1996, 1:30 p.m.....6710

Texas Higher Education Coordinating Board

Thursday, July 18, 1996, 2:45 p.m.....6710

Texas Historical Commission

Thursday, July 18, 1996, 9:00 a.m.....6710

Thursday, July 18, 1996, 1:00 p.m.....6710

Thursday, July 18, 1996, 2:30 p.m.....6710

Thursday, July 18, 1996, 3:30 p.m.....6711

Thursday, July 18, 1996, 3:45 p.m.....6711

Friday, July 19, 1996, 8:00 a.m.....6711

Friday, July 19, 1996, 8:30 a.m.....6711

Friday, July 19, 1996, 9:30 a.m.....6711

Friday, July 19, 1996, 11:00 a.m.....6712

Texas Incentive and Productivity Commission

Wednesday, July 24, 1996, 9:00 a.m.....6712

State Independent Living Council

Friday, July 19, 1996, 9:00 a.m.; Saturday, July 20, 1996, 9:00 a.m.....6712

Texas Appraiser Licensing and Certification Board

Monday, July 22, 1996, 9:30 a.m.....6712

Texas Life, Accident, Health & Hospital Service Insurance Guaranty Association

Tuesday, July 16, 1996, 8:30 a.m.....6712

Tuesday, July 16, 1996, 9:00 a.m.....6712

Texas Natural Resource Conservation Commission

Wednesday, September 11, 1996, 9:30 a.m.....6713

Board of Nurse Examiners

Wednesday, July 24, 1996, 4:00 p.m.....6713

Thursday-Friday, July 25-26, 1996, 8:30 a.m.....6713

Texas Council on Offenders with Mental Impairments

Tuesday, July 23, 1996, 10:00 a.m.....6713

Texas Public Finance Authority

Wednesday, July 17, 1996, 10:30 a.m.....6714

Rail Road Commission of Texas

Tuesday, July 16, 1996, 9:30 a.m.....6714

Tuesday, July 16, 1996, 9:30 a.m.....6714

Texas State Soil & Water Conservation Board

Wednesday, July 17, 1996, 8:00 a.m.....6714

State Board of Examiners for Speech-Language Pathology and Audiology

Thursday, July 18, 1996, 1:00 p.m.....6715

Thursday, July 18, 1996, 2:00 p.m.....6715

Thursday, July 18, 1996, 3:00 p.m.....6715

Thursday, July 18, 1996, 3:30 p.m.....6715

Texas Guaranteed Student Loan Corporation

Thursday, July 18, 1996, 11:00 a.m.....6715

Thursday, July 18, 1996, 4:30 p.m.....6716

Thursday, July 18, 1996, 7:00 p.m.....6716

Friday, July 19, 1996, 9:00 a.m.....6716

Friday, July 19, 1996, 9:00 a.m.....6716

Texas State Technical College System

Friday, July 12, 1996, 10:00 a.m.....6717

Texas Tech University & Texas Tech University Health Sciences Center

Friday, July 12, 1996, 10:15 a.m.....6717

University of Houston

Monday, July 15, 1996, 2:00 p.m.....6717

Utilization Review Advisory Committee

Tuesday, July 16, 1996, 10:00 a.m.....6717

Texas Water Development Board		
Wednesday, July 17, 1996, 3:00 p.m.....	6718	
Wednesday, July 17, 1996, 4:00 p.m.....	6718	
Texas Water Resources Finance Authority		
Thursday, July 18, 1996, 9:00 a.m.....	6718	
Texas Workforce Commission		
Tuesday, July 16, 1996, 9:00 a.m.....	6718	
Regional Meetings		
Date Filed: July 8, 1996.....	6718	
Date Filed: July 9, 1996.....	6719	
Date Filed: July 10, 1996.....	6720	
IN ADDITION		
Texas Department of Agriculture		
Notice of Public Hearings.....	6721	
Coastal Coordination Council		
Correction of Error.....	6721	
Office of Consumer Credit Commissioner		
Notice of Rate Ceilings.....	6721	
Office of the Governor		
Posting of Public Hearing-Governor's Committee to Promote Adoption.....	6722	
Texas Department of Health		
Correction of Errors.....	6722	
Texas Department of Health		
Notice of Request for Proposals (RFP) for Grant Reviewer Services	6723	
Texas Department of Housing and Community Affairs		
HOME Investment Partnerships Program Public Notice.....	6723	
Texas Department of Insurance		
Correction of Errors.....	6724	
		Notices..... 6724
		Third Party Administrator Applications 6725
		Texas State Library and Archives Commission
		Quarterly Report of Consultant Contract Reports Received by the Texas State Library 6725
		Texas Lottery Commission
		Invitation for Bids for Court Reporter Services..... 6726
		Texas Natural Resource Conservation Commission
		Correction of Errors..... 6726
		Enforcement Orders 6726
		Notice of Applications for Waste Disposal..... 6729
		Notices of Opportunity to Comment on Permitting Actions..... 6730
		Notices of Receipt of Application for Municipal Solid Waste Management Facility Permits..... 6731
		Public Hearing Notice (Chapter 285)..... 6732
		Provisionally-Issued Temporary Permits to Appropriate State Water 6732
		Public Utility Commission of Texas
		Invitation to Bid..... 6733
		Notices of Intent of File Pursuant to Public Utility Commission Substantive Rule 23.27 6733
		Public Notice..... 6734
		Railroad Commission of Texas
		San Antonio-Bexar County Metropolitan Planning Organization
		Request for Proposals..... 6735
		Telecommunications Infrastructure Fund
		Request for Proposal 6735
		The University of Texas System
		Request for Proposals for Management Information Technology Consulting Services..... 6737

PROPOSED RULES

Before an agency may permanently adopt a new or amended section or repeal an existing section, a proposal detailing the action must be published in the *Texas Register* at least 30 days before action is taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive action, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

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

TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 9. Seed Quality

Special Provisions for Labeling

4 TAC §§ 9.8-9.11

The Texas Department of Agriculture (the department) proposes new §§ 9.8-9.11, concerning the administration of the Texas Seed Law. The new sections are being relocated from Chapter 19 of this title as part of the department's reorganization of its regulatory rules. The purpose of the new sections is to furnish the seed purchaser with truthful information on the tag or label to give favorable returns on seed investment; to help decide whether the stock is the best obtainable for the money; to increase the net income for farm families by more careful seeding and seed production methods; to eliminate the selling of inferior seed with large weed seed content.

Charles Leamons, director for seed quality, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Leamons also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to clarify and eliminate the burden of compliance to antiquated rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Charles Leamons, Director for Seed Quality, Texas Department of Agriculture, P. O. Box 629, Giddings, Texas 78942. Comments must be received no later than 30 days from the date of the publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Agriculture Code (the Code), §61.002, which provides the Texas Department of Agriculture with the authority to adopt rules necessary for the efficient enforcement of Chapter 61 and to establish standards of genetic purity and identity.

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

§9.8. Hybrid Agricultural Seed.

(a) If any one kind or kind and variety of seed present in excess of 5.0% is hybrid seed, it shall be designated hybrid on the label. The percentage that is hybrid shall be at least 95% of the percentage of pure seed shown unless the percentage of pure seed which is hybrid is shown separately. If two or more kinds or varieties are present in excess of 5.0% and are named on the label, each that is hybrid shall be designated as hybrid on the label. Any one kind or kind and variety that has pure seed which is less than 95% but more than 90% hybrid as a result of incompletely controlled pollination in a cross shall be labeled to show the percentage of pure seed that is hybrid. No kind or variety of seed shall be labeled as hybrid if the pure seed contains less than 90% hybrid seed, except hybrid wheat, hybrid millet and hybrid cotton.

(b) Hybrid wheat, hybrid millet and hybrid cotton shall be labeled the same as all other hybrids except that any one kind or kind and variety that has pure seed which is less than 95% but more than 75% hybrid seed as a result of incompletely controlled pollination in a cross shall be labeled to show:

(1) the percentage of pure seed that is hybrid seed; or

(2) a statement such as "contains from 75% to 95% hybrid seed." No one kind or variety of seed shall be labeled as hybrid if the pure seed contains less than 75% hybrid seed.

§9.9. Noxious Weed Seed.

It shall be unlawful to sell, offer for sale, or expose for sale any agricultural or vegetable seed for planting purposes in Texas containing noxious weed seed in excess of the following limitations per pound.

(1) Prohibited noxious weed seeds are:

FIGURE 1: 4 TAC §9.9.(a)

(2) Restricted noxious weed seeds and limitations per pound are:

FIGURE 2: 4 TAC §9.9.(b)

(3) If bermudagrass (*Cynodon dactylon*) or giant bermudagrass (*Cynodon spp.*) occurs in excess of 5.0% of the whole by weight, its presence therein must be indicated as an agricultural seed on the labeling of such seed. When either bermudagrass or giant bermudagrass is considered an agricultural seed, the seed of the other kind, if present shall also be classified as an agricultural seed and must meet the requirements for labeling of agricultural seed.

(4) Johnsongrass includes sorghum alnum (*Sorghum alnum*) and all seeds indistinguishable from Johnsongrass. If

Johnsongrass occurs in excess of 5.0% of the whole by weight, its presence therein must be indicated as an agricultural seed on the label of such seed.

(5) Restricted noxious weed seeds in any combination in excess of 500 per pound are prohibited from sale, provided, however, that the rate per pound of annual bluegrass, bermudagrass, giant bermudagrass, Johnsongrass and morningglory are exempt from the total count.

§9.10. *Treated Seed.*

All treated seed shall be labeled in accordance with the Federal Insecticide, Fungicide and Rodenticide Act, as amended.

§9.11. *Hermetically-Sealed Containers.*

For agricultural and vegetable seeds labeled and packed in a hermetically-sealed container; the nine-month limitation on testing is extended as provided herein, if the following conditions are met:

(1) The germination test shall be completed within 36 months, not including the calendar month in which the test was completed, immediately prior to being sold or offered, exposed, or transported for sale.

(2) The seed was packaged in the hermetically-sealed container within nine months after harvest.

(3) The container does not allow water vapor penetration (WVP) through any wall, including the seals, greater than 0.05 grams of water per 24 hours per 100 square inches of surface at 100 degrees F with a relative humidity on one side of 90% and on the other side of 0.00%. WVP is measured by the standards of the U.S. Bureau of Standards as: gm. H₂O/24 hour/100 sq. in./100 degrees F/90% RH V. 0% RH.

(4) The percentage of moisture of the seed, on a wet weight basis, does not exceed the maximum allowable percentage for that kind as shown in the following list. Agricultural seeds beet, field:7.5 ryegrass, annual:8.0 beet, sugar:7.5 ryegrass, perennial:8.0 bluegrass, Kentucky:6.0 all others:6.0 clover, crimson:8.0 mixtures of the above:0 fescue, red:8.0 Vegetable seeds bean, garden:7.0 leek:6.5 bean, lima:7.0 lettuce:5.5 beet:7.5 muskmelon:6.0 broccoli:5.0 mustard, India:5.0 brussels sprouts:5.0 onion:6.5 cabbage:5.0 onion, Welsh:6.5 cabbage, Chinese:5.0 parsley:6.5 carrot:7.0 parsnip:6.0 cauliflower:5.0 pea:7.0 celeriac:7.0 pepper:4.5 celery:7.0 pumpkin:6.0 chard, Swiss:7.5 radish:5.0 chives:6.5 rutabaga:5.0 collards:5.0 spinach:8.0 corn, sweet:8.0 squash:6.0 cucumber:6.0 tomato:5.5 eggplant:6.0 turnip:5.0 kale:5.0 watermelon:6.5 kohlrabi:5.0 all other:6.0

(5) The container is conspicuously labeled to indicate:

(A) that the seed is hermetically sealed;

(B) that the seed has been preconditioned as to moisture content;

(C) the calendar month and year in which the germination test was completed or an expiration date may be labeled in lieu of the actual date of test or year for which the seed was packaged. If this procedure for labeling is used, the words "Texas expiration date," "expiration date," "exp. date," or "TX exp. date" must precede the month and year. Unless otherwise specified, the expiration date will be the last day of the month designated; and

(D) all other labeling information required by this Act and this Chapter.

(6) The percentage of germination of the vegetable seed at the time of packaging was equal to or above those standards set by § 9.7 of this title (relating to Vegetable Seed).

(7) Adequate records are kept giving the percent moisture of the seed at the time of packaging.

(8) Hermetically sealed seed is not repackaged and relabeled as hermetically sealed seed.

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

Issued in Austin, Texas, on July 8, 1996.

TRD-9609736

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Earliest date of adoption: August 16, 1996

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



Chapter 21. Citrus

Subchapter B. Citrus Quality

4 TAC §§21.20-21.23

The Texas Department of Agriculture (the department) proposes new §§ 21.20-21.23, concerning citrus quality standards. These sections have been relocated from Chapter 10 of Title 4 of the Texas Administrative Code as a part of the department's reorganization of its regulatory program rules. The new sections are proposed to establish minimum acceptable ratios of soluble solids to anhydrous citric acids in the fruit and to establish the minimum juice content requirements as they relate to the size of grapefruit and oranges, and establish procedures to determine soluble solids and anhydrous citric acid contents in the fruit.

Brent Wiseman, coordinator for crop certification and citrus quality programs, has determined that for the first five-year period the sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering these sections. Under these rules, fees will remain at current levels.

Mr. Wiseman also has determined that for each year of the first five-years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be an assurance that the citrus fruit meet quality standards. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the sections as proposed.

Comments on the proposal may be submitted to Brent Wiseman, Coordinator for Crop Certification and Citrus Quality Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of the publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Agriculture Code, §94.003, which provides the Texas Department of

Agriculture with the authority to adopt rules as necessary to establish citrus quality standards.

The Texas Agriculture Code, Chapter 94 is affected by this proposal.

§21.20. Definitions.

In addition to the definitions set out in the Texas Agriculture Code, Chapters 94 and 95, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

Anhydrous citric acid-Anhydrous citric acid in grapefruit or orange juice is equal to the total acidity of the juice, which is determined by titration using standard alkali and phenolphthalein as the indicator.

Handled-To prepare, receive, or deliver for sale or transportation, transport, sell or offer for sell.

Soluble solids -The percentage of soluble solids in grapefruit or orange juice shall be determined by using a Brix hydrometer. The reading of the hydrometer corrected for temperature is the percent of soluble solids.

§21.21. Standards.

Grapefruit handled after July 31 and before December 2 and oranges after July 31 and before November 2 must be mature and fit for consumption. Fruit are considered mature and fit for consumption if the following conditions are met:

(1) Grapefruit:

(A) minimum ratio of soluble solids to anhydrous citric acid:

Figure 1: 4 TAC §21.21(1)(A)

(B) minimum juice requirement (in cubic centimeters) as it relates to fruit size:

Figure 2: 4 TAC §21.21(1)(B)

(2) Oranges:

(A) minimum ratio of soluble solids to anhydrous citric acid:

Figure 3: 4 TAC §21.21(2)(A)

(B) minimum juice requirement (in cubic centimeters) as it relates to fruit size:

Figure 4: 4 TAC §21.21(2)(B)

§21.22. Fees.

A person who sells or ships grapefruit after July 31 and before December 2 of a year, or early or midseason oranges after July 31 and before November 2 of a year, shall pay to the department a maximum inspection fee of:

(1) 2.5 cents per on-half standard box that is sold, transported, or delivered for transportation;

(2) 1.5 cents per one-half standard box, or other container that is one-half the size of a standard container, that is sold, transported, or delivered for transportation; or

(3) 2.5 cents per 80-pound lot, or portion of an 80-pound lot, that is sold or transported in bulk.

§21.23. Violations and Penalties.

In addition to any other violations that may arise under the act or this chapter:

(1) It is a violation for any person to violate a stop-sale order of the department.

(2) Any violation of these rules may be subject to criminal penalty. In addition, the department may assess administrative penalties as prescribed in §12.020 of the Texas Agriculture Code, against any person for a violation of these rules.

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

Issued in Austin, Texas, on July 5, 1996.

TRD-9609737

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: August 16, 1996

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



Chapter 22. Nursery Products and Floral Items

4 TAC §§22.1–22.6

The Texas Department of Agriculture (the department) proposes new §§22.1-22.6, concerning nursery products and floral items. These sections are being relocated from Chapter 9 of this title as part of the department's rearrangement of its regulatory rules. The new sections are proposed to allow for the clarification of language in the current regulations and provide additional information to the public regarding procedures to follow in complying with the regulations. The department is proposing new §22.1 to provide definitions; §22.2 to establish procedures for application; §22.3 to establish registration fees and an additional registration for businesses to sell nursery products and/or floral items at temporary locations; §22.4 to establish guidelines for a stop-sale order; §22.5 to establish violations and penalties; and, §22.6 to establish an expiration provision.

David Kostroun, coordinator for Plant Quality Programs, has determined that for the first five-year period the rules are in effect there will be an estimated decrease in state revenue of approximately \$10,500 annually due to a cost reduction to register a temporary location. There will be no fiscal impact on local government as a result of enforcing or administering the sections.

Mr. Kostroun has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be more choice of nursery products and floral items at events such as art and craft shows due to increased nursery/floral business participation; a reduction in industry confusion concerning regulatory requirements; and, a facilitation of effective administration of rules concerning nursery products and floral items. The effect on small businesses and to persons who are required to comply with the proposed rule will be that they will not be required to purchase a Class 1 registration for each temporary location. Except as provided under the new Class M registration, all fees imposed under these rules will remain at their current levels.

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

The new sections are proposed under the Texas Agriculture Code, §71.042 which provides the Texas Department of Agriculture with authority to adopt rules as necessary for the efficient enforcement and administration of programs to protect against horticultural diseases and pests; and, §71.043 which authorizes the department to collect registration fees.

The Texas Agriculture Code, Chapter 71, Subchapter B is affected by this proposal.

§22.1. Definitions.

In addition to the definitions set out in the Texas Agriculture Code, §71.041, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Distribute - Offer for sale, hold for sale, sell, barter, or supply.

Event permit - A registration issued by the department for the operation of a business holding a valid registration certificate for the purpose of selling nursery products and/or floral items at a temporary location, during any portion of a 24 hour period.

Temporary location-A non-permanent location where nursery products and/or floral items are sold, offered for sale or lease, grown for the purpose of sale or lease, or offered as an enticement to promote the sale or lease of other items.

§22.2. Application.

(a) Each location where nursery products and/or floral items are sold, offered for sale or lease, distributed, grown for the purpose of sale or lease, or offered as an enticement to promote the sale or lease of other items, shall be registered with the department.

(b) Application for a new certificate must be submitted on a form prescribed by the department. Each applicant shall be responsible for declaring the proper nursery/floral classification and submitting the appropriate fee to the department. Failure to complete the form in its entirety may result in denial of the registration.

(c) A registrant shall display a valid Nursery/Floral certificate and, when applicable, a valid event permit.

(d) The expiration date of registration certificates will be October 31st of each year.

(e) An event permit may be obtained by contacting a regional office designated by the department, during regular office hours, at least one day prior to the event.

§22.3. Nursery/Floral Registration Classifications and Fees.

(a) The fee for a new certificate will be prorated as outlined on the Nursery/Floral Registration Certificate Application to coincide with the October 31st expiration date.

(b) Registration and renewal fees are:

(1) Class 1-\$60. Includes businesses who sell, lease, or distribute, but do not grow nursery products and/or floral items, such as garden centers, stores, landscape contractors, floral shops, interior decorators, and street vendors.

(2) Class 2-\$90. Includes permanently located businesses who sell, lease, or distribute, nursery products and/or floral items and have a growing area of 435,600 square feet (ten acres) or less.

(3) Class 3-\$120. Includes permanently located businesses who sell, lease, or distribute, nursery products and/or floral items and have a growing area of 435,601 - 871,200 square feet (in excess of ten acres to twenty acres).

(4) Class 4-\$150. Includes permanently located businesses who sell, lease, or distribute nursery products and/or floral items and have a growing area of 871,201 square feet or more (over twenty acres).

(5) Class M-\$150. Includes businesses who sell, lease, or distribute, nursery products and/or floral items at temporary locations such as flea markets, arts and craft shows, plant or flower shows, or other temporary markets. Class M registrants must obtain an event permit for each day nursery products and/or floral items are sold. A maximum number of 30 event permits is allowed during a license year at no additional cost, under this registration; i.e., one event permit equals one day (or any portion of a 24 hour period) at one location. Selling nursery products and/or floral items for any portion of a 24 hour period constitutes the use of 1 event permit. The fee for a Class M registration certificate will not be prorated.

(c) Class 1, 2, 3, and 4 certificate holders may obtain an event permit for participation in trade shows, garden shows, or other horticultural exhibits, sponsored in whole or in part by an Internal Revenue Service designated nonprofit organization at no additional cost under a registration.

§22.4. Stop-sale Order.

Nursery products and/or floral items that are diseased, pest infested or sold from unregistered locations are subject to a stop-sale order.

§22.5. Violations and Penalties.

In addition to any other violations that may arise under the act or this chapter:

(1) It is a violation for any person to falsify an application.

(2) Any violation of these rules is subject to civil and criminal penalties. In addition, the department may revoke a certificate, and/or assess administrative penalties as prescribed in the Texas Agriculture Code, Chapter 12, against any person for a violation of these rules.

§22.6. Expiration provision.

Unless specifically acted upon by amendment or repeal and substitution of a new section or sections in accordance with the Texas Government Code Annotated §§2001.021-2001.038 (Vernon 1996) or specific reactivation by the department, all of the sections in this chapter shall expire on August 31, 2000.

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

Issued in Austin, Texas, on July 5, 1996.

TRD-9609706

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: August 16, 1996

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



Chapter 23. Rose Grading

4 TAC §§23.1–23.6

The Texas Department of Agriculture (the department) proposes new §§23.1-23.6, concerning rose grades and regulations. These sections are being relocated from Chapter 9 of this title as part of the department's rearrangement of its regulatory rules. The new sections are proposed to allow for the clarification of existing language and provide additional information to the public regarding procedures to follow in complying with the regulations. The department is proposing new §23.1 to provide definitions; §23.2 to establish procedures for application; §23.3 to establish certificate of authority fees; §23.4 to establish guidelines for labeling; §23.5 to establish violations and penalties; and, §23.6 to establish an expiration provision.

David Kostroun, Coordinator for Plant Quality Programs, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the new rules.

Mr. Kostroun also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of the new rules will be a reduction in industry confusion concerning regulatory requirements; and, facilitation of effective administration of rose grading rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed. All fees imposed under these rules will remain at their current levels.

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

The new rules are proposed under the Texas Agriculture Code, §121.001 which provides the department with the authority to adopt rules and prescribe procedures for the inspection, grading, and labeling of all rose plants sold or offered for sale within this state; and the Texas Agriculture Code, §121.004 which provides the Texas Department of Agriculture with the authority to charge a fee for the certificate of authority.

The Texas Agriculture Code, Chapter 121 is affected by this proposal.

§23.1. Definitions.

In addition to the definitions set out in the Texas Agriculture Code, Chapter 121, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Caliper (Cal.)- A unit of measure obtained by the use of a Caliper for determining thickness and diameter of a rose cane.

Certificate of authority- a document issued by the department to a person who grades, sells, or offers for sale rose plants.

Container-grown roses- Roses which have been growing in the container in which they are marketed for a minimum of one month of active growing season or for a maximum of two growing seasons.

Cull- Any bush not meeting the grade, sizes, or standards as set out in this chapter.

Non-established container stock- Roses which are transported in soil or in a potting mixture contained within a container for a period insufficient to allow the formation of fibrous roots sufficient to form a root-media ball.

Row-run- A term used in purchasing roses grown in a crop in which diseased and cull plants are excluded from the sale.

§23.2. Application.

(a) Each grower, dealer, wholesaler, and processor who grades, sells, or offers for sale rose plants must obtain a certificate of authority from the department.

(b) An application form for a new or renewal certificate of authority may be obtained from the department. Each applicant shall be responsible for declaring the proper classification and submitting the appropriate fee to the department. Failure to complete the form entirely may result in denial of the certificate of authority.

(c) Exemptions.

(1) Growers of rose bushes are exempt from provisions of this chapter unless a grade is claimed.

(2) Grading classifications and labeling requirements do not apply to crops in the field or to row-run sales of field crops, but only apply from point of delivery to distributors, processors, packers, wholesalers, and retailers.

(3) A nursery/floral certificate issued by the department will meet the requirements of the certificate of authority unless the person or business determines or otherwise influences the grade.

§23.3. Fees.

New and renewal certificate of authority fees are based on the number of roses handled, sold, or offered for sale, by the grower, dealer or wholesaler during the calendar year and are as follows: Number of roses: Fee— up to 110,000—\$15; 110,001-500,000—\$25; 500,001 up to 1 million—\$50; Over 1 million—\$100.

§23.4. Labeling.

(a) General.

(1) Roses shall be identified as to grade by labels bearing the required designation attached to each rose. There must be a label attached to each unit sold at the consumer level denoting the grade. The word "Grade" shall be stated following each designation as to grade. Example: "No. 1 Grade."

(2) Whenever a grade-size designation is used in labeling roses or shipments thereof, it shall be minimum size and not more than 10% of the roses in any lot shall be below the size specified and/or of a lower grade. The roses or shipments thereof, shall be labeled according to grade in distinctly legible bold face type.

(3) Rooted cuttings or seedlings shall be so designated by variety or species.

(b) Specific.

(1) Single rose bushes packed and sold or offered for sale must bear a designated grade on each individual package and/or container.

(2) All rose bushes must have the name and address of the packer or grower printed on the rose package or container.

(3) Non-established container rose stock shall be designated and so labeled by the processor using the word "Non-established."

(4) Roses sold bare-root must be in bundles and each bundle must bear a designated grade.

(5) Roses sold row-run may be so designated by invoice.

(c) Grade sizes.

(1) The standards specified apply to all roses when sold either bare root in bundles or individually wrapped and packaged in carton.

(2) Packaged roses shall have a minimum cane length of six inches and shall comply with the caliper requirements specified in this chapter.

(3) A container grown or non-established rose stock may be pruned to a minimum of four inches above the bud union at the time they are potted and still comply with the grades in which they are classified.

(4) All grades of roses must have a well-developed and well proportioned root system sufficient to give normal growth when properly planted. It shall show no shriveling or blackening from drying or other damage. The cane or canes shall be adequately alive and the health condition shall be indicated by the cambium layer. In the event of freeze damage, a rosebush shall be considered viable if, in the judgment of the inspector, 70% of cambium six inches above the bud union, and 100% at the bud union remains in good growing condition.

(5) All canes used in grading must branch within three inches of the bud union. The caliper of the cane will be measured at four inches from the bud union.

Figure 1: 1 TAC§23.4(c)(5)

(6) All container grown roses shall be sold by the grade and container size designated herein.

Figure 2: 1 TAC§23.4(c)(6)

§23.5. *Violations and Penalties.*

(a) Any violation of these rules is subject to civil and criminal penalties. In addition to any other violations that may arise under the act or this chapter it is a violation for any person to:

(1) use an invalid certificate of authority or render a certificate invalid.

(2) falsify an application.

(3) grade roses without a valid certificate of authority.

(b) The department may revoke a certificate of authority for a violation of these rules.

§23.6. *Expiration Provision.*

Unless specifically acted upon by amendment or repeal and substitution of a new section or sections in accordance with the Texas Government Code Annotated, §§2001.021-2001.038 (Vernon 1996),

or specific reactivation by the department, all of the sections in this chapter shall expire on August 31, 2000.

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

Issued in Austin, Texas, on July 5, 1996.

TRD-9609707

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Earliest date of adoption: August 16, 1996

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

TITLE 16. ECONOMIC REGULATION

Part IV. Texas Department of Licensing and Regulation

Chapter 68. Architectural Barriers

16 TAC §68.91

The Texas Department of Licensing and Regulation proposes the repeal of §68.91 concerning Enforcement Authority of the Architectural Barriers program. The section is proposed for repeal to eliminate an unnecessary procedural step which generates significant administrative paperwork.

Rick Baudoin, Program Administrator for the Architectural Barriers section, has determined for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government.

Mr. Baudoin also has determined that for each year of the first five years the section is repealed the public benefit anticipated as a result of the repealed section will be more efficient processing of violations with significantly less paperwork for both the department and building owners. There will be no fiscal effect on small businesses and persons who are required to comply with the section.

Comments on the proposal may be submitted to Rick Baudoin, Program Administrator, Architectural Barriers Section, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711.

The repeal is proposed under Texas Civil Statutes, Article 9102, Architectural Barriers Act, which provides the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules and take action necessary to assure compliance with the intent and purpose of the Act.

The article that is affected by this proposal is Article 9102.

§68.91. *Enforcement Authority.*

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

Issued in Austin, Texas, on July 5, 1996.

9609687

Tommy V. Smith
Executive Director

Texas Department of Licensing and Regulation

Earliest date of adoption: August 16, 1996

For further information, please call: (512) 463-7357

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 157. Emergency Medical Care

Emergency Medical Services Provider Licenses

25 TAC §157.25

The Texas Department of Health (department) proposes new §157.25, concerning out-of-hospital do not resuscitate (DNR) orders. The new section will allow individual patients who have a terminal illness, to give an advanced directive to out-of-hospital healthcare professionals concerning life-sustaining measures that the patient wishes to be withheld.

The new section implements the requirements of Chapter 674 of the Health and Safety Code.

Gene Weatherall, Bureau Chief, has determined that for the first five-year period the section is in effect there will be fiscal implications as a result of enforcing and administering the section as proposed. The effect on state government will be upfront costs of under \$20,000 to develop the DNR order form and plastic bracelet. The program will become revenue neutral as patients will be charged a small fee to cover the cost of generating the form and bracelet. There will be no fiscal implications for local government.

Mr. Weatherall has also determined that for each year of the first five years the section is in effect, the public will benefit from the ability to leave an advanced directive for EMS and other out-of-hospital healthcare professionals. There will be no cost to small business. The economic cost to persons who are required to comply with the section will be a cost of up to three dollars for a DNR order form and a plastic identification bracelet. There will be no impact on local employment.

Comments on the proposed rule may be submitted to Gene Weatherall, Chief, Bureau of Emergency Management, 1100 West 49th Street, Austin, Texas 78756, (512)834-6700, gweatherall@ems.tdh.state.tx.us, FAX (512)834-6736. Comments will be accepted for 30 days after publication of this rule in the *Texas Register*. A public hearing will be held Thursday, July 18, 1996, at 10:00 a.m. in K-100, Lecture Hall, Texas Department of Health, 1100 West 49th Street, Austin, Texas.

The new section is proposed under the Health and Safety Code, Chapter 773, which provides the Board of Health with the authority to adopt rules to implement the Emergency Medical Services Act; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Board, the Texas Department of Health, and the Commissioner of Health.

The new section affects Health and Safety Code, Chapter 773.

§157.25. *Out-of-Hospital Do Not Resuscitate (DNR) Order.*

(a) Purpose. The purpose of this section shall be to establish a statewide DNR protocol as required in the Health and Safety Code, Title 8, Chapter 674.

(b) DNR order. A DNR order may be issued by an attending physician for a patient who has been diagnosed as having a terminal condition. That attending physician has responsibility for ensuring that the form is filled out in its entirety and that the information regarding the existence of a DNR order is entered into the patient's medical record. A DNR order does not include authorization to withhold medical interventions or therapies considered necessary to provide comfort care or to alleviate pain or to provide water or nutrition.

(c) Protocol development. A DNR protocol in accordance with this section, shall apply to all out-of-hospital settings including cardiac arrests which occur during interfacility transport. The protocol shall include the following:

(1) a copy of the Texas Department of Health (department) standardized DNR form listing the designated procedures that shall be withdrawn or withheld. Those procedures shall be:

- (A) cardiopulmonary resuscitation;
- (B) endotracheal intubation or other advanced airway management;
- (C) artificial ventilation;
- (D) defibrillation;
- (E) transcutaneous cardiac pacing; and
- (F) administration of cardiac resuscitation medications;

(2) an explanation of the patient identification process to include an option to use a department-standardized identification device such as a necklace or bracelet; and

(3) an on-site DNR dispute resolution process which includes contacting an appropriate physician.

(d) Recordkeeping. Records shall be maintained on each incident in which an out-of-hospital DNR order or DNR identification device is encountered by responding healthcare professionals, and the number of cases where there is an on-site revocation of the DNR order shall be recorded.

(1) The data documented should include:

- (A) an assessment of patient's physical condition;
- (B) whether an identification device or a DNR form was used to confirm DNR status and patient identification number;
- (C) any problems relating to the implementation of the DNR order;
- (D) the name of the patient's attending physician; and
- (E) the full name, address, telephone number, and relationship to patient of any witness used to identify the patient.

(2) If the patient is transported, the original DNR order shall be kept with the patient.

(3) Copies of the original DNR order may be put on file with concerned parties, and the original order shall remain in the possession of the patient, a legal guardian, or the healthcare facility

responsible for the patient's care. The original DNR order shall be filed as a part of the permanent patient care record at the facility where the patient dies.

(4) Annually, the out-of-hospital provider shall submit a report to the Bureau of Emergency Management with the following information:

(A) number of times personnel have been presented with DNR documentation;

(B) number of times there was a problem and the DNR order could not be honored; and

(C) any problems that were encountered using the standardized form.

(e) Out-of-state DNR orders. Personnel may accept an out-of-hospital DNR order that has been executed in any other state, if there is no reason to question the authenticity of the order. Personnel may not accept any out-of-state identifying devices to include bracelets or necklaces. If there is any question of validity of the DNR order, the responding healthcare professional shall attempt to contact medical control.

(f) Failure to honor a DNR order. If there are any indications of unnatural or suspicious circumstances, the provider shall begin resuscitation efforts until such time as a physician directs otherwise.

(g) DNR form. The Bureau of Emergency Management or their appointees shall furnish DNR forms to physicians, clinics, and hospitals throughout the state upon request.

(1) The form shall contain all the information as prescribed in the Health and Safety Code, Chapter 674.

(2) The form shall be 8 1/2 inches by 14 inches, printed front and back, and in the format specified by the board as follows: Figure: 25 TAC §157.25 (g)(2)

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

Issued in Austin, Texas, on July 3, 1996.

TRD-9609597

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: August 16, 1996

For further information, please call: (512) 458-7236



Chapter 229. Food and Drug

Production, Processing, and Distribution of Bottled and Vended Drinking Water Amendments

25 TAC §§229.81-229.88

The Texas Department of Health (department) proposes amendments to §§229.81-229.88, concerning Production, Processing, and Distribution of Bottled and Vended Drinking Water. Specifically, these amendments update language in the general provisions, sampling, water hauling, microbiological control standards, labeling and advertising, processing of

vended water, certificates of competency, and requirements for approved source. These amendments are in compliance with federal regulations and statutory changes enacted during the 74th Texas Legislature.

Robert D. Sowards, Jr., Director, Manufactured Foods Division, has determined that , for the first five-year-period the rules are in effect, there will be minimal administrative costs for state government. There will be no fiscal implications to local governments.

Mr. Sowards has also determined that, for each year of the first five years the sections are in effect, the public benefit will be greater assurance that bottled and vended water offered for sale within the State of Texas will be of higher quality and offer a greater margin for safety from food and water related diseases. There is no anticipated economic cost to small businesses or persons who are required to comply with the sections. There will be no effect on local employment.

Comments on the proposal may be sent to Robert D. Sowards, Jr., Director, Manufactured Foods Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 719-0243. Comments will be accepted for 30 days from the date of publication of this proposal.

The amendments are proposed under Texas Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

The amendments affect Texas Health and Safety Code, Chapter 431.

§229.81. General Provisions.

(a) Purpose. These sections establish definitions and standards for the processing and bottling of drinking and vended water. The sections also will supplement [existing department rules in] §§229.181-229.184 of this title (relating to **Licensure of Manufacturers of Food and Wholesale Distributors of Food – Including Good Manufacturing Practices** [Definitions, Registration Fee and Procedures, Minimum Standards for Registration, and Refusal, Revocation, or Suspension of Registration]) and [existing] federal regulations in Title 21, Code of Federal Regulations, **Part 165** [Part 103] concerning standards of quality, and Part 129 concerning processing and bottling of bottled drinking water.

(b) **Requirements for specific standardized beverages. The department adopts by reference Title 21 Code of Federal Regulations, §165.110 concerning the identity, nomenclature, other label statements and label declarations for both bottled and vended water, except as modified by the Texas Board of Health in §229.85(b) of this title (relating to Labeling and Advertising).**

(c)[(b)] Definitions. The following words and terms, when used in this chapter, shall pertain to both bottled and vended water and shall have the following meanings unless the context clearly indicates otherwise.

(1) Approved source [-] (When used in reference to a plant's product water or operations water)-A [means a] source of water and the water therefrom, whether it be from a spring, artesian well, drilled well, municipal water supply, or any other source, that has been inspected and the water sampled, analyzed,

and found to be of a safe and sanitary quality according to applicable laws and regulations of State and local government agencies having jurisdiction. The presence in the plant of current certificates or notifications of approval from the government agency or agencies having jurisdiction constitutes approval of the source and the water supply.

(2) **Artesian water-Water from a well tapping a confined aquifer in which the water level stands at some height above the top of the aquifer is "artesian water" or "artesian well water."** [which will rise by natural pressure higher than the interface of the first impervious stratum above the water bearing formation. Artesian water shall meet the requirements of natural water as defined in this section.]

(3) **Bottled water or drinking water** -Water that is **intended for human consumption and that is sealed in bottles or other containers with no added ingredients except that it may optionally contain safe and suitable antimicrobial agents.** [sealed in bottles or other containers and intended for human consumption. Products with or without natural or added carbonations may be prepared with added flavors, extracts and/or essences derived from a spice or fruit and comprising less than one percent by weight of the final product. Said products shall contain no sweeteners or other additives. Bottled water does not include products traditionally produced by nonalcoholic beverage plants.]

(4) Department-Texas Department of Health.

(5) **Distilled water**-Water which has been produced by a process of distillation and meets the definition of purified water in the most recent edition of the United States Pharmacopeia.

[(6) **Drinking water**-Water obtained from an approved source that has at minimum undergone treatment consisting of filtration (activated carbon or particulate) and ozonation or an equivalent disinfection process.]

[(6)(7) **Fluoridated water**-Water containing **added** fluoride. [The label shall specify whether the fluoride is naturally occurring or added.]

(7) **Ground water**-Water from a subsurface saturated zone that is under a pressure equal to or greater than atmospheric pressure.

(8) **Mineral water**-Water **containing not less than 250 parts per million (ppm) total dissolved solids (TDS), coming from a source tapped at one or more bore holes or springs, originating from a geologically and physically protected underground water source.** [which meets the requirements of natural water as defined in this section. Mineral water shall also meet the quality standards prescribed in Title 21, Code of Federal Regulations, Part 103.35 except that mineral water shall be permitted to contain total dissolved solids in excess of the federal standards.]

[(9) **Natural water**-Spring, mineral, artesian well, or well water which is not derived from a public system and which is unmodified by blending with water from another source or by mineral addition or deletion, except as it relates to ozonation or equivalent disinfection and filtration.]

(9) [(10) **Purified water**-Water **that has been** produced by distillation, deionization, reverse osmosis, or other suitable processes and that meets the definition of "purified water" in the [most recent edition of the] United States Pharmacopeia, **23d revision, January 1, 1995, which the department adopts by reference.**

(Copies may be obtained from the United States Pharmacopial Convention, Inc., 12601 Twinbrook Parkway, Rockville, MD 20852). [Water which meets the definition of purified water and is vaporized, then condensed, may be labeled distilled water. Water which meets the definition of purified, but is not vaporized and condensed may make reference to distilled water uses provided that the type size is no more than half the type size of the product name and is not part of the name of the product.]

(10) **Sparkling bottled water**-Water that after treatment and possible replacement of carbon dioxide, contains the same amount of carbon dioxide that it had at emergence from the source.

(11) **Spring water**-Water derived from an underground formation from which water flows naturally to the surface of the earth. [Spring water shall meet the requirements of natural water as defined in this section.]

(12) **Sterile water or sterilized water**-Water that meets requirements under "Sterility Tests" in the United States Pharmacopeia, 23rd revision, January 1, 1995, which the department adopts by reference. (Copies may be obtained from the United States Pharmacopial Convention, Inc., 12601 Twinbrook Parkway, Rockville, MD 20852).

(13) [(12)] **Vended water** [means either of the following:]
-Vended water is:

(A) water dispensed from any **vending machine** [self-service device which upon insertion of a coin, coins, or token, or upon receipt of payment by other means, dispenses unit servings of water in bulk, without the necessity of refilling the machine between each operation]; **or**

(B) unit servings of water **dispensed** in bulk [dispensed] by any operator or consumer from any device.

(14) [(13)] **Vending machine**-Any self-service device which upon insertion of a coin, coins, or token, or upon receipt of payment by other means, dispenses unit servings of water in bulk, without the necessity of refilling the machine between each operation.

(15) [(14)] **Well water**-Water **taken** from a hole bored, drilled, or otherwise constructed in the ground which taps the water of an aquifer.[Well water shall meet the requirements of natural water as defined in this section.]

(d) Other requirements for specific standardized beverages.

(1) Artesian water may be collected with the assistance of external force to enhance the natural underground pressure. On request, a bottler or vendor shall demonstrate to the department that the water level stands at some height above the top of the aquifer.

(2) For bottled water or drinking water, fluoride may be optionally added within the limitations established in 21 Code of Federal Regulations (CFR) Part 165.110(b)(4)(ii). Bottled water may be used as an ingredient in beverages (e.g., diluted juices, flavored bottled waters). It does not include those food ingredients that are declared in ingredient labeling as "water," "carbonated water," "disinfected water," "filtered water," "seltzer water," "soda water," "sparkling water," and "tonic water." The processing and bottling of bottled water shall comply with applicable regulations in 21 CFR, Part 129.

(3) For fluoridated water, the total fluoride content levels cannot exceed levels contained in 21 CFR 165.110(b)(4)(ii).

(4) Ground water must not be under the direct influence of surface water as defined in 40 CFR 141.2.

(5) Mineral water shall be distinguished from other types of water by its constant level and relative proportions of minerals and trace elements at the point of emergence from the source, due account being taken of the cycles of natural fluctuations. No minerals may be added to this water.

(6) Water processed by demineralization that meets the purified water definition may alternatively be called "demineralized water." Alternatively, water that has been processed by deionization may be called "deionized water", and water processed by distillation may be called "distilled water", and water that has been processed by reverse osmosis may be called "reverse osmosis water". Also, if the water has been processed by either of the previously listed methods the water may be called "(blank) drinking water", with the blank being filled in with one of the defined terms describing the method of processing.

(7) Spring water shall be collected only at the spring or through a bore hole tapping the underground formation feeding the spring. There shall be a natural force causing the water to flow to the surface through a natural orifice. The location of the spring shall be identified. Spring water collected with the use of an external force shall be from the same underground stratum as the spring, as shown be a measurable hydraulic connection using a hydro geologically valid method between the bore hole and the natural spring, and shall have all the physical properties, before treatment, and be of the same composition and quality, as the water that flows naturally to the surface of the earth. If spring water is collected with the use of an external force, water must continue to flow naturally to the surface of the earth through the spring's natural orifice.

§229.82. *Sampling.*

Bottled water [and vended water] must be sampled in accordance with the compliance procedures of Title 21, Code of Federal Regulations, Part 129. All required analyses must be performed by a **laboratory acceptable to the Texas Department of Health** [an approved laboratory]. An **acceptable** [approved] laboratory is one **which is acceptable to** [that is approved by] the Texas Department of Health, certified by the U.S. Environmental Protection Agency (EPA), or certified by the primacy enforcement authority in any state which has been granted primacy by EPA[,], or certified [(accredited)] by a third party organization acceptable to a primacy state.

§229.83. *Water Hauling.*

When water is distributed by tank truck or trailer, in lieu of distribution piping, it must be accomplished in accordance with the requirements of this section.

(1) (No change.)

(2) The equipment used to haul the water must be [approved by the department and must be] constructed as follows.

(A)-(G) (No change.)

(H) Hoses used for the transfer of drinking water to and from the tank shall be used only for that purpose and labeled for drinking water **only**. **The hoses shall conform to American National Standards Institute/National Sanitation Foundation (ANSI/NSF) Standard 61 and must be certified by an entity recognized by the Texas Natural Resource Conservation Commission (TNRCC).** [The hoses must be properly stored between uses

and must be provided with caps and keeper chains or have the ends connected together.]

[(I) The tank shall be disinfected monthly and at any time that contamination is suspected.]

[(J) At least two samples of water shall be collected and submitted for bacteriological analysis, to a laboratory approved by the Texas Department of Health, for each month of operation.]

[(K) A minimum chlorine residual of 0.5 mg/l shall be maintained in the water being hauled. Chlorine or chlorine containing compounds may be added on a batch basis to maintain the required residual.]

[(L) Operational records detailing the amount of water hauled and purchased, and the source of water shall be maintained.]

(3) The water hauler shall perform the following operational procedures.

(A) Hoses used for the transfer of drinking water to and from the tank shall be used only for that purpose and labeled for drinking water. The hoses must be properly stored between uses and must be provided with caps and keeper chains or have the ends connected together. Hoses and related appurtenances must be cleaned and disinfected on a daily basis or before start-up during intermittent use.

(B) The tank shall be disinfected a minimum of once per month and at any time that contamination is suspected, and shall keep records of all tank disinfections or cleanings.

(C) At least two samples of water must be submitted for bacteriological analysis, to a laboratory acceptable to the Texas Department of Health, for each month of operation.

(D) A minimum chlorine residual of 0.5 mg/l must be maintained in the water being hauled. Chlorine or chlorine containing compounds may be added on a "batch" basis to maintain the required residual.

(E) Operational records must be maintained detailing the amount of water hauled and purchased, and the source of water.

(4) A person, firm, or corporation shall test and record the chlorine residual in the tank at the time of receipt. The record shall be maintained on file at the receiving location (bottle production plant) for a minimum of two years.

§229.84. *Microbiological Control Standards.*

Bottled **and vended** water production including transporting, processing, packaging, and storage, shall be conducted under such conditions and controls as are necessary to minimize the potential for microbiological contamination of the finished product. These conditions and controls shall include the following.

(1) Bottled **and vended** water shall be subject to effective germicidal treatment by ozonation, chlorination, exposure to ultraviolet light, or other equivalent disinfection approved by the department.

(2) Bottled **and vended** water shall not be transported or stored in bulk tanks or processed [or bottled] through equipment or lines used for any non-food product.

(3) (No change.)

§229.85. *Labeling and Advertising*

[(a) References to the content of ingredients that are not normal in drinking water shall be prohibited except as permitted in §229.81(b) of this title (relating to General Provisions). In addition, if reference is made to any chemical constituent contained in bottled or vended water, with the exception of sodium, then reference shall be made only in milligrams per liter (mg/l) and will require reference to each of the chemicals listed in Title 21, Code of Federal Regulations, §103.35(d).]

[(b) Statements as to the quantitative sodium content of bottled water and vended water must comply with Title 21, Code of Federal Regulations, Part 101.13.]

(a) [(c)] Claims of medicinal and health-giving properties shall not be placed on labels and references shall not be made to bacterial purity or to laboratory examinations which may have been made by department laboratories.

(b) [(d)] The label must state the source of all **artesian water, spring water, mineral water, well water, or drinking** water sold. Source refers to the point of origin. Examples: Singing Mountain Spring Water from Buck Hollow, Arkansas; drinking water obtained from Austin municipal water supply, Austin, Texas; well water from Bandera, Texas.

(c) Other label statements.

(1) If the Total Dissolved Solids (TDS) content of Mineral water is below 500 ppm, or if it is greater than 1,500 ppm, the statement "low mineral content" or the statement "high mineral content", respectively, shall appear on the principal display panel following the statement of identity in type size at least one-half the size of the statement of identity but in no case less than one-sixteenth of an inch. If the TDS of mineral water is between 500 and 1,500 ppm, no additional statement need appear.

(2) When the label or labeling of a bottled water product states or implies (e.g., through label statements or vignettes with reference to infants) that the bottled water is for use in feeding infants, and the product is not commercially sterile, the product label shall bear conspicuously and on the principal display panel the statement "Not sterile. Use as directed by physician or by labeling directions for use of infant formula."

[(e) Bottled water or vended water to which minerals are added shall be labeled so as to disclose that minerals are added and must list the minerals added.]

[(f) All labels, labeling and advertising shall conform to the provisions of these sections within six months after the effective date of these sections.]

[(g) The label shall provide a statement describing the treatment process. If no treatment process is utilized then a statement to that effect is required for all but natural water. Treatment process means any blending or mineral addition or deletion.]

§229.86. *Processing of Vended Water.*

(a) Any device from which any operator or consumer dispenses unit servings of water in bulk must comply with Title 21, Code of Federal Regulations, **§129.40, Equipment and Procedures** [Part 129, Processing and Bottling of Bottled Drinking Water], and **§165.110, Requirements for Specific Standardized Beverages** [§103.35 Subpart B Standards of Quality]. **Section 129.40** the [The] provision pertaining to the cleaning, sanitizing, filling, and capping

or sealing of containers shall not apply to containers furnished by the consumer.

(b) Vending machine requirements are as follows.

(1) Water dispensed from a vending machine must comply with Title 21, Code of Federal Regulations, **§165.110, Requirements for Specific Standardized Beverages** [§103.35, Subpart B, Standards of Quality, and labeling and advertising requirements of these sections].

(2) Vending machines shall:

(A)-(F) (No change.)

(G) disinfect vended water by ultraviolet light or other method approved by the department **immediately** prior to delivery into the customers *container*;

(H)-(L) (No change.)

(M) display in a position clearly visible to customers, the following information: the name and address of the operator; a statement to the effect that the water is obtained from an approved water **source** [system; a statement describing the treatment process; if no treatment process is utilized, then a statement to that effect;] and a local or toll free telephone number that may be called for further information, service, or complaints.

(c) Service, sampling and records should meet the following requirements.

(1) (No change.)

(2) The vended water from each water vending machine shall be analyzed **a minimum of**[at least] once every month for bacteriological purposes and [,] if required[,], **by the department, shall also be analyzed for** other physical, chemical, or microbiological parameters. All records shall be maintained for **a period of** [not less than] two years. The analysis shall be performed by a laboratory **acceptable to the department** [certified] to perform drinking water analyses, and a copy of the analysis shall be available for inspection.

(3) Each person **operating** [desiring to operate] a water vending machine shall **maintain** [have] a written maintenance program [for the routine servicing of water vending machines to include]. **The written maintenance program shall include** written servicing instructions for the operator; technical manuals for the machine and water treatment appurtenances involved; and **records of service** [regularly scheduled] service visits. **The written maintenance program shall be available for inspection by the department.**

(4) The water vending machine operator shall clean and perform servicing of the water vending machine a minimum of once per month, or more frequently as required by the manufacturer of the water vending equipment.

(5) Methods of testing for maximum contaminant levels (MCLs) for microbiological contaminants in water dispensed from vending machines shall be performed as follows.

(A) If a sample submitted during a month is total coliform positive, the operator shall service the vending machine including the cleaning and sanitizing of all product storage and contact surfaces. The operator shall submit one sample per day, to a laboratory acceptable to the department, during a four consecutive-day period for bacteriologic testing.

(B) If a sample submitted during a month is invalidated or reported as unsuitable for analysis, the operator must submit one sample per day, to a laboratory acceptable to the Department, during a two consecutive-day period for bacteriologic testing.

§229.87. *Certificates of Competency.*

No person, firm, or corporation [, partnership or individual] shall offer for sale bottled or vended water unless the production, processing and treatment is at all times under the supervision of a person [or persons] holding a valid certificate of competency as a **bottled or vended water operator** [for bottled water plant operators] issued **under the direction of** [by] the department.

§229.88. *Requirements for Approved Sources.*

Sources in Texas shall comply with the following requirements.

(1) Public water systems. Sources in Texas which are public water systems shall comply with **the Texas Health and Safety Code, Chapter 341, Subchapter C relating to drinking water standards and rules adopted thereunder by the Texas Natural Resource Conservation Commission, 30 Texas Administrative Code (TAC) §§290.101-290.121, and §§290.38-290.47, relating to rules and regulations for public water systems** [§§337.1-337.18 of this title (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems) and §§337.201-337.212 of this title (relating to Public Water Systems)].

(2) Other sources. Any other sources in Texas shall comply with **30 TAC, §§290.101-290.121** [§§337.1-337.18 of this title] **relating to drinking water standards**, [(relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Supply Systems),] except where variances are permitted in §229.81 of this title (relating to General Provisions), and **30 TAC §§290.10-290.121, 290.38-290.43, and 290.46 relating to rules and regulations for public water systems.** [§§337.201-337.205, 337.207, and 337.209 of this title (relating to Public Water Systems).]

(3) Compliance with these sections is required as if the source were a public water system.

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

Issued in Austin, Texas, on July 3, 1996.

TRD-9609595

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: August 16, 1996

For further information, please call: (512) 458-7236

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part I. Texas Natural Resource Conservation Commission

Chapter 213. Edwards Aquifer

Subchapter A. Edwards Aquifer in Medina, Bexar, Comal, Kinney, Uvalde Hays, Travis and Williamson Counties

30 TAC §§213.1-213.14

The Texas Natural Resource Conservation Commission (commission) proposes new §§213.1-213.14, concerning the Edwards Aquifer.

The purpose of the proposed new chapter is to streamline and consolidate the current Chapter 313, Edwards Aquifer rule, into new Chapter 213. The proposed numbering change implements a reorganization of commission rules by moving this chapter to the 200 series of Title 30 of the Texas Administrative Code that is being reserved for rules related to water programs. In addition, the proposed rule reorganizes the current rule to reflect the proper sequence of steps required to obtain approval from the executive director to commence construction of a regulated activity. Obsolete cross-references to other commission rules were corrected, poorly written or ambiguous language was revised, and processes and procedures were streamlined as part of the commissions regulatory reform process.

An additional purpose of the proposed new chapter is to respond to public comment received during hearings held pursuant to §26.046 of the Texas Water Code, which requires the agency to hold annual public comment hearings to receive evidence from the public on actions the commission should take to protect the Edwards Aquifer from pollution. Initially, agency staff conducted three hearings in 1994 on March 30, April 5, and June 2, in San Antonio, Austin, and Hondo, respectively, to receive public comment on the protection of the Edwards Aquifer, related commission Chapter 313 rule, and its implementation by the agency. Staff then compiled a report which contained recommendations for changes to the rule based upon the comments received. Staff held three hearings on December 6 and December 12, 1995 in San Antonio and Austin, respectively, and January 10, 1996 in Belton to receive comment on the report.

The proposed changes to the rules reflect comments requesting action that were reasonable, necessary, and the most cost-effective way to directly address specific, demonstrated water quality threats and to avoid duplication or unnecessary conflict with local regulations. These recommendations include: requiring 150 foot setback from a sensitive feature for new Underground Storage Tank (UST) without tertiary containment and temporary Above Ground Storage Tank (AST) facilities; the regulation of temporary ASTs on construction sites; the lowering of the exemption for the regulation of permanent AST facilities under this rule from 1,000 to 500 gallons of cumulative storage capacity; adding all new Municipal Solid Waste Type I facilities, including facilities required comply with Type I standards (i.e. Types I, II, and III facilities as defined in 30 TAC §330.41 (b), (c), and (d)) to the list of prohibited activities in both the recharge and transition zones; clarifying the definition of Significant Recharge Features to aid in consistent program implementation and facilitate setbacks and recharge protection; clarifying that no discharge from sewage collection line leakage is allowed, enabling flexibility in repair schedules; remov-

ing requirements which are duplicative of Chapter 317 design criteria for sewage collection line standards; requiring Professional Engineer certification for plans which address caves encountered during construction of sewage collection lines; requiring a geologic assessment for new sewage lift station applications; requiring a geologic assessment for all new sewage collection systems; and modifying the exemption for geologic assessments to be based on acreage and amount of development.

The proposed changes also update the rule to reflect the current day-to-day operations of the agency relating to the protection of the water quality of the Edwards Aquifer and make the administration of the Edwards Aquifer Protection Program more efficient and effective. These changes include: reducing the requirement for conducting a geologic assessment for a distance of at least one mile downstream of all regulated developments to one-half mile, due to property access problems; clarifying the approved sewer line testing procedures; requiring a project that is partially located on the recharge and transition zone to meet standards as if the entire project is located within the recharge zone; placing a two-year expiration on Aboveground Storage Tank and Underground Storage Tank approvals to provide consistency with other expiration dates for approved regulated activities in Chapter 213; and eliminating the requirement for a Water Pollution Abatement Plan for electrical transformer stations containing mineral oil while clarifying that these facilities are not considered a hydrocarbon storage facility.

In addition, the commission has included a requirement for the inspection of best management practices and measures that are proposed as part of an Edwards Aquifer protection plan that are taken to prevent pollution of stormwater flowing onto and off a site. Maintenance and repair of these structures is required. The technical report will also include measures to avoid increased instream erosion from a site.

The purpose of this proposed rule is to establish regulations for activities having the potential for causing pollution of the Edwards Aquifer to protect existing and potential uses of groundwater and maintain the Texas Surface Water Quality Standards. However, these rules do not regulate in a totally independent manner. They build upon and expand other existing rules under Title 30 of the Texas Administrative Code which govern various permitting, licensing, and spill response programs that address surface and groundwater pollution prevention from storage, transportation, and disposal of waste, hazardous substances, and wastewater. Some of these chapters are cross referenced within the proposed Chapter 213 and some of these chapters have special cross-references to the Edwards Aquifer or to a sole source aquifer as designated under the federal Safe Drinking Water Act.

Specific cross references in the proposed rule relate to on-site wastewater treatment which are contained in Chapter 285 of this title (relating to On-Site Wastewater Treatment). These rules contain specific provisions for on-site sewerage facilities (including septic tanks) in the recharge zone having the potential to cause pollution of the Edwards Aquifer. Cross references in the proposed rule also refer to Chapter 338 of this title relating to the Water Well Drillers Rules. This chapter specifically address the proper drilling and abandonment of wells to insure groundwater quality protection. While there are

specific requirements for organized sewage collection systems contained in the proposed rule, the general design, design plans, and specifications must also comply with Chapter 317 of this title relating to Design Criteria for Sewerage Systems. To insure proper design and installation, underground storage tank systems designs are required to be prepared and signed by a registered contractor and installed by a person registered under Chapter 334 of this title (relating to Underground and Aboveground Storage Tanks). The design of wastewater treatment plants must be in accordance with Chapter 317 of this title and attain the effluent discharge standards contain in Chapter 309 of this title (relating to Effluent Limitations) and Chapter 311 of this title (relating to Watershed Protection) where applicable. The agency has proposed a rule under Chapter 216 of this title (relating to Water Quality Performance Standards for Urban Development) that regulates non-point source pollution from certain developments in a limited part of the recharge and transition zones of the aquifer.

Prohibited activities are cross-referenced in the proposed rule to the chapters that contain the permitting provisions under this title. Waste disposal wells under Chapter 331, new feedlot/concentrations animal feeding operation under Chapter 321, land disposal of Class I wastes under Chapter 335, and new municipal solid waste landfill facilities required to meet and comply with Type I standards under Chapter 330 are all prohibited on the recharge zone. Waste disposal wells, land disposal of Class I waste, and new municipal solid waste facilities are all prohibited on the transition zone. Chapter 335 (relating to Industrial Solid Waste and Municipal Hazardous Waste) has specific provisions in the section on location standards for hazardous waste storage, processing, or disposal that prohibit a land treatment facility, waste pile, storage surface impoundment, and landfill on the recharge zone of a sole source aquifer which cross references the Edwards Aquifer recharge zone maps that implement these proposed rules. Storage and processing facilities (excluding storage surface impoundments) under Chapter 335 may not be located on the recharge zone of a sole source aquifer unless secondary containment is provided.

Although not cited in the proposed rules, additional water quality protection from spills is provided by the commission staff in Regional Offices and through the Emergency Response Center. As specified under Chapter 343 of this title (relating to Oil and Hazardous Substances), the agency is the state's lead agency for response to all hazardous substance discharges or spills, and discharges or spills of other substances and certain inland oil discharges or spills which may cause pollution of the aquifer. This authority is derived from §26.039 and §§26.261–26.268 of the Texas Water Code through the Texas Hazardous Substances Spill Prevention and Control Act. Pursuant to §26.039(b), whenever an accidental discharge or spill occurs, the individual operating or responsible for the activity or facility must notify the agency as soon as possible, but not later than 24 hours after the occurrence. In addition, the Railroad Commission of Texas has jurisdiction over discharges or spills from crude oil or natural gas pipelines under their jurisdiction. However, discharges or spills from pipelines transporting refined products such as gasoline, diesel, or other fuel oils fall under the jurisdiction of the agency. As specified under the "State of Texas Oil and Hazardous Substances Spill Contingency Plan," the agency serves as the lead in directing and

approving the response for the discharge or spill of a harmful quantity of crude oil (defined as five or more barrels discharged or spilled on the ground or any quantity discharged or spilled into water) during highway or rail transportation. In addition, the agency works with the Texas Department of Transportation to address both potential contamination issues surrounding the construction of highways and the placement of hazardous material traps to capture accidental spills resulting from accidents.

Proposed new §213.1, Purpose, discusses the intention of this chapter, delegates authority to the executive director to act on behalf of the commission and makes all actions taken by the executive director subject to 30 TAC Chapter 50, Subchapter C.

Proposed §213.2, Applicability and Person Required to Apply, specifies that these rules are applicable only to the Edwards Aquifer and identifies who must file applications with the executive director for approval.

Proposed §213.3, Definitions, provides definitions for terms used throughout the chapter. New or revised definitions relating to aboveground and underground storage tank facilities, commencement of construction, geologic or manmade feature, regulated activity, sensitive feature, and site are included in this section.

Proposed §213.4, Application Processing and Approval, identifies who needs to file an Edwards Aquifer protection plan and how the plan will be processed. Section 213.4(a) prohibits the commencement of construction of a regulated activity until a plan has been approved by the executive director. Section 213.4(b) specifies the required contents of an application, including forms and the appropriate Edwards Aquifer protection plan. Section 213.4(c) requires that four copies of the application be submitted to the executive director for review and approval and specifies who has the authority to submit an application. Section 213.4(d) discusses the requirements for signatures on an application. Section 213.4(e) gives the time frame for executive director review and approval of an application and §213.4(f) authorizes the executive director to require additional provisions under a plan which are necessary to protect the Edwards Aquifer from pollution. Section 213.4(g) requires that within 30 days after plan approval, the applicant must record in the county deed records that the property is subject to an Edwards Aquifer protection plan and must provide proof of recordation to the executive director prior to commencing construction at the site. Section 213.4(h) relates to the term of approval of a plan, requiring that such approval expires two years after the initial issuance unless commencement of construction has occurred. This expiration is for all regulated activities that require an Edwards Aquifer protection plan under the proposed rules. Section 213.4(i) requires new owners of a site to comply with all terms of the approved Edwards Aquifer protection plan for that site. Modifications to previously approved plans are discussed in §213.4(j) and compliance is discussed in §213.4(k).

Proposed §213.5, Required Edwards Aquifer Protection Plans, Notification, and Exemptions, lists activities that require an Edwards Aquifer protection plan, contents of a plan, notification and inspection requirements, and exemptions from submitting a plan. Section 213.5(a) lists regulated activities, by type of activity that requires an Edwards Aquifer protection plan.

A water pollution abatement plan (WPAP) is required for all regulated activities on the recharge zone not specified in §213.5(c), (d), or (e). An organized sewage collection system plan (OSCSP) is required for repair, replacement, or construction of existing or new systems on the recharge zone. An underground storage tank facility plan (USTFP) is required for the construction, repair, or replacement of an underground storage tank system for the storage of static hydrocarbons and hazardous substances on the recharge or transition zone. An aboveground storage tank facility plan (ASTFP) is required for the construction, repair, or replacement of an aboveground storage tank system for the storage of static hydrocarbons and hazardous substances on the recharge or transition zone.

Proposed §213.5(b) specifies that contents of the WPAP are the application, site location information, assessment of area geology, and a technical report. The geologic assessment must be prepared by a geologist, must describe both area and site-specific geology, and identify potential pathways for contaminant movement to the Edwards Aquifer. Sensitive features within the 100-year floodplain that are located beyond the site boundary and the shorter distance of either one-half mile downgradient of the site or the distance to the downgradient boundary of the recharge zone shall be identified. The proposed rule allows these features to be inventoried from literature searches, recognized from aerial photographs, or identified from other sources of information when access to downgradient property is denied.

The proposed rule also provides a standard method to identify sensitive features by requiring executive director approved forms. These forms allow the geologist to assess and determine if the geologic or manmade feature should be treated as a sensitive feature. This will allow for the identification of permeable geologic or manmade features located on the recharge zone or transition zone where a potential for hydraulic interconnectivity between the surface and the aquifer exists and where rapid infiltration to the subsurface may occur. The WPAP will have to specifically address these sensitive features to insure that contamination of the aquifer does not occur. The geological assessment will also detail the potential for fluid movement to the aquifer and contain a narrative description of soils on the site.

The WPAP also includes a technical report that details the nature of the regulated activity including size, projected population, amount and type of impervious cover, volume and character of wastewater to be produced, volume and character of stormwater runoff expected, and activities or processes which could be a potential source of aquifer contamination. The technical report will contain a description of the best management practices and measures that will be taken to prevent pollution of stormwater originating on-site or upgradient and the best management practices and measures that will prevent polluted stormwater runoff from leaving a site during and after construction. The report will also contain a description of measures that will be taken to prevent pollutants from entering the aquifer while, to the extent practicable, maintaining flow to sensitive features. The sealing of sensitive features as a pollution control measure will be evaluated by the executive director on a case-by-case basis. The technical report will contain a description of measures to be taken to avoid or minimize instream erosion from water flow-

ing off the site. The method of wastewater disposal from the site and measures that will be taken to contain any spill from the temporary storage of 250 or more gallons on site of static hydrocarbons or hazardous substance must be described. A plan for the inspection of best management practices and measures, and their maintenance and repair is required as part of the report.

Proposed §213.5(c) provides for the submittal of an OSCSP for repair, replacement, or construction related to existing or new organized sewage collection systems on the recharge zone. The general design of the system must comply with 30 TAC §317, Design Criteria for Sewerage Systems, and must be filed with and approved by the executive director or review authority before the OSCSP is submitted. Section 213.5(c)(3) contains special requirement for sewage collection systems on the recharge zone in the following areas: manhole construction repair or replacement, piping for gravity and pressurized collection systems, lift station design, certification of new sewage collection system lines, testing of existing sewer lines, blasting for sewer line excavation, sewer line stub outs, locating sewer lines within a five-year floodplain, inspection of private service lateral connections, embedment materials, sewer lines bridging caverns or other sensitive features, erosion and sedimentation control, alternative sewage collection systems, and required corrective action.

The OSCSP, under proposed §213.5(c)(4), must contain an application, narrative description, plans and specifications, and assessment of area geology. The assessment of area geology is required along the path of the sewer line(s) plus 50 feet on either side of the line using the same technic described in proposed §213.5(b)(3). The OSCSP will contain pollution abatement measures for sensitive features identified along the path of the proposed sewer line as required by the assessment.

Proposed §213.5(d), Static Hydrocarbon and Hazardous Substance Storage in Underground Storage Tanks System, specifies the design standards for an underground storage tank systems and the required contents of the underground storage tank facility plan (USTFP) for facilities located on either the recharge or transition zone. New or replacement systems will be double-walled or an approved equivalent. The system design must be prepared and signed by a contractor registered under 30 TAC Chapter 334 (relating to Underground and Aboveground Storage Tanks) and installed by a person certified pursuant 30 TAC Chapter 334. Any new system that is within 150 feet of a domestic, industrial, irrigation, or public water supply well or other sensitive feature requires tertiary containment. Under proposed §213.5(d)(2), the required contents of an USTFP are the application, site location map as specified under §213.5(b)(2), assessment of area geology as described under §213.5(b)(3), and a technical report as described under §213.5(b)(4).

Proposed §213.5(e), Static Hydrocarbon and Hazardous Substance Storage in an Aboveground Storage Tank Facility, specifies the design standards for aboveground storage tank systems, the contents of the aboveground storage tank facility plan (ASTFP), and exemptions for facilities located on either the recharge or transition zone. Facilities used for the temporary and permanent aboveground storage of static hydrocarbon and hazardous substance must be constructed in a controlled drainage area that directs any spill to a collection point for re-

covery. The controlled drainage area is required to be sized to capture one and one-half times the storage capacity of the facility and constructed of a material impervious to the substance(s) being stored. Any spill from a storage tank facility is required to be removed from the controlled drainage area for disposal within twenty-four (24) hours of the spill. Under proposed §213.5(e)(2), the contents of an ASTFP for permanent storage are the application, site location map as specified under §213.5(b)(2), assessment of area geology as described under §213.5(b)(3), and technical report as described under §213.5(b)(4).

A description of measures that will be taken to contain any spill of hydrocarbons or hazardous substances from temporary storage of 250 gallons or more shall be included in the plan. Any new temporary aboveground hydrocarbon and hazardous substance storage tank system is required to be located a minimum horizontal distance of 150 feet from any domestic, industrial, irrigation, public water supply well, or other sensitive feature.

Proposed §213.5(e)(4) exempts equipment used to transmit electricity that utilizes mineral oil for insulation or cooling purposes and permanent aboveground storage facilities with a cumulative storage capacity of less than 500 gallons from submitting an ASTFP.

Proposed §213.5(f), Notification and inspection, specifies that written notification is required no later than 48 hours prior to commencement of construction, repair, or replacement. Notice is required if any sensitive features are discovered during construction, repair or replacement. Upon completion of excavation for any lift station or tankhold, a qualified geologist is required to inspect the excavation for the presence of sensitive features. If sensitive features are discovered, methods to protect the aquifer from potentially adverse impacts from the regulated activity must be approved by the executive director.

Proposed §213.5(g), Exemption, clarifies that the installation of natural gas, telephone or electric lines, water lines, or other such utility lines which are not designed to carry and will not carry pollutants, stormwater runoff, or sewage effluent are exempt from the Edwards Aquifer protection plan submittal requirements under this section. However, the construction of these facilities on the recharge zone is a regulated activity requiring the installation and maintenance of appropriate temporary erosion and sedimentation controls.

Proposed §213.6, Wastewater Treatment and Disposal Systems, contains a prohibition on new discharges or increases in discharges into or adjacent to water in the state, on the recharge zone that would create additional loading. Existing permits may be renewed for the same discharge volumes and with the same conditions and authorizations specified in those permit. New land application wastewater treatment plants located on the recharge zone must be designed, constructed, and operated such that there are no bypasses of the treatment facilities or any discharges of untreated or partially treated wastewater from those facilities. Wastewater treatment plants must be designed in accordance with 30 TAC Chapter 317.

With the exception of licensed private sewage facilities, land application systems, under proposed §213.6(b), that rely on percolation for wastewater disposal are prohibited on the recharge

zone. Disposal of wastewater on the recharge zone utilizing land application methods, such as evaporation or irrigation, will be considered on a case-by-case basis. Existing permits may be renewed for the same discharge volume and with the same conditions and authorizations specified in the permit.

Specific standards for wastewater discharge into or adjacent to water in the state, upstream from the recharge zone, are contained in §213.6(c). These standards apply to new or increased discharges of treated wastewater other than industrial wastewater discharges, within zero to five miles upstream from the recharge zone, more than five miles but within ten miles upstream from the recharge zone and any other discharges that the agency determines may affect the Edwards Aquifer. Special provisions are also specified for all discharges, other than industrial wastewater discharges, more than five miles upstream from the recharge zone which enter the main stem or a tributary of Segment 1428 of the Colorado River, or Segment 1427, main stem Onion Creek, or a tributary of Onion Creek. Any existing permitted industrial wastewater discharges within zero to ten miles upstream of the recharge zone must, at all times, discharge effluent in accordance with permitted limits. Any application for new industrial wastewater discharge permits for facilities zero to ten miles upstream of the recharge zone will be considered on a case-by-case basis.

Proposed §213.7, Plugging of Abandoned Wells, requires that all identified abandoned water well be plugged according to the requirements of 30 TAC Chapter 338 and any other locally applicable rules.

Proposed §213.8, Prohibited Activities, lists activities that are prohibited on either the recharge or transition zone due to their high potential to contaminate the aquifer. The following activities are prohibited on the recharge zone: waste disposal wells regulated under 30 TAC Chapter 331; new feedlot/concentrated animal feeding operations regulated under 30 TAC Chapter 321; land disposal of Class I wastes, as defined in 30 TAC §335.1; sewage holding tanks used as part of an organized sewage collection systems; and new municipal solid waste landfill facilities (MSWLF) required to comply with Type I standards under 30 TAC §330.41 (b), (c), and (d). The following activities are prohibited on the transition zone: waste disposal wells regulated under 30 TAC Chapter 331; land disposal of Class I wastes, as defined in 30 TAC §335.1; and new MSWLF required to comply with Type I standards under 30 TAC §330.41 (b), (c), and (d).

Proposed §213.9, Exceptions, provides for exceptions to this chapter to be granted by the executive director and specifies the procedure for requesting an exemption.

Proposed §213.10, Enforcement, specifies that failure to comply with any provision of this chapter, any applicable statute or regulation, or order of the commission issued pursuant to this chapter may result in liability for penalties and may subject a noncompliant person to enforcement proceedings initiated by the executive director under Chapter 26 of the Texas Water Code.

Proposed §213.11, Groundwater Conservation Districts, recognizes the authorities, powers, and duties of groundwater conservation districts to conserve, prevent waste, and protect groundwater quality and encourages districts to assist the commission

in its administration of this chapter by conducting specific functions within the areal extent of their geographic jurisdiction.

Proposed §213.12, Application Fees, requires applicants under this chapter to pay an application fee in the amount set forth in §213.14. The fee is due at the time the application is filed.

Proposed §213.13, Fees Related to Requests for Extensions, requires applicants under this chapter to pay \$100 for each extension request. The fee is due at the time the extension request is filed. The application must include a copy of the approved Edwards Aquifer protection plan.

Proposed §213.14, Fee Schedule, contains the criteria for calculating the application fee for the Edwards Aquifer protection plan.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period these proposed sections are in effect, there will be fiscal implications as a result of enforcement and administration of the sections. There are no significant fiscal implications anticipated for state government, although some changes in the costs of projects could be realized by state agencies operating in the geographical areas affected by these sections. These fiscal implications could be positive or negative depending on the type of project. These impacts are not anticipated to represent major changes in the costs to any state agency. Fiscal implications are also anticipated for units of local government. For example, local government will be impacted by the requirement to construct temporary erosion and sedimentation controls pursuant to proposed §213.5(g). Also, while the notification and inspection requirements for sewer line trenches are not new, this process has been expanded to include lift station excavations under §213.5 (f). However, some cost savings to local governments may occur. These cost effects cannot be estimated at this time and are not anticipated to vary as a direct result of any provision of the proposed rule.

Mr. Minick also has determined that for the first five years these proposed sections are in effect the public benefit anticipated as a result of enforcement of and compliance with the sections will be the prevention of further degradation of the quality of water resources in newly developed urban and suburban areas, reduction of the risk to human health and safety from degradation of water quality, the preservation of aquatic and related biological resources, and the maintenance of the quality of public and recreational resources.

Economic costs are anticipated for persons required to comply with the new requirements under this proposed chapter. Unless otherwise provided under this chapter, the owner of an existing or proposed site such as a residential or commercial development, sewage collection system, or aboveground or underground storage tank facility for static hydrocarbons or hazardous substance, who proposes new or additional regulated activities under this chapter, must file all appropriate applications and planning material with the executive director for approval. No changes to the application fees are proposed. Costs implications of the rule may be associated with the following changes.

Under proposed §213.5(b)(3), a geologic assessment will not be required for single-family residential subdivisions on less than ten acres. However, there will be a potential increase

in cost because the current rule does not require a geologic assessment for a single-family residential subdivision with less than 24 lots. The potential difference is that, under the current rules, 24 lots could be proposed on 100 acres and no geologic assessment would be required.

Under proposed §213.5(b)(3), the requirement for a downgradient assessment of area geology has been decreased from 1 mile to one-half mile. This will result in a cost savings.

Under proposed §213.5(c)(4)(D), a geologic assessment will have to be performed 50 feet on each side of the path of the proposed sewer line. While this new requirement will result in an initial cost, a cost savings should result ultimately during the construction phase since it allows for pre-planning to address sensitive features. Under the current rule, all construction must stop while plans are designed and approved.

Under proposed §213.5(d)(1)(B), new UST systems are required to be located a minimum horizontal distance of 150 feet from any well or sensitive feature unless the system uses tertiary containment. This will result in an increased cost depending on the location of the UST.

Proposed §§213.5(b)(4) and 213.5(e)(3), require description of measures to contain spills for temporary ASTs storing greater than 250 gallons and require these facilities be located a minimum horizontal distance of 150 feet from any well or sensitive feature. Both temporary and permanent facilities that store greater than 500 gallons are required to be constructed within a controlled drainage area of impervious material that is sized to contain one and one-half times the storage capacity of the facility.

This new requirement represents a cost increase because the current rules do not require containment for temporary ASTs. However clean-up of spills of hazardous substances has always been required under the Texas Hazardous Substances Spill Prevention and Control Act. This section also requires permanent AST facilities of 500 gallon to 1,000 gallon to file and comply with an ASTFP.

Under §213.5(f)(2)(A)(i), a geologist must certify that a lift station excavation has been inspected for sensitive features. Section 213.5(f)(2)(B) also requires a geologist to certify that a UST excavation has been inspected for sensitive features. These new requirements could result in a cost, however, the current rule already requires that sensitive features be address if they are encountered during construction.

Under §213.5(h), temporary erosion and sedimentation controls will be required for the installation of utility lines that do not carry pollutants. This will result in an additional cost because these types of facilities are currently exempt from requirements under Chapter 313.

Under §213.8(a)(5) and (b)(3), new Type I municipal solid waste landfills are prohibited on the recharge or transition zone. This should not result in a cost increase or decrease because the topography, availability of soil liner materials, and geologic factors are unsuitable and uneconomical for locating these facilities in these areas.

The cost implications of these requirements for any project will vary on a case-by-case basis with the type of project, its size

and location, the type of construction and other site-specific conditions. For large or particularly complex developments with significant potential for impact, the total monetary implications could be significant. It is not anticipated that the total, incremental financial effects of the new requirements will increase total construction and development costs by a significant percentage. Many projects have no significant increases and could, in fact, realize some cost savings. There may also be indirect cost savings as a result of the reduction of contamination risks and the associated liability cost. Many of these fiscal implications will affect small businesses. However, the magnitude of costs or costs savings will vary with the size and individual characteristics of proposed developments, but not directly with the size of the affected firm.

The commission has prepared a Takings Impact Assessment for this rule pursuant to Texas Government Code, §2007.043. The following is a summary of that Assessment. The specific purpose of the rule is to regulate activities having the potential for causing pollution of the Edwards Aquifer. The rule will substantially advance this specific purpose by clarifying the procedures and criteria to be used by the commission in the review and approval of Edwards Aquifer plans for regulated activities under this section. Promulgation and enforcement of this rule could affect private real property which is the subject of the rule.

However, there are exceptions to the application of Chapter 2007 of the Texas Government Code. One exception exists since the possibility of degradation to the quality of the water supply presents a real and substantial threat to public health and safety (see Texas Government Code, §2007.003(b)(13)). The proposed rule will significantly contribute to the prevention of this threat. The Edwards Aquifer is the sole or primary source of water for over 1.5 million people. To the extent this rule regulates activities which have the potential for causing significant pollution of the Edwards Aquifer over the recharge and transition zones, it significantly advances health and safety. This rule is necessary to carry out the stated authority of the commission to protect human health and the environment.

Additionally, regardless of the applicability of §2007.003(b)(13) of the Act, §2.007.003(c) also applies to this rule. Subsection (c) exempts the enforcement or implementation of a statute, ordinance, order, rule, regulation, requirement, resolution, policy, guideline, or similar measure that was in effect September 1, 1995 and that prevents the pollution of a reservoir or an aquifer designated as a "sole source" aquifer. This exception applies to the enforcement or implementation of the entire rule even though only part of the Edwards has been designated as a sole source aquifer (See 40 FedReg 58344 (1975) and 53 FedReg 20897 (1988)). Current Chapter 313 rules regulating activities over the recharge or transition zones of the Edwards Aquifer have been in effect since March 1990.

The activities addressed by the rule are those that may pose a threat to water quality. This rule specifically applies to the Edwards Aquifer and is not intended to be applied to any other aquifers in the state of Texas. Unless otherwise provided under this chapter, the owner of an existing or proposed site such as a residential or commercial development, sewage collection system, or aboveground storage tank facility for static hydrocarbons or hazardous substance, who proposes new or

additional regulated activities under this chapter, must file all appropriate applications with the executive director for approval.

Changes in the proposed rule would prohibit Type I, II or III municipal solid waste disposal facilities to be located over the recharge zone. However, there are no known permitted or proposed Type I, II or III municipal solid waste facilities currently located within the recharge or transition zones of the aquifer. Generally, the topography, availability of soil liner materials, and geologic factors are unsuitable and uneconomical for locating municipal solid waste landfills on the recharge zone. Other activities with high potential for pollution, including new confined animal feeding operations and disposal of hazardous waste, are already prohibited under the existing Edwards Aquifer rule.

Public hearings on the proposal will be held in San Antonio on September 4th at 7:00 p.m. in the San Antonio City Council Chambers, Municipal Plaza Building at Main and Commerce Streets, 103 Main Plaza, San Antonio; and in Austin on September 10th at 2:00 p.m. at the Texas Natural Resource Conservation Commission Office Complex, Building E., Room 201S, 12100 Park 35 Circle, Austin. The hearing is structured to receive oral or written comments by interested persons. Individuals may present oral statements when called upon in the order of registration. There will be no open discussion by the audience during the hearing; however, a commission staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments on the proposal should reference Rule Log Number 96114-213-WT and may be submitted to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640. Written comments must be received by 5:00 p.m., September 16, 1996. For further information concerning this proposal, please contact Mary Ambrose, Water Policy and Regulations Division at (512) 239-4813.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

The new sections are proposed under Texas Water Code, §§5.103, 5.105, 26.011, 26.341 and Texas Health and Safety Code, §§361.024 and 366.012, which provide the commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by the Codes and other laws. Additionally, Texas Water Code, §26.046, requires the commission to hold annual public hearing to receive evidence from the public on actions the commission should take to protect the Edwards Aquifer from pollution, §26.0461, allows the commission to impose fees for processing plans or amendments that are subject to review or approval under the commission's Edwards Aquifer rules, §26.121, prohibits unauthorized discharges, and §28.011, authorizes the commission to make and enforce rules for the protection and preservation of groundwater quality.

There are no other cods are statutes that will be affected by this proposal.

§213.1. Purpose.

The purpose of this chapter is to regulate activities having the potential for polluting the Edwards Aquifer in order to protect existing and potential uses of groundwater and maintain Texas Surface Water Quality Standards. The activities addressed are those that pose a threat to water quality. Nothing in this chapter is intended to restrict the powers of the commission or any other governmental entity to prevent, correct, or curtail activities that result or might result in pollution of the Edwards Aquifer. The executive director shall review and act on an application subject to this chapter. Applications under this chapter are also subject to Chapter 50, Subchapter C of this title (relating to Action by Executive Director).

§213.2. Applicability and Person or Entity Required to Apply.

These rules specifically apply to the Edwards Aquifer and are not intended to be applied to any other aquifers in the state of Texas. Unless otherwise provided under this chapter, the owner of an existing or proposed site, such as a residential or commercial development, sewage collection system, or aboveground or underground storage tank facility for static hydrocarbons or hazardous substances, who proposes new or additional regulated activities under this chapter, must file all appropriate applications with the executive director for approval.

§213.3. Definitions.

The definitions in §§26.001, 26.263, and 26.342 of the Texas Water Code are applicable to this chapter. When used in this chapter, those definitions shall have the same meaning as the following definitions unless the context in which they are used clearly indicates otherwise, or those definitions are inconsistent with the definitions listed in this section.

Abandoned well- A well that has not been used for six consecutive months. A well is considered to be in use in the following cases:

(A) a non-deteriorated well which contains the casing, pump and pump column in good condition; or

(B) a non-deteriorated well which has been capped (as defined by Chapter 338 of this title relating to Water Well Drillers Rules).

Aboveground storage tank facility- The site, tract, or other area where one or more aboveground storage tank systems is located, including all adjoining contiguous land and associated improvements.

Aboveground storage tank system - A nonvehicular device (including any associated piping) that is made of nonearthen materials; located on or above the ground surface, or on or above the surface of the floor of a structure below ground, such as a mineworking, basement, or vault; and designed to contain an accumulation of static hydrocarbons or hazardous substances.

Appropriate regional office- For regulated activities covered by this chapter and located in Hays, Travis and Williamson counties, the appropriate agency regional office is Region 11, located in Austin, Texas. For regulated activities covered by this chapter and located in Kinney, Uvalde, Medina, Bexar, and Comal counties, the appropriate agency regional office is Region 13, located in San Antonio, Texas.

Assessment of area geology- A report which is prepared by a geologist describing area and site-specific geology.

Best management practice (BMPs)- schedule of activities, prohibitions of practices, maintenance procedures, and other management

practices to prevent or reduce the pollution of water in the State. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. BMPs are those measures that are reasonable and necessary to achieve a performance standard that protects existing and potential uses of groundwater and maintain Texas Surface Water Quality Standards, as determined by studies and other information that are generally relied upon by professionals in the environmental protection field and verified through performance monitoring.

Commencement of construction- The initiation of any regulated activity directly related and integral to the construction of the project proposed by the applicant in the approved water pollution abatement plan, organized sewage collection system plan, underground storage tank facility plan, or aboveground storage tank facility plan. Activities will be considered on a case-by-case basis to have commenced if the owner has obtained all necessary federal, state, and local approvals or permits required to begin a regulated activity; and if either on-site construction directly related to the development has begun, or the owner has entered into contractual obligations, for physical construction to be completed within a reasonable time, which cannot be canceled or modified without substantial loss.

Edwards Aquifer- That portion of an arcuate belt of porous, water-bearing, predominantly carbonate rocks known as the Edwards and Associated Limestones in the Balcones Fault Zone trending from west to east to northeast in Kinney, Uvalde, Medina, Bexar, Comal, Hays, Travis, and Williamson counties; and composed of the Salmon Peak Limestone, McKnight Formation, West Nueces Formation, Devil's River Limestone, Person Formation, Kainer Formation, Edwards Formation, and Georgetown Formation. The permeable aquifer units generally overlie the less-permeable Glen Rose Formation to the south, overlie the less-permeable Comanche Peak and Walnut formations north of the Colorado River, and underlie the less-permeable Del Rio Clay regionally.

Edwards Aquifer protection plan holder—Person who is responsible for compliance with an approved water pollution abatement plan, organized sewage collection system plan, underground storage tank facility plan, aboveground storage tank facility plan, or an exception or variance granted by the executive director.

Feedlot/concentrated animal feeding operation- A concentrated, confined livestock or poultry facility operated for meat, milk or egg production, growing, stabling, or housing, in pens or houses wherein livestock or poultry are fed at the place of confinement and crop or forage growing or production of feed is not sustained in the area of confinement.

Geologic or manmade features- Features including but not limited to closed depressions, sinkholes, caves, faults, fractures, bedding plane surfaces, interconnected vugs, reef deposits, wells, borings, and excavations.

Groundwater conservation district- Any groundwater district created by the Texas Legislature or the commission under the Texas Water Code, Chapter 36, as a groundwater conservation district to conserve, preserve, and protect the waters of an underground water supply.

Hazardous substance—Any substance designated as such by the administrator of the Environmental Protection Agency pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act; regulated pursuant to §311 of the Federal Water

Pollution Control Act; or any solid waste, or other substance that is designated to be hazardous by the commission, pursuant to the Texas Water Code, §26.263 or Texas Health and Safety Code, §361.003.

Industrial wastewater discharge- Any category of wastewater except:

(A) those that are primarily domestic in composition; or

(B) those emanating from feedlot/concentrated animal feeding operations.

Land application system- A wastewater disposal system designed not to discharge wastewater into a surface drainage way.

Organized sewage collection system- Any public or private sewerage system for the collection and conveyance of sewage to a treatment and disposal system that is regulated pursuant to rules of the commission and provisions of Chapter 26 of the Texas Water Code. A system includes lift stations, force mains, gravity lines, and all appurtenances necessary for conveying wastewater from a generating facility to a treatment plant.

Pollution- The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to public health, safety or welfare, or impairs the usefulness of the public enjoyment of the waters for any lawful or reasonable purpose.

Private sewage facilities- On-site sewage facilities as defined under Chapter 285 of this title (relating to On-site Wastewater Treatment).

Private service lateral- Facilities extending from the building drain to an existing private or public sewage collection system or other place of disposal that provides service to one individual household or building whose operation and maintenance are the sole responsibility of the tenant or owner of the building. Facilities extending from the convergence of private service laterals from more than one building is considered a sewage collection system.

Recharge zone- Generally, that area where the stratigraphic units constituting the Edwards Aquifer crop out, including the outcrops of other geologic formations in proximity to the Edwards Aquifer, where caves, sinkholes, faults, fractures, or other permeable features would create a potential for recharge of surface waters into the Edwards Aquifer. The recharge zone is identified as that area designated as such on official maps located in the appropriate regional office and groundwater conservation districts.

Regulated activity- Any construction-related activity on the recharge zone of the Edwards Aquifer, such as, but not limited to: construction of buildings, utility stations, roads, highways, or railroads; clearing, excavation or any other activities which alter or disturb the topographic, geologic, or existing recharge characteristics of a site; any installation of aboveground or underground storage tank facilities on the recharge or transition zone of the Edwards Aquifer; or any other activities which may pose a potential for contaminating the Edwards Aquifer. "Regulated activity" does not include:

(A) the clearing of vegetation in a 10-foot wide path, for the sole purpose of surveying;

(B) agricultural activities, except feedlots/concentrated animal feeding operations;

(C) activities associated with the exploration, development, and production of oil or gas or geothermal resources as de-

ined in Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste);

(D) routine maintenance of existing structures that does not involve additional site disturbance, such as; resurfacing of roads, parking lots, sidewalks, or other development-related impervious surfaces; fence building, or other similar activities in which there is little or no potential for contaminating groundwater, or there is little or no change to the topographic, geologic, or existing sensitive features; or

(E) construction of single-family residences on lots that are larger than five acres, where no more than one single-family residence is located on each lot.

Sensitive feature- Permeable geologic or manmade feature located on the recharge zone or transition zone where:

(A) a potential for hydraulic interconnectedness between the surface and the Edwards Aquifer exists, and

(B) rapid infiltration to the subsurface may occur.

Sewage holding tank- A tank or other containment structure used to receive and store sewage until its ultimate disposal in an approved treatment facility.

Site- The entire area included within the legal boundaries of the property. Regulated activities on a site that is located partially on the recharge zone and transition zone shall be treated as if the entire site is located on the recharge zone.

Static hydrocarbon- A hydrocarbon which is liquid at atmospheric pressure and 20o centigrade.

Stub out- A wye, tee, or other manufactured appurtenance placed in a sewage collection system providing a location for a future extension of the collection system.

Transition zone- That area where geologic formations crop out in proximity to and south and southeast of the recharge zone and where faults, fractures, and other geologic features present a possible avenue for recharge of surface water to the Edwards Aquifer, including portions of the Del Rio Clay, Buda Limestone, Eagle Ford Group, Austin Chalk, Pecan Gap Chalk, and Anacacho Limestone. The transition zone is identified as that area designated as such on official maps located in the appropriate regional office and groundwater conservation districts.

Underground storage tank facility- The site, tract, or other defined area where one or more underground storage tank systems are located, including all adjoining contiguous land and associated improvements.

Underground storage tank system- Any one or combination of underground tanks and any connecting underground pipes used to contain an accumulation of regulated substances, the volume of which, including the volume of the connecting underground pipes, is 10% or more beneath the surface of the ground.

Well- A bored, drilled or driven shaft, or an artificial opening in the ground made by digging, jetting or some other method, where the depth of the well is greater than its largest surface dimension. A well is not a surface pit, surface excavation, or natural depression.

§213.4. *Application Processing and Approval.*

(a) Approval by the executive director. No person shall commence the construction of any regulated activity until an Edwards Aquifer protection plan or modifications to the plan as required

by §213.5 of this title (relating to Required Edwards Aquifer Protection Plans, Notification, and Exemptions) has been filed with the appropriate regional office, and the application has been reviewed and approved by the executive director. The appropriate regional office shall provide copies of submittals to affected incorporated cities and groundwater conservation districts having jurisdiction over the area potentially affected by a proposed regulated activity, for the purpose of considering timely input from local government entities. A complete application for approval, as described in this section, must be submitted with the appropriate fee as specified in §213.12 of this title (relating to Application Fees).

(b) Contents of Application.

(1) Forms provided by the executive director. Applications for approval filed under this chapter must be made on forms provided by or approved by the executive director. Each application for approval must, at a minimum, include the following:

(A) name of the development, subdivision, or facility for which the application is submitted;

(B) a narrative description of the location of the project or facility for which the application is submitted, presenting sufficient detail and clarity so that the project site and its boundaries can be located during a field inspection;

(C) name, address, and telephone number of the owner or any other persons signing the application; and

(D) information needed to determine the appropriate fee under §213.14 of this title (relating to Fee Schedule) for the following plan types:

(i) for water pollution abatement plans and modifications to plans, the total acreage of the site where regulated activities will occur;

(ii) for organized sewage collection system plans and modifications to plans, the total linear footage of all lines; or

(iii) for static hydrocarbon and hazardous substance storage in underground or permanent aboveground storage tank facility plans, the total number of tanks or piping systems.

(2) Additional information. Each application must also include the following information, as applicable:

(A) for water pollution abatement plans, the information required under §213.5(b) of this title;

(B) for sewage organized collection system plans, the information required under §213.5(c) of this title;

(C) for static hydrocarbon and hazardous substance storage in underground storage tank systems, the information required under §213.5(d) of this title;

(D) for static hydrocarbon and hazardous substance storage in aboveground storage tank systems, the information required under §213.5(e) of this title; and

(E) any other pertinent information related to the application which the executive director may require.

(c) Application submittal. Four copies of the application must be submitted to the appropriate regional office. Only owners, their authorized agent(s), or those persons having an option to purchase, or having the right to possess and control the property

which is the subject of the Edwards Aquifer protection plan may submit the plan for review and approval by the executive director.

(d) Signatories to Applications.

(1) Required Signature. All applications must be signed as follows.

(A) For a corporation, a principal executive officer (president, vice-president, or a duly authorized representative) must sign the application. A representative must submit written proof of the authorization.

(B) For a partnership, a general partner must sign the application;

(C) For a political entity such as a municipality, state, federal or other public agency, either a principal executive officer or a duly authorized representative must sign the application. A representative must submit written proof of the authorization.

(D) For an individual or sole proprietorship, the individual or sole proprietor must sign the application.

(2) Proof of Authorization to Sign. The executive director requires written proof of authorization for any person signing an application.

(e) Executive director review. The executive director must complete the review of an application within 90 days after determining that it is administratively complete. The executive director must declare that the application is administratively complete or deficient within 60 days of receipt by the appropriate regional office. Grounds for a deficient application include, but are not limited, to failure to pay all applicable application fees.

(f) Additional provisions. As a condition of approval, the executive director may impose additional provisions deemed necessary to protect the Edwards Aquifer from pollution. The executive director may conditionally approve an Edwards Aquifer protection plan or impose special conditions on the approval of a plan.

(g) Deed recordation. Within 30 days of receiving written approval of an Edwards Aquifer protection plan for a proposed regulated activity, the applicant must record in the county deed records that the property is subject to an approved Edwards Aquifer protection plan. Prior to commencing construction, the applicant must submit, to the appropriate regional office, proof of application for recordation of notice in the county deed records.

(h) Term of approval. The executive director's approval of an Edwards Aquifer protection plan will expire two years after the date of initial issuance, unless prior to the expiration date, construction related to the approved plan has commenced. If a written request for an extension is timely filed under the provisions of this subsection, the approved plan shall continue in effect until the executive director makes a determination on the request for the extension.

(1) A written request for an extension must be received not earlier than 60 days and no later than 30 days prior to the expiration date of an approved Edwards Aquifer protection plan or a previously approved extension. Requests for extensions are subject to fees outlined in §213.13 of this title (relating to Fees Related to Requests For Extensions).

(2) An executive director's approved extension will expire six months after the original expiration date of the approved Edwards Aquifer protection plan or a previously approved extension unless prior to the expiration date, commencement of construction, repair, or replacement related to the approved plan has occurred.

(3) Any requests for extensions received by the executive director after the expiration date of an approved Edwards Aquifer protection plan or a previously approved extension will be considered a new application for the purposes of this title and will be subject to appropriate fees.

(4) An extension will not be granted if the proposed regulated activity or approved plan for the regulated activity(s) under this chapter has changed.

(i) Legal Transfer of Property. Upon legal transfer of property, sewage collection systems, force mains, lift stations, underground storage tank system, or aboveground storage tank system, the new owner(s) is required to comply with all terms of the approved Edwards Aquifer protection plan. If the new owner intends to commence any new regulated activity on the site, he/she must file an Edwards Aquifer protection plan that specifically addresses the new activity.

(j) Modification of previously approved plans. The holder of any approved Edwards Aquifer protection plan must notify the appropriate regional office in writing and obtain approval from the executive director prior to any of the following:

(1) any physical or operational modification of any water pollution abatement structure(s), including but not limited to ponds, dams, berms, sewage treatment plants, and diversionary structures;

(2) any change in the nature or character of the regulated activity from that which was originally approved or a change which would significantly impact the ability of the plan to prevent pollution of the Edwards Aquifer;

(3) any development of land previously identified as undeveloped in the original water pollution abatement plan;

(4) any physical modification of the approved organized sewage collection system;

(5) any physical modification of the approved underground storage tank system; or

(6) any physical modification of the approved aboveground storage tank system.

(k) Compliance. The holder of the approved or conditionally approved Edwards Aquifer protection plan shall be responsible for compliance with this chapter and any special conditions of an approved plan through all phases of plan implementation. Failure to comply with any condition of the executive director's approval is a violation of this rule.

§213.5. Required Edwards Aquifer Protection Plans, Notification, and Exemptions.

(a) Required plans. A plan must be submitted for the following, as appropriate:

(1) a water pollution abatement plan under subsection (b) of this section to conduct regulated activities on the recharge zone not covered by subsections (c), (d), or (e) of this section;

(2) an organized sewage collection system plan under subsection (c) of this section for repair, replacement, or construction related to existing or new organized sewage collection systems on the recharge zone;

(3) an underground storage tank facility plan for static hydrocarbon and hazardous substance storage under subsection (d) of this section for the construction, repair, or replacement of an underground storage tank system; including tanks, piping, and related systems located on the recharge zone or transition zone; and

(4) an aboveground storage tank facility plan for static hydrocarbon and hazardous substance storage under subsection (e) of this section for the construction, repair, or replacement of an aboveground storage tank system; including tanks, piping, and related systems, for the storage of hydrocarbon or hazardous substance located on the recharge zone or transition zone.

(b) Water Pollution Abatement Plan. A water pollution abatement plan must contain the following information.

(1) Application. The information required under §213.4 of this title (relating to Application Processing and Approval) is part of the plan and shall be filed with the executive director at the appropriate regional office.

(2) Site location. The location data and maps shall include the following:

(A) a legible road map with directions, including mileage, which would enable the executive director to locate the site for inspection;

(B) a general location map showing:

(i) the site location on a copy (or spliced composite of copies, if necessary) of an official recharge zone map(s) with quadrangle name(s) and recharge and transition zone boundaries clearly labeled; and

(ii) a drainage plan, shown on the recharge zone map, indicating all paths of drainage from the site to the boundary of the recharge zone; and

(C) a site plan with a minimum scale of 1 inch to 400 feet, showing:

(i) the 100-year floodplain boundaries (if applicable);

(ii) the layout of the development, and existing and finished contours at appropriate, but not greater than five foot contour intervals;

(iii) the location of all known wells (including but not limited to water wells, oil wells, and unplugged and abandoned wells); and

(iv) any sensitive feature located on the site of the proposed regulated activity or for areas beyond the site boundary that is within the 100-year floodplain and is a distance of one-half mile downgradient of the site as identified in paragraph (3) of this subsection.

(3) Assessment of area geology. For all regulated activities, the applicant must submit a report prepared by a geologist describing area and site-specific geology identifying all potential pathways for contaminant movement to the Edwards Aquifer. For ar-

eas beyond the site boundary that are within the 100-year floodplain and are the shorter distance of either one-half mile downgradient of the site or the downgradient boundary of the recharge zone, the geologic assessment must include an identification of sensitive features. If access to downgradient property is denied, these features may be inventoried from literature searches, recognized from aerial photographs, or identified from other sources of information. Where the 100-year floodplain has not been delineated, the applicant shall delineate the 100-year floodplain, showing all applicable data and calculations used to make such a delineation. Single-family residential subdivisions constructed on less than 10 acres are exempt from this requirement. The geologic assessment must include:

(A) a geologic map at site-plan scale showing the outcrop of surface geologic units and all geologic and manmade features, specifically identifying caves, sinkholes, faults, permeable fractures, solution zones, and other sensitive features;

(B) a stratigraphic column showing at a minimum, formations, members, and thicknesses;

(C) forms provided by or approved by the executive director, which describe and evaluate all geologic and manmade features to access and determine if they are sensitive features, and include:

(i) identification of each geologic or manmade feature, with a cross reference to the site-plan map coordinates; and

(ii) the type of geologic or manmade feature, including but not limited to, sinkholes, caves, faults, wells or potentially permeable fractures and solution zones;

(D) a narrative assessment of site-specific geology, detailing the potential for fluid movement to the Edwards Aquifer, including discussion of the stratigraphy, structure, and karstic characteristics of the site; and

(E) a narrative description of soil units and soil profile, including thickness and hydrologic characteristics.

(4) Technical report. For regulated activities, a technical report shall address the following issues.

(A) An assessment of:

(i) the nature of the regulated activity (such as residential, commercial, industrial, or utility), including the size of the site in acres; the projected population for the site; the amount and type of impervious cover expected after construction is complete, such as paved surface or roofing; the amount of surface expected to be occupied by parking lots; and other factors that could affect water quality;

(ii) the volume and character of wastewater expected to be produced (such as wastewater generated at a site should be characterized as either domestic or industrial, or if commingled, by approximate percentages of each type);

(iii) the volume and character of stormwater runoff expected to occur (estimates of stormwater runoff quality and quantity should be based on area and type of impermeable cover, as described in clause (i) of this subparagraph); and

(iv) any activities or processes which may be a potential source of contamination.

(B) A description of the best management practices and measures that will be taken to prevent pollution of stormwater originating on-site or upgradient from the site and potentially flowing across the site during construction and after completion of construction.

(C) A description of the best management practices and measures that will be taken to prevent pollution downgradient of the site by contaminated stormwater runoff from the site during construction and after completion of construction.

(D) A description of the best management practices and measures that will be taken to prevent pollutants from entering the aquifer while, to the extent practicable, maintaining flow to sensitive features identified in either the assessment of area geology or during excavation, blasting, or construction. The sealing of sensitive features as a pollution control measure will be evaluated by the executive director on a case-by-case basis.

(E) Measures to be taken to avoid or minimize changes in which water may enter a stream as a result of construction and development that would increase flashing, create stronger flow and stream velocity; or otherwise increase instream erosion and further water quality degradation;

(F) A description of the method of disposal of wastewater from the site:

(i) if wastewater is to be disposed of by conveyance to a sewage treatment plant for treatment and disposal, the existing or proposed treatment facility must be identified; or

(ii) if wastewater is to be disposed of by an on-site sewage facility, the application must be accompanied by a written statement from the appropriate authorized agent, stating that the site is suitable for the use of private sewage facilities and will meet the special requirements for on-site sewage facilities located on the Edwards Aquifer recharge zone as specified under Chapter 285 of this title (relating to On-site Wastewater Treatment), or identifying those areas that are not suitable.

(G) A description of measures that will be taken to contain any spill of hydrocarbons or hazardous substances from temporary aboveground storage of 250 gallons or more. Temporary storage facilities are those used on site for less than one year. Temporary aboveground storage tank systems of 250 gallons or more cumulative storage capacity shall be located a minimum horizontal distance of 150 feet from any domestic, industrial, irrigation, or public water supply well, or other sensitive feature.

(H) A plan for the inspection of best management practices and measures and for their maintenance and repair.

(c) Organized Sewage Collection Systems.

(1) No person shall commence repair, replacement, or construction related to an existing or new organized sewage collection system on the recharge zone, until design plans, specifications, and an engineering report, as specified in Chapter 317 of this title (relating to Design Criteria for Sewerage Systems) and appropriate special requirements of this section, have been filed with and approved by the executive director or review authority.

(2) General design of sewage collection systems. Design of new sewage collection systems on the recharge zone must comply with Chapter 317 of this title.

(3) Special requirements for sewage collection systems. In addition to the requirements in paragraph (2) of this subsection, sewage collection systems on the recharge zone must meet the following special requirements.

(A) Manhole construction, repair, or replacement. All manholes constructed, repaired, or replaced after March 21, 1990, must be watertight, with watertight rings and covers and must be constructed and tested to meet the requirements of §317.2(c)(5)(H) of this title (relating to Sewage Collection System).

(B) Piping for gravity and pressurized collection systems. Compliance with the following is required, unless local regulations dictate more stringent standards:

(i) for gravity collection systems, all PVC pipe must have a Standard Dimension Ratio (SDR) of 35 or less and meet the requirements of §§317.2(a)-317.2(c)(4) of this title; and

(ii) for all pressurized sewer systems, all PVC pipe must have a minimum working pressure rating of 150 pounds per square inch and meet the requirements of §317.2(d)(2)-(4) and §317.3(d)(5)-(7) of this title (relating to Sewage Collection System and Lift Stations).

(C) Lift station design. Lift stations must be designed and constructed to assure that bypassing of any sewage does not occur. All lift stations must be designed to meet the requirements of §317.2(d) and §317.3 of this title. A lift station submittal must include final construction plans and a design report prepared by or under the direct supervision of a Texas Registered Professional Engineer. All design information must be signed, sealed, and dated by a Texas Registered Professional Engineer.

(D) Certification of new sewage collection system lines by a Texas Register Professional Engineer. Owners of sewage collection systems must insure that all new gravity sewer system lines having a diameter greater than or equal to six inches, all new force mains, and all new private service laterals, are tested for leakage following construction. Such lines must be certified by a Texas Registered Professional Engineer to meet the appropriate requirements of §317.2 of this title (relating to Design Criteria for Sewerage Systems). The engineer shall retain copies of all test results which shall be made available to the executive director upon request. The engineer shall submit a letter certifying that all wastewater lines have passed all required testing to the appropriate regional office within 30 days of test completion and prior to use of the new collection system. Following the completion of the new sewer lines and manholes, they must be tested every five years thereafter in accordance with subparagraph (E) of this paragraph.

(E) Testing of existing sewer lines. Owners of sewage collection systems must insure that all existing sewer lines having a diameter greater than or equal to six inches, including private service laterals, manholes, and connections, are tested to determine types and locations of structural damage and defects such as offsets, open joints, or cracked or crushed lines that would allow exfiltration to occur. Existing manholes and lift station wetwells shall be tested using methods for new structures which are approved by the executive director.

(i) Testing of all sewage collection systems shall be completed within five years of commencement. Any sewage collection system in place as of March 21, 1990 shall have commenced and completed testing. Every five years thereafter, existing sewer

collection systems must be tested to determine types and locations of structural damage and defects such as offsets, open joints, or cracked or crushed lines that would allow exfiltration to occur. These test results shall be certified by a Texas Registered Professional Engineer. The following methods meet the requirements for the five-year testing of existing sewer lines.

(I) In-place deflection testing shall meet the requirements of §317.2(a)(4)(C) of this title. No pipe shall exceed a deflection rate of 5.0%.

(II) Internal line inspections, using a color television camera to verify that the lines are free of structural damage such as offsets, open joints, or cracked or crushed lines, that would allow exfiltration to occur, are acceptable. The use of black and white television equipment will not be accepted by the executive director.

(III) In-line smoke testing is acceptable only for the testing of private service laterals.

(IV) Testing methods other than those listed above must be approved by the executive director prior to initiating the sewer line testing.

(ii) As soon as possible, but at least within one (1) year of detecting defects, repairs to the sewage collection system must be initiated by the system's owner. However, all leakage must be immediately contained to prevent any discharge to water in the state or pollution of the Edwards Aquifer whether necessary repairs have been completed or not. Failure to comply with this section is a violation of §26.121 of the Texas Water Code. All repairs must be certified by a Texas Registered Professional Engineer. Repairs must be tested within 45 days of completion using the methods described in clause (i) of this subparagraph. Results must be submitted to the appropriate regional office within 30 days of testing.

(F) Blasting for sewer line excavation. Blasting for sewer line excavation must be done in accordance with appropriate criteria established by the National Fire Protection Association. Should such blasting result in damage to an existing or newly completed sewer line or any of its appurtenances, the owner of the sewer system and appurtenances must repair and retest the damaged sewer line and its appurtenances immediately. The use of sand for pipe embedment or backfill in blasted rock is prohibited.

(G) Sewer line stub outs. New collection system lines must be constructed with stub outs for the connection of anticipated extensions. The location of such stub outs must be marked on the ground such that their location can be easily determined at the time of connection of the proposed extensions. All stub outs must be sealed with a manufactured cap to prevent leakage. Extensions that were not anticipated at the time of original construction or that are to be connected to an existing sewer line not furnished with stub outs must be connected using a manufactured saddle in accordance with accepted plumbing techniques.

(i) Main line stub outs. Manholes shall be placed at the end of all sewer lines that will be extended at a future date, as specified in §317.2(c)(5) of this title. If the main line is to be extended within one year, a variance to allow the use of stub out until the line is extended will be considered on a case-by-case basis. At the time of original construction, new stub outs must be constructed sufficiently to extend beyond the end of the street pavement. Stub outs that were not anticipated at the time of original construction must enter the

manhole using a bored or drilled hole. Chiseling or hammering to enter a manhole is prohibited.

(ii) Private service lateral stub outs. Such stub outs must be manufactured using wyes or tees that are compatible in size and material with both the sewer line and the extension. Private service lateral stub outs that were not anticipated at the time of original construction must be connected using a manufactured saddle in accordance with accepted plumbing techniques.

(H) Locating sewer lines within a five-year floodplain. Sewer lines shall not be located within the five-year floodplain of a drainageway, unless an exemption is granted by the executive director. If the applicant demonstrates to the executive director that such location is unavoidable, and the area is subject to inundation and stream velocities which could cause erosion and scouring of backfill, the trench must be capped with concrete to prevent scouring of backfill, or the sewer lines must be encased in concrete. All concrete shall have a minimum thickness of six inches.

(I) Inspection of private service lateral connections. After installing and prior to covering and connecting a private service lateral to an organized sewage collection system, a Texas Registered Professional Engineer, Texas Registered Sanitarian, or appropriate city inspector shall inspect the private service lateral and the connection to the collection system and certify that construction conforms with the applicable provisions of this subsection. The owner of the collection system must maintain such certifications for three years and forward copies to the appropriate regional office upon request. No connections may be made to an approved sewage collection system until the executive director has received certification of new construction or repairs, and subsequent testing has been performed as required by paragraph (D) or (E) of this subsection. Private service laterals may only be connected to approved sewage collection systems.

(J) Embedment materials. Embedment materials must meet the specification for bedding contained in §317.2(a)(5) of this title.

(K) Sewer lines bridging caverns or other sensitive features. Sewer lines that bridge caverns or sensitive features must be constructed in a manner that will maintain the structural integrity of the line. When such geologic features are encountered during construction, the location and extent of those features must be reported to the appropriate regional office in writing within two working days of discovery and must comply with the requirements under subsection (g) of this section.

(L) Erosion and sedimentation control. A temporary erosion and sedimentation control plan must be included with all construction plans. All temporary erosion and sedimentation controls must be installed prior to construction, must be maintained during construction, and shall be removed when vegetation is established and the construction area is stabilized.

(M) Alternative sewage collection systems. The executive director may approve an alternative procedure which is technical justified; signed, sealed and dated by a Texas Register Professional Engineer indicating equivalent environmental protection; and which complies with the requirements of §317.2(d) of this title (relating to Design Criteria for Sewerage Systems).

(N) Required corrective action. Notwithstanding compliance with the requirements of subparagraphs (A)-(M) of this para-

graph, sewage collection systems must operate in a manner that will not cause pollution of the Edwards Aquifer. Any failure must be corrected in a manner satisfactory to the executive director.

(4) Contents of organized sewage collection system plan.

(A) Application. For organized sewage collection systems, the information required under §213.4 of this title (relating to Application Processing and Approval) shall be filed with the executive director at the appropriate regional office.

(B) Narrative description of proposed organized sewage collection system. A narrative report must include at a minimum a geographic description and anticipated type of development within the sewage collection system service area. A technical report that was submitted under subsection (b) of this section satisfies this requirement, provided it properly addresses the proposed sewage collection systems.

(C) Plans and specifications. Plans and specifications addressing all the requirements in paragraphs (2) and (3) of this subsection, at a minimum, must include at a minimum:

(i) a map showing the location of the organized sewage collection system lay-out in relation to recharge zone boundaries;

(ii) a map showing the location of the organized sewage collection system lay-out, overlaid by topographic contour lines, using a contour interval of not greater than five feet, and showing the area within both the 5-year floodplain and the 100-year floodplain of any drainage way;

(iii) construction documents prepared by or under the supervision of a Texas Registered Professional Engineer, which have also been signed, sealed, and dated by that Texas Register Professional Engineer, at a minimum, shall include:

(I) plan and profile view of the collection system;

(II) construction details of collection system components;

(III) specifications for all collection system components; and

(IV) proposed pollution abatement measures for sensitive features identified along the path of the proposed sewer line.

(D) Assessment of area geology. An assessment of area geology shall be performed along the path of the proposed sewer line(s), plus 50 feet on each side of the proposed sewer line as described in subsection (b)(3) of this section.

(d) Static Hydrocarbon and Hazardous Substance Storage in Underground Storage Tanks System.

(1) Standards for Underground Storage Tank Systems. New or replacement systems for the underground storage of static hydrocarbons or hazardous substances shall be of double-walled or an equivalent method approved by the executive director. Methods for detecting leaks in the inside wall of double-walled system shall be included in the facility's design and construction. The leak detection system shall provide continuous monitoring of the system and shall be capable of immediately alerting the system's owner of possible leakages. System design shall be prepared and signed by a contractor

registered under Chapter 334 of this title (relating to Underground and Aboveground Storage Tanks).

(A) Installation. All underground hydrocarbon and hazardous substance storage tank systems shall be installed by a person possessing a valid certificate of registration in accordance with the requirements of Subchapter I of Chapter 334 of this title (relating to Underground and Aboveground Storage Tanks).

(B) Siting. Any new underground hydrocarbon and hazardous substance storage tank system that does not incorporate a method for tertiary containment shall be located a minimum horizontal distance of 150 feet from any domestic, industrial, irrigation, or public water supply well, or other sensitive feature.

(2) Contents of an Underground Storage Tank Facility Plan. An underground storage tank facility plan must, at a minimum, contain the following information.

(A) Application. The information required under §213.4 of this title (relating to Application Processing and Approval) shall be filed with the executive director at the appropriate regional office.

(B) A site location map as specified in subsection (b)(2) of this section including a legible road map, a general location map, and a site plan, shall be submitted as part of the plan.

(C) Assessment of area geology. For all facilities, located on either the recharge zone or transition zone, an assessment of area geology, as described in subsection (b)(3) of this section, shall be submitted for the site and for areas beyond the site boundary that is within the 100-year floodplain the shorter distance of either one-half mile downgradient of the site or the downgradient boundary of the recharge zone.

(D) Technical report. For all facilities, located on either the recharge zone or transition zone, a technical report as described in §213.5(b)(4) of this title (relating to Technical report), shall be submitted for the site.

(e) Static Hydrocarbon and Hazardous Substance Storage in an Aboveground Storage Tank Facility.

(1) Design standards. Facilities used for the temporary and permanent aboveground storage of static hydrocarbon and hazardous substance shall be constructed within controlled drainage areas that are sized to capture one and one-half times the storage capacity of the facility. The controlled drainage area shall be constructed of and in a material impervious to the substance(s) being stored, and shall direct spills to a convenient point for collections and recovery. Any spills from storage tank facilities shall be removed from the controlled drainage area for disposal within 24 hours of the spill.

(2) Contents of an Aboveground Storage Tank Facility Plan. A permanent aboveground storage tank facility plan must contain, at a minimum, the following information.

(A) Application. For an aboveground storage tank facility, the information required under §213.4 of this title shall be filed with the executive director at the appropriate regional office.

(B) A site location map as specified in subsection (b)(2) of this section, including a legible road map, a general location map, and a site plan, shall be submitted as part of the plan for a permanent facility.

(C) Assessment of area geology. For all facilities, located on either the recharge zone or transition zone, an assessment of area geology, as described in subsection (b)(3) of this section, shall be submitted for the site and for areas beyond the site boundary that is within the 100-year floodplain the shorter distance of either one-half mile downgradient of the site or the downgradient boundary of the recharge zone.

(D) Technical report. For all facilities, located on either the recharge zone or transition zone, a technical report as described in subsection (b)(4) of this section (relating to Technical report), shall be submitted.

(3) A description of measures that will be taken to contain any spill of hydrocarbons or hazardous substances from temporary storage of 250 gallons or more shall be included with the plan unless described under subsection (b)(4)(F) of this section. Any new temporary aboveground hydrocarbon and hazardous substance storage tank system shall be located a minimum horizontal distance of 150 feet from any domestic, industrial, irrigation, or public water supply well, or other sensitive feature.

(4) Exemptions from this section.

(A) Equipment used to transmit electricity that utilizes mineral oil for insulation or cooling purposes, including transformers and oil circuit breakers, are exempt from this section.

(B) Permanent storage facilities with a cumulative storage capacity of less than 500 gallons are exempt from this section.

(f) Notification and inspection.

(1) The applicant must provide written notification of intent to commence construction, repair, or replacement to the appropriate regional office 48 hours prior to commencing such regulated activity. Written notification shall include the date on which the regulated activity will commence and identify the approved plan under which the regulated activity will proceed.

(2) If any sensitive feature is discovered during construction, repair, or replacement, all regulated activities near the sensitive feature must be suspended immediately. The holder of an approved Edwards Aquifer protection plan must immediately notify the appropriate regional office of any sensitive features encountered during construction before continuing construction. Regulated activities near the sensitive feature may not proceed until the executive director has reviewed and approved the methods proposed to protect the sensitive feature and the Edwards Aquifer from potential adverse impacts to water quality.

(A) The holder of an approved sewage collection system plan, must meet the following.

(i) Upon completion of any lift station excavation, a geologist shall certify that the excavation has been inspected for the presence of sensitive features. Certification that the excavation has been inspected shall be submitted to the appropriate regional office. Further excavation and installation activities shall not proceed until the executive director has reviewed and approved the methods proposed to protect any sensitive feature discovered during this inspection and the Edwards Aquifer from potentially adverse impacts to water quality from the lift station.

(ii) A Texas Registered Professional Engineer shall submit proposed plans for insuring the structural integrity of the sewer

line or modifying the proposed collection system alignment around the feature.

(B) Upon completion of tankhold excavation for an approved underground storage tank facility plan, a geologist shall certify that the excavation has been inspected for the presence of sensitive features. Certification that the excavation has been inspected shall be submitted to the appropriate regional office. Installation activities shall not proceed until the executive director has reviewed and approved the methods proposed to protect any sensitive feature found during this inspection and the Edwards Aquifer from potentially adverse impacts to water quality from the underground storage tank system. This protection method shall be consistent with subsection (d)(1)(B) of this section.

(3) The executive director must determine the acceptability of plans intended to demonstrate methods to mitigate potential contamination associated with the sensitive feature within one week of receiving the plans.

(g) On-site sewerage systems. On-site sewerage systems located on the recharge zone of the Edwards Aquifer must be designed, installed, maintained, repaired, and replaced in accordance with §285.18 of this title (relating to On-Site Sewerage Facilities on Recharge Zones of the Edwards Aquifer) and other applicable provisions contained in Chapter 285.

(h) Exemption. The installation of natural gas, telephone or electric lines, water lines, or other such utility lines which are not designed to carry and will not carry pollutants, stormwater runoff, or sewage effluent is exempt from the Edwards Aquifer protection plan submittal requirements under this section. The construction of these facilities on the recharge zone is a regulated activity and the installation and maintenance of appropriate temporary erosion and sedimentation controls is required. All temporary erosion and sediment controls must be installed prior to construction, must be maintained during construction, and shall be removed when vegetation is established and the construction area is stabilized. The executive director may monitor stormwater discharges from these projects to evaluate the adequacy of the temporary erosion and sedimentation control measures. Additional protection will be required if the executive director determines that these controls are inadequate to protect water quality.

§213.6. Wastewater Treatment and Disposal Systems.

(a) General. New discharges or increases in discharges into or adjacent to water in the state that would create additional loading by treated wastewater are prohibited on the recharge zone. Existing permits may be renewed for the same discharge volumes and with the same conditions and authorizations specified in the permit unless the facility becomes non-compliant, as defined in Chapter 337 of this title (relating to Enforcement). New land application wastewater treatment plants located on the recharge zone must be designed, constructed, and operated such that there are no bypasses of the treatment facilities or any discharges of untreated or partially treated wastewater. Design of wastewater treatment plants must be in accordance with Chapter 317 of this title (relating to Design Criteria for Sewerage Systems).

(b) Land application systems. Except for licensed private sewage facilities, land application systems that rely on percolation for wastewater disposal are prohibited on the recharge zone. Wastewater disposal systems for disposal of wastewater on the recharge zone utilizing land application methods, such as evaporation or irrigation, will be considered on a case-by-case basis. At a minimum, those

systems must attain secondary treatment as defined in Chapter 309 of this title (relating to Effluent Limitations). Existing permits may be renewed for the same discharge volumes and with the same conditions and authorizations specified in the permit unless the facility becomes non-compliant, as defined in Chapter 337 of this title (relating to Enforcement).

(c) Discharge upstream from the recharge zone.

(1) All new or increased discharges of treated wastewater into or adjacent to water in the state, other than industrial wastewater discharges, within zero to five (0 to 5) miles upstream from the recharge zone, at a minimum, shall achieve the following level of effluent treatment:

(A) five milligrams per liter of carbonaceous biochemical oxygen demand, based on a 30-day average;

(B) five milligrams per liter of total suspended solids, based on a 30-day average;

(C) two milligrams per liter of ammonia nitrogen, based on a 30-day average; and

(D) one (1) milligram per liter of phosphorus, based on a 30-day average.

(2) All new or increased discharges into or adjacent to water in the state, other than industrial wastewater discharges, more than five miles but within ten miles upstream from the recharge zone and any other discharges that the agency determines may affect the Edwards Aquifer, at a minimum, must achieve the level of effluent treatment for 2N based on a 30-day average as set out in Table 1 of Chapter 309 of this title. More stringent treatment or more frequent monitoring may be required on a case-by-case basis.

(3) All discharges, other than industrial wastewater discharges, more than five miles upstream from the recharge zone which enter the main stem or a tributary of Segment 1428 of the Colorado River, or Segment 1427, main stem Onion Creek, or a tributary of Onion Creek must comply with §311.43 of this title (relating to Effluent Requirements for All Tributaries of Segment 1428 of the Colorado River and Segment 1427, Onion Creek, and Its Tributaries, of the Colorado River Basin), and to §311.44 of this title (relating to Disinfection). More stringent treatment or more frequent monitoring may be required on a case-by-case basis.

(4) Any existing permitted industrial wastewater discharges within zero to ten miles upstream of the recharge zone must, at all times, discharge effluent in accordance with permitted limits. Any application for new industrial wastewater discharge permits for facilities zero to ten miles upstream of the recharge zone will be considered on a case-by-case basis, in accordance with appropriate discharge limits applicable to that industrial activity and with consideration of its proximity to the recharge zone.

§213.7. *Plugging of Abandoned Wells.*

All identified abandoned water wells, including injection, dewatering, and monitoring wells must be plugged pursuant to requirements under Chapter 338 of this title (relating to Water Well Drillers) and all other locally applicable rules, as appropriate.

§213.8. *Prohibited Activities.*

(a) Recharge zone. The following activities are prohibited on the recharge zone:

(1) waste disposal wells regulated under Chapter 331 of this title (relating to Underground Injection Control);

(2) new feedlot/concentrated animal feeding operations regulated under Chapter 321 of this title (relating to Control of Certain Activities by Rule).

(3) land disposal of Class I wastes, as defined in §335.1 of this title (relating to Definitions);

(4) the use of a sewage holding tank as part of an organized sewage collection systems; and

(5) new municipal solid waste landfill facilities required to meet and comply with Type I standards which are defined in §330.41 (b), (c), and (d) of this title (relating to Types of Municipal Solid Waste Facilities).

(b) Transition zone. The following activities are prohibited on the transition zone:

(1) waste disposal wells regulated under Chapter 331 of this title;

(2) land disposal of Class I wastes, as defined in §335.1 of this title; and

(3) new municipal solid waste landfill facilities required to meet and comply with Type I standards which are defined in §330.41 (b), (c), and (d) of this title.

§213.9. *Exceptions.*

(a) Granting of exceptions. Exceptions to any provisions of this chapter may be granted by the executive director if the requestor can demonstrate equivalent protection for the Edwards Aquifer. Requests for exceptions will be reviewed by the executive director on a case-by-case basis.

(b) Procedure for requesting an exception. A person requesting an exception to the provisions of this chapter must file four copies of a written request with the executive director at the appropriate regional office stating in detail:

(1) the name, address, and telephone numbers of the requestor;

(2) site and project name and location;

(3) the nature of the exception requested;

(4) the justification for granting the exception as described in (a) of this section; and

(5) any other pertinent information that the executive director requests.

§213.10. *Enforcement.*

Failure to comply with any provision of this chapter or of any applicable regulation or order of the commission issued pursuant to this chapter and in accordance with Chapter 26 and other relevant provisions of the Texas Water Code may result in liability for penalties and may subject a noncompliant person to enforcement proceedings initiated by the executive director under Texas Water Code, Chapter 26.

§213.11. *Groundwater Conservation Districts.*

The commission recognizes the authorities, powers, and duties of special-purpose districts, created by the Texas Legislature or by the commission under Chapter 36 of the Texas Water Code, as

groundwater conservation districts to conserve, prevent waste, and protect the quality of ground water. In order to foster cooperation with local governments, the commission encourages districts to assist it in the administration of this chapter by carrying out the following functions within the areal extent of their geographic jurisdiction which includes the recharge zone or transition zone:

- (1) cooperating with licensing authorities in carrying out the provisions of this chapter,
- (2) conducting such geologic investigations as are necessary to provide updated information to the executive director regarding the official maps of the recharge zone and transition zone,
- (3) monitoring the quality of water in the Edwards Aquifer, and
- (4) maintaining maps of regulated activities on the recharge or transition zone.

§213.12. Applications Fees.

The person submitting an application for approval or modification of any plan under this chapter must pay an application fee in the amount set forth in §213.14 of this Chapter (relating to Fee Schedule). The fee is due and payable at the time the application is filed. The fee must be sent to the appropriate regional office or the cashier in Austin Office of the agency, accompanied by an Edwards Aquifer Fee Application Form, provided by the executive director. Application fees must be paid by check or money order, payable to the "Texas Natural Resource Conservation Commission". If the application fee is not submitted in the correct amount, the executive director is not required to consider the application until the correct fee is submitted.

§213.13. Fees Related to Requests for Extensions.

The person submitting an application for an extension of an approval of any plan under this chapter must pay \$100 for each extension request. The fee is due and payable at the time the extension request is filed, and should be submitted as described in §213.12 of this title (relating to Application Fees). If the extension fee is not submitted in the correct amount, the executive director is not required to consider the extension request until the correct fee is submitted. The extension request must be submitted to the appropriate regional office and must include a copy of the Edwards Aquifer protection plan and approval letter that is the subject of the extension request.

§213.14. Fee Schedule.

(a) Water Pollution Abatement Plans. For water pollution abatement plans and modifications to those plans, the application fee shall be based on the classification and total acreage of the site where regulated activities will occur as specified in Table 1.
Figure: 30 TAC §213.14(a)

(b) Organized sewage collection systems. For sewage collection system plans and modifications, the application fee shall be based on the total number of linear feet of all lines for which approval is sought. The fee shall be \$.50 per linear foot, with a minimum fee of \$500 and a maximum fee of \$2,000.

(c) Underground and aboveground storage tank facilities. For underground or permanent aboveground storage tank system facility plans and modifications, the application fee shall be based on the number of tanks or piping systems for which approval is sought. The fee shall be \$500 per tank or piping system, with a minimum fee of \$500 and a maximum fee of \$2,000.

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

Issued in Austin, Texas, on July 8, 1996.

TRD-9609743

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Proposed date of adoption: September 16, 1996

For further information, please call: (512) 239-4640

Chapter 285. On-Site Sewage [Wastewater Treatment] Facilities

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes the repeal of §§285.11-285.18, 285.51- 285.63 and 285.101- 285.109, relating to on-site wastewater treatment, and proposes new Subchapters A-1, §§285.1- 285.7, 285.10- 285.11, 285.20- 285.22, 285.30-285.36, 285.39, 285.40, 285.50- 285.63, 285.70, 285.80, and 285.90- 285.91, relating to on-site sewage facilities.

The commission has assessed the existing rules, which were adopted by the Texas Department of Health in January 1990, concerning the On-Site Sewage Facility (OSSF) system standards, specifications, criteria, and program administration and determined new rules are necessary in order to effectively administer, manage, and implement the program regulating the planning, design, construction, installation, operation, and maintenance of OSSFs in the state.

The purpose of the proposed new rules is to revise the technical standards in response to the evolution of on-site wastewater technology since 1990. In addition, these new rules are being proposed to provide minimum levels of acceptable criteria to assure that the proper OSSFs are being installed in the state in order to eliminate and prevent health hazards for the public and the waters in the state.

New Chapter 285 is being proposed, in part, to simplify the existing rules. The commission has received criticism that the existing rules are difficult to work with and understand. Similar procedures, standards, and criteria are being consolidated into subchapter format to enhance their effectiveness.

In addition, the proposed new rules concerning general program administration are being proposed in order to clarify program operating procedures, better define the commission's relationship with authorized agents, establish an additional class of installer and continuing education requirements for installers, and require the training and certification for individuals inspecting OSSF systems in the state. These proposed new rules will implement Senate Bill 1042 mandated by the 73rd Legislature (1993) which authorized the commission to establish a certification procedure for designated representatives of authorized agents and to pursue civil and administrative penalties for violations of Chapter 366, Texas Health and Safety Code, or its rules.

The commission proposes a new Subchapter A, General Provisions, which delineates the following: general policies and guidelines under which the commission will administer the OSSF program; the definitions used throughout the proposed

new chapter; who these rules are applicable to; and the general requirements, such as facility planning and submittal requirements, that individuals must adhere to if they are planning to utilize an OSSF as their means of wastewater treatment and disposal. In addition, this proposed new subchapter also establishes the overall requirements for the use of cluster systems and allows the executive director to assess a cost recovery fee in areas of the state where no authorized agent is in existence.

Proposed new §285.1, Purpose, provides the general policies under which the agency will administer the OSSF program.

Proposed new §285.2, Definitions, contains the definitions and meanings of key words and phrases found throughout the proposed new chapter.

Proposed new §285.3, General Requirements, specifies that these proposed new rules are applicable as minimum requirements for all OSSFs installed, repaired, or maintained in the state. This proposed new section prohibits the installation and use of boreholes, cesspools, and seepage pits. In addition, this proposed new section allows anyone to request a variance to the provisions of these proposed new rules so long as the requested variance will provide an equivalent protection of the public health and the environment.

Proposed new §285.4, Facility Planning, establishes lot sizing requirements for any subdivisions platted or designed after January 1, 1988 at « acre for a subdivision served by a public water system and one acre for a subdivision served by individual water systems. In the alternative, an individual must have site-specific planning materials prepared by a registered professional engineer or registered sanitarian and approved by the permitting authority. Any existing lots subdivided prior to January 1, 1988, and not conforming to the minimum lots sizes mentioned above, may be approved for an OSSF provided the site has been determined by a site evaluator to be suitable in accordance with §285.30 of the proposed new chapter (relating to Site Evaluation); and minimum separation distances in §285.31 of the proposed new chapter (relating to Separation/Setback Requirements) are maintained. This proposed new section also describes what planning materials a person proposing a subdivision or development must submit to the permitting authority for approval.

Proposed new §285.5, Submittal Requirements for Planning Materials, specifies who can submit planning materials for the different types of OSSFs. This proposed new section also establishes that the executive director shall review all **initial** non-standard planning materials and the authorized agent shall review all subsequent similar non-standard planning materials once the initial planning materials received a favorable review from the executive director.

Proposed new §285.6, Cluster Systems, delineates the overall requirements for a cluster system and the minimum required elements for property ownership and maintenance of a such an OSSF. Each single family dwelling connected to a cluster system must individually obtain a permit from the permitting authority.

Proposed new §285.7, Cost Recovery Fee, establishes a fee that may be assessed by the executive director to any local governmental entity, in accordance with §366.059 of the Texas

Health and Safety Code, that does not adopt an approved OSSF order/ordinance, rescinds its delegation, or it's delegation is revoked by the commission. The fee is proposed at \$200 for each inspection of a new, altered, extended or repaired OSSF. The purpose of this fee is to recover the administrative costs of the agency's OSSF permitting program.

Proposed new Subchapter B, Local Administration of the OSSF Program, specifies the requirements and procedures for a local governmental entity obtaining delegation of the OSSF program for their area of jurisdiction. The proposed new subchapter also specifies the procedures for amending an existing order/ordinance, relinquishment of delegation by the authorized agent, and revocation of delegation by the commission. In addition, this proposed new subchapter also establishes the criteria for an authorized agent to follow in resolving nuisance complaints, and information regarding the OSSF program that the authorized agent must submit to the executive director on a monthly basis. This proposed new subchapter also specifies that the executive director shall review locally administered programs to assure adequate performance and compliance with requirements established in Chapter 366, Texas Health and Safety Code.

Proposed new §285.10, Delegation to Authorized Agents, establishes the requirements and the step-by-step procedure that a local governmental entity seeking delegation must follow in order to receive delegation. This proposed new section also establishes the procedure for amending an order/ordinance to be the same as obtaining initial delegation. An authorized agent is required by this section to resolve nuisance complaints in accordance with the general criteria established in the section. The authorized agent is required to provide the executive director with a monthly report of OSSF activities within its jurisdiction.

This proposed new section also specifies the requirements and procedures for an authorized agent to follow in requesting relinquishment of its delegation of the OSSF program. In addition, this proposed new section delineates the process and procedures that the executive director and commission will follow in revoking an authorized agent's delegation. If an authorized agent relinquishes delegation or delegation is revoked by the commission, the authorized agent may be subject to assessment of cost recovery fees in accordance with these proposed new rules.

Proposed new §285.11, Review of Locally Administered Programs, specifies that the executive director shall review an authorized agent's program for adequate performance and compliance with this chapter, the order/ordinance adopted by the authorized agent and Chapter 366, Texas Health and Safety Code. If this review determines that an authorized agent does not enforce the minimum requirements established in this proposed new chapter, the commission may hold a hearing to determine whether to revoke delegation for the authorized agent. Proposed new Subchapter C, Commission Administration of the OSSF Program in Areas Where No Local Administration Exists, specifies how the agency will provide the administration of the OSSF related activities in those areas of the state where no authorized agent exists. This proposed new subchapter contains the general application requirements for obtaining a permit for an OSSF in the state and the additional application require-

ments necessary to obtain a permit for an OSSF with a surface application system. This proposed new subchapter also establishes the fee schedule for applications for the different types of OSSF and also establishes a reinspection fee for those facilities which fail a construction inspection of the installed OSSF.

Proposed new §285.20, Application Requirements- General, contains the general procedures for submitting an application to obtain a permit to operate an OSSF in areas of the state where there is no authorized agent. The applications shall be completed and submitted to the local regional office for review and approval. Upon approval of the application, the regional office will issue an authorization to construct which is good for up to one year. Upon approval of the installation (construction inspection), the regional office will issue a license to operate the OSSF in the name of the legal responsible party for that OSSF.

Proposed new §285.21, Additional Application Requirements for Surface Irrigation Systems, provides the additional information that an applicant will have to submit in an application to obtain approval for an OSSF which will utilize surface irrigation as a disposal method. With the application, an applicant will have to submit a technical report, site drawing, landscape plan, and an affidavit. Prior to final approval, the applicant will also have to submit a maintenance contract with a maintenance company, who will be responsible for maintaining and repairing the system as needed. During actual operation of a surface irrigation system, the maintenance company will be responsible for conducting certain tests and reporting the results of those tests in accordance with §285.91 (d) of the proposed new chapter. Any treated effluent which will be used in the surface irrigation system must be disinfected prior to actual application. This proposed new section specifies the accepted methods of disinfection.

Proposed new §285.22, Fees, establishes the fee schedule for applications for OSSF permits and re inspections. The application fee is \$200 for a single family dwelling and \$400 for other types of OSSF installations, excluding single family dwelling. In addition, this proposed new section provides for a reinspection fee, to be paid by the installer, at one-half of the original application fee. Also, this proposed new section specifies when and how the fees are to be paid.

Proposed new Subchapter D, Planning, Construction, and Installation Standards for OSSFs, specifies minimum procedures, requirements, and criteria that must be met to properly plan, construct, and install an OSSF in the state.

Proposed new §285.30, Site Evaluation, specifies that site evaluations have to be made at all potential sites, where an OSSF is to be utilized, to determine the site's suitability for a standard or other proposed type of system. Such evaluations shall be conducted by an individual holding a valid certificate with the agency as a "site evaluator." In the past, percolation tests were used to determine whether a site was suitable for a standard type of OSSF. Under this new proposed section, additional analyses and evaluations have to be made to determine whether a site is suitable. These analyses and evaluations include: soil texture, soil structure, soil depth, depth to a restrictive horizon, depth to groundwater, slope of the tract, and whether the site is in a floodway or depression. Also, this proposed new section establishes the protocol the site evaluator

must follow in doing a percolation evaluation. Upon completion of the site evaluation, the site evaluator determines that all soil and site criteria are suitable, then a standard subsurface disposal method may be utilized. However, if the site evaluator determines that one or more of the soil or site criteria is unsuitable, then standard subsurface disposal methods cannot be utilized. In the latter case, a standard treatment system may be utilized if a non-standard disposal system is used.

Proposed new §285.31, Setback and Separation Requirements, contains the minimum distance requirements that an OSSF must be isolated from certain areas such as water wells, lakes, roads, fences, and other objects subject to contamination from the OSSF. These setback requirements are further specified in §285.91 (j) of this proposed new chapter. This proposed new section provides that surface irrigation areas shall be considered as drainfields for determining separation distances and that all public or private water wells shall be constructed in accordance with Chapters 290 and 338 of this title (relating to Water Hygiene and Water Well Drillers, respectively).

Proposed new §285.32, Criteria for Sewage Treatment Systems, establishes the minimum criteria for standard, proprietary, and non-standard OSSF treatment systems. Septic tanks and intermittent sand filters (secondary treatment only) are listed as standard treatment systems. This proposed new section provides specifications that a manufacturer must conform with in the construction and sale of precast concrete, fiberglass, and polyethylene tanks. Also, this proposed new section specifies that the executive director may require the use of a pretreatment tank for use in conjunction with an aerobic treatment unit that does not prevent non-digestible sewage from interfering with aeration lines and diffusers. In addition, the proposed new section establishes the specifications for using intermittent sand filters as a secondary treatment method.

This proposed new section specifies the testing protocol and approval procedures for proprietary systems. A proprietary system may not be utilized in the state unless it has been approved for use by the agency. The agency will maintain an up-to-date list of all approved proprietary systems. Only proprietary aerobic systems which have been tested and approved by National Sanitation Foundation International (NSF) or by an American National Standard Institute (ANSI) or NSF-accredited testing institution shall be considered for approval by the executive director. For systems which NSF or ANSI or NSF-accredited testing institutions will not accept for testing because of system size or type, the manufacturer shall seek approval by an independent third party testing of the proprietary system through the installation, via a temporary authorization, of a small number of units for a specific two-year test period. The executive director may issue temporary authorizations for the test period. Upon conclusion of the test period, the executive director will review all data and information collected and determine whether to conditionally approve the system. If the system is conditionally approved, such approval will extend only to installations in areas similar to the area where the system was tested. In addition, the system will have to be monitored, by an entity and monitoring method approved by the executive director, for an additional five-year period. Upon successful completion of the monitoring period, the monitoring requirements may be lifted by the executive director and the system deemed suitable for use in areas of the

state with similar site conditions as to those where the system was tested.

In addition, this proposed new section provides that any OSSF not described in this section as a standard or proprietary treatment system will be considered to be non-standard. Such systems shall be submitted to the permitting authority for review by a registered professional engineer. Systems submitted for review will be analyzed on basic engineering principles and the criteria established in this proposed new chapter.

Proposed new §285.33, Criteria for Sewage Disposal Systems, establishes the minimum criteria for standard, proprietary and non-standard OSSF disposal systems. Absorptive drainfields, evapotranspirative drainfields, and pumped effluent drainfields are listed as standard disposal systems. The planning and installation specifications for each of these systems is described in this proposed new section. Gravel-less drainfield piping, leaching chambers, and pressure emitters are listed as acceptable proprietary systems. All proprietary systems, other than those previously described, shall be approved prior to their use in the state. Proprietary systems shall be approved utilizing the procedures described in proposed new section §285.32(b) of this chapter.

In addition, this proposed new section provides that any OSSF not described in this section as a standard or proprietary disposal system will be considered to be non-standard. The permitting authority, at its discretion, shall either approve or disapprove the planning materials on a case-by-case basis. Planning and installation criteria are listed in the proposed new section for low pressure dosed drainfields, surface irrigation systems, mound systems, soil substitution drainfields, and drainfields following secondary treatment and disinfection.

Proposed new §285.34, Other Requirements, establishes the criteria and specifications for: connections between the building structure and the OSSF; pump tanks; pumps; grease interceptors; holding tanks; composting toilets; and discharges from condensate lines.

Proposed new §285.35, Emergency Repairs, specifies that emergency repairs can be made to an OSSF provided that such repairs were made to abate an immediate, serious, and dangerous health hazard, that such repairs did not alter the planned system, and that they meet minimum standards established in this proposed new chapter. All emergency repairs must be reported, in writing, to the permitting authority within 72 hours of the repair.

Proposed new §285.36, Abandoned Septic, Holding, and Pump Tanks, provides that all abandoned tanks, boreholes, cesspools, seepage pits, holding tanks, and pump tanks shall be uncovered, have the wastewater/septage removed, filled with clean sand or other suitable material, and then covered with soil.

Proposed new §285.37 and §285.38 are reserved for future expansion of the rules.

Proposed new §285.39, OSSF Maintenance and Management Practices, specifies a number of maintenance, management, and water conservation practices that each owner/operator of an OSSF shall be made aware of in order to properly operate and maintain an OSSF.

Proposed new Subchapter E, Special Requirements for OSSFs Located in the Edwards Aquifer Recharge Zone, establishes the additional requirements that a person will have to meet if they want to install and maintain an OSSF in the recharge zone of the Edwards aquifer.

Proposed new §285.40, OSSFs on the Recharge Zone of the Edwards Aquifer, provides that the additional requirements established under this proposed new section only apply to this particular area of the state. All planning materials must be submitted by a registered professional engineer. This proposed new section establishes that each lot or tract must contain at least one acre; each treatment or holding tank must be located at least 50 feet away from a recharge feature; any soil absorption system must be located at least 150 feet away from a recharge feature; and any OSSF must be located at least 75 feet away from the banks of the Nueces, Dry Frio, Frio or Sabinal Rivers downstream from the Uvalde County line to the recharge zone.

Also, this proposed new section provides the exceptions for lots recorded or platted before dates specified in the section from the one-acre minimum lot size requirements. Any person desiring to construct a residential development on the recharge zone must notify the prospective buyers of the requirements of this section.

Proposed new Subchapter F, Registration, Certification, and/or Training Requirements for Installers, Apprentices, Site Evaluators, and Designated Representatives, contains the overall requirements that an individual must meet to obtain registration/certification and continue to practice as an installer, apprentice, site evaluator, or designated representative in the state.

Proposed new §285.50, General Requirements for Registration and Certification, provides that no individual represent himself or herself as an installer, site evaluator or designated representative without possessing a valid certificate for that profession. This proposed new section specifies the limitations under which an individual may practice as an installer, apprentice, site evaluator, or designated representative. Beginning 360 days after the effective date of proposed new rules, if adopted, no individual may be employed or compensated as a designated representative or a site evaluator without being registered with the executive director and possessing a valid certification.

Proposed new §285.51, Exceptions to Registration/Certification Requirements, provides that a single family residential property owner is not subject to the training and registration/certification requirements, when that individual installs or repairs an OSSF on his or her own property. However, the individual must still comply with the permitting requirements and planning and installation criteria of this proposed new chapter.

Proposed new §285.52, Administration, establishes the executive director as being responsible for overall management and administration of the registration and certification of installers, apprentices, site evaluators, and designated representatives.

Proposed new §285.53, Applications, provides the overall requirements for making application for registration or certification under this proposed new subchapter. This proposed new section establishes that an application is valid for not more than 12 months from the date of the initial examination.

Proposed new §285.54, Qualifications, specifies the requirements that an installer (two levels), site evaluator, or designated representative would have to complete to qualify for certification. These qualifications include attainment of certain levels of experience and successful completion of agency approved training courses and agency examinations. Beginning 360 days after the effective date of proposed new rules, if adopted, an applicant for an Installer I certification shall have at least one year of experience under an Installer I or II holding a valid certificate. Beginning 360 days after the effective date of proposed new rules, if adopted, an installer shall no longer operate as an Installer II without meeting all the requirements set forth in new proposed Subchapter F.

Proposed new §285.55, Examinations, establishes the procedures for taking an appropriate examination and establishes the follow-up procedures for someone who fails an examination.

Proposed new §285.56, Certificates/Renewal Applications, describes the procedures for the issuance of a certificate, the term of each certificate, and the requirement that each certificate holder shall notify the executive director of any change of address. All classes of certificates will be issued to an individual and are not transferable. In addition, this proposed new section provides the procedures for renewing an existing certificate. It is the responsibility of the certificate holder to make sure that a renewal application and the appropriate fee is submitted to the executive director within 30 days of the expiration date of the individual certificate. Upon the applicant's fulfillment of the requirements of this section, the executive director will issue a certificate renewal. Duplicate certificates may be obtained upon request and the payment of a duplicate certificate fee.

Proposed new §285.57, Fees, specifies the following fees: \$125 for filing an application (includes taking the examination) and combination Installer II and Site Evaluator certification/renewal; \$75 for both installer/Site Evaluator certification/renewal; \$50 for reexamination, late fee, and Designated Representative certification/renewal; \$25 for Apprentice registration/renewal; and \$20 for duplicate certificate. If a certificate holder has not renewed their certificate by the expiration date of the certificate, this proposed new section requires that a late fee be paid in addition to any required renewal fee. If the certificate holder has not renewed an expired certificate within two years of the date of expiration, then the individual must meet all the requirements and procedures for obtaining original certification. In addition, this proposed new section establishes how all fees shall be paid to the agency. All fees paid to the agency under this proposed new section are non-refundable.

Proposed new §285.58, Duties and Responsibilities, establishes what activities a certificate holder, under this proposed new subchapter, must adhere to in the performance of their day-to-day practices under the issued certificate.

Proposed new §285.59, Training, requires that an individual holding a certificate under this proposed new subchapter must successfully complete a minimum of eight hours of continuing education training approved by the executive director on an annual basis in order to renew their certificate. This proposed new section specifies what subjects the continuing education training courses must contain for the different types of certifications.

Proposed new §285.60, Apprentice Program, specifies that an individual wanting to begin an apprentice training program shall have an installer submit a registration form and fee. In addition, the registration request shall include a detailed description of the training program established by the supervising installer for the apprentice, the commencement and termination dates of the training program, and proof that the supervising installer has agreed to accept financial responsibility for the activities of the apprentice undertaken on behalf of the installer. Either the apprentice or the installer may terminate the registration at any time without reason. An apprentice is not allowed to perform any OSSF services except under the direct supervision of an installer.

Proposed new §285.61, Revocation, Suspension or Reinstatement of Certificate and Registration, provides that if the executive director determines good cause, the executive director shall request the commission to schedule a hearing. Notice shall be provided to the certificate holder or registrant. If the commission finds that the certificate holder or registrant violated provisions of this new chapter, falsified information or documents or for other good cause, the commission may suspend or revoke the certificate or registration. A certificate or registration may be suspended for up to one year, unless the certificate holder or registrant requests an indefinite suspension. A certificate or registration is revoked automatically upon a second suspension. A certificate or registration may be permanently revoked or revoked for a term designated by the commission.

Proposed new §285.62, Hearings, specifies the type of notice and to whom the notice of hearing will be given.

Proposed new §285.63, Type of Hearing, provides for how the hearing will be conducted.

Proposed new Subchapter G, OSSF Enforcement, establishes the general protocol for conducting agency investigations related to the OSSF industry and the pursuance of any subsequent enforcement action.

Proposed new §285.70, Agency Enforcement of OSSFs, provides that the executive director may investigate matters related to OSSFs and matters related to apprentices, installers, site evaluators, designated representatives, or authorized agents. The executive director may take appropriate enforcement action under Chapters 70 and 80 of this title (relating to Enforcement and Contested Case Hearings). If the executive director determines that an OSSF is creating a nuisance, the executive director may require the owner to repair the malfunctioning system not later than 30 days from the date notified.

In addition, this proposed new section establishes that the commission can assess administrative penalties or seek other appropriate action under existing commission rules or Chapter 26 of the Texas Water Code or Chapters 341 or 366 of the Texas Health and Safety Code for violations of commission rules or the statutes. Also, this proposed new section provides that written notice, by registered mail to the last known address, shall be given to a certificate holder at least ten days prior to a commission hearing to consider whether to revoke or suspend a certification or reprimand the certificate holder.

Proposed new Subchapter H, Treatment and Disposal of Greywater, establishes the criteria for construction or modification of a greywater system as defined by these proposed new rules.

Proposed new §285.80, Treatment and Disposal of Greywater, specifies that new or existing greywater systems must be constructed or modified in accordance with these rules and the requirements of the Uniform Plumbing Code, Standard Plumbing Code, or other plumbing requirements adopted by the State Board of Plumbing Examiners.

Proposed new Subchapter I, Appendices, provides a list of figures and tables that would need to be utilized to properly plan and construct an OSSF in accordance with these proposed new rules.

Proposed new §285.90, Figures, contains nine separate figures which provide data necessary to properly size an OSSF or examples of forms, reports, and typical layouts of different types of systems described in previous proposed new subchapters.

Proposed new §285.91, Tables, contains eleven separate tables which provide data necessary to determine the proper type, size, and location for an OSSF. Also, this proposed new section provides the required testing and monitoring schedules for proprietary and non-standard treatment systems.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections as proposed are in effect there will be fiscal implications as a result of administration and enforcement of the sections. The effect on state government will be an increase in both revenue and cost. Increases in revenue will result from increases in permit fees and the imposition of fees under the programs for certification of occupations and professionals. These increases are anticipated to be approximately \$1,070,000 in fiscal year 1997, \$805,000 in fiscal year 1998, and decreasing to \$760,000 in each of the fiscal years 1999-2001. Initially, cost increases will be limited by appropriation authority to no more than approximately \$190,000 annually. Costs to the state will also be directly affected by the level of permitting activity for which the state is responsible. The effects on local government will be some increases in cost associated with their functions as the state's authorized agents and designated representatives for operation of the on-site sewage facility program. Local governments electing not to assume delegation of the program will be assessed a charge-back fee of \$200 for each permit issued by the commission within the local jurisdiction. In addition, local designated representatives and other officials will be required to pay an application fee of up to \$125 and new or higher certification fees which will increase from between \$25 and \$75 per year, in addition to other related training and continuing education costs.

Mr. Minick has also determined that for the first five years these sections as proposed are in effect the public benefit anticipated as a result of enforcement of and compliance with the sections will be increased incentives for local administration of water quality programs, improved regulation of on-site sewage facilities, more cost-effective control of potential sources of contamination to surface and groundwater resources and improvement in the qualification and expertise of professionals operating within the on-site wastewater program. The costs to persons affected by these sections are generally associated with in-

creases in fees, although program amendments may also have cost implications. OSSF permit fees for property owners will increase by \$150 for most single-family residences and by \$200 for most commercial facilities. Application fees for those professionals proposed to be certified under these rules will be \$125. Annual renewal and certification fees will range from \$25 to \$75. The proposed provisions regarding third party testing of proprietary equipment will expand opportunities for testing and certification of equipment; however, the costs potentially assessed by third parties to vendors has not been estimated. The effects on small businesses will be similar to those for any business concern and will vary with the size of the operation, the level of activity and the number of professionals subject to the certification and registration provisions of these rules. Some costs to property owners may be offset by cost savings resulting from the proposed amendments relating to reduced engineering and design cost for certain OSSF systems.

The "Texas Government Action Affecting Private Property Act", as found in Chapter 2007 of the Texas Government Code, applies to governmental actions which affect private property. This statute provides that the regulation of on-site sewage disposal systems is specifically exempted from the application of that chapter. The specific exemption is found at Chapter 2007.003(b)(11)(B).

A public hearing on the proposal will be held at 10:00 a.m. on August 8, 1996 in Room 2210, of TNRCC Building F, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, a TNRCC staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments on the proposal should mention Rule Log Number 95122-285-WT and may be submitted to Lutrecia Oshoko, TNRCC Office of Policy and Regulatory, Development, MC 201, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640. Written comments must be received by 5:00 p.m., 30 days from the date of publication of this proposal in the *Texas Register*. For further information or questions concerning this proposal, please contact Michael Fahy, Field Operations Division, at (512) 239-1490.

Subchapter A. General Provisions

30 TAC §§285.1-285.7

The new sections are proposed under Texas Water Code, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code and other laws of this state.

Additionally, the new sections are proposed pursuant to the Texas Health and Safety Code, Chapter 366, which provides the TNRCC with the authority to regulate the on-site sewage facilities and adopt rules consistent with the general intent and purposes of the statutes.

There are no other codes, rules or statutes that will be affected by this proposal.

§285.1. *Purpose.*

It is the policy of the commission to assist the state's citizens in obtaining safe and adequate on-site sewage facilities (OSSFs); to minimize the exposure of Texas citizens to the disease transmission potential of human and domestic waste; to minimize the contamination of drinking water supplies and hazards to the state's recreational areas; and to reduce the potential for surface and groundwater pollution. It is further the policy of the commission to promote regulation of OSSFs by local governmental entities and to eliminate and prevent health hazards through the regulation and the proper planning of the location, design, construction, installation, alteration, extension, repair, operation, and maintenance of OSSFs.

§285.2. *Definitions.*

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

Abandoned tanks - A tank that is not to be used or is not allowed to be used by a permitting authority.

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

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

Apprentice - An individual who has been properly registered with the agency, and is undertaking a training program under the supervision of an installer (holding a valid certificate under this chapter) who has agreed to accept responsibility for the individual.

Authorized agent - A local governmental entity authorized by the commission, executive director or Chapter 284 of this title (relating to Private Sewage Facilities) to implement and enforce Chapter 366, Texas Health and Safety Code.

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

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

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

Certificate or certification - The actual certificate of registration held by an individual required to obtain such under this chapter or the process of obtaining a certificate of registration from the agency.

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

Chemical - A substance that in sufficient quantity could have a biotoxic effect on OSSFs.

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

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

Condensate drain - Collection and disposal of water generated by air conditioners, refrigeration equipment, and other equipment.

Delegation - To delegate or designate.

Designated representative - An individual who holds a valid certificate with the agency and is designated by the authorized agent to make site evaluations, percolation tests, system evaluations, and inspections subject to the authorized agent's approval.

Edwards Aquifer - That portion of an arcuate belt of porous, waterbearing limestones composed of the Comanche Peak, Edwards, and Georgetown formations trending from west to east to northeast through Kinney, Uvalde, Medina, Bexar, Comal, Hays, Travis, and Williamson Counties or as amended under Chapter 313 of this title (relating to Edwards Aquifer).

Edwards Aquifer Recharge zone - Generally, that area where the stratigraphic units constituting the Edwards Aquifer crop out, and including the outcrops of other geologic formations in proximity to the Edwards Aquifer, where caves, sinkholes, faults, fractures, or other permeable features would create a potential for recharge of surface waters into the Edwards Aquifer. The recharge zone is specifically that geological area delineated on official maps located in the Austin and San Antonio Regional Offices of the agency, or as amended by Chapter 313 of this title (relating to Edwards Aquifer).

Emergency repair - A repair made to an OSSF to abate a serious and dangerous nuisance condition without altering the OSSF's planned function and notification is given to the permitting authority within 72 hours of when the repairs begin.

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

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

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

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

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

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

Grease interceptor - Floatation chambers where grease floats to the water surface and is retained while the clearer water underneath is discharged. There are no moving mechanical parts and its operational characteristics are similar to a septic tank.

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

Groundwater - Subsurface water that occurs beneath the water table in soils and geologic formations that are fully saturated.

Hardness (water) - Primarily the presence in water of calcium bicarbonate, magnesium bicarbonate, calcium sulfate (gypsum), magnesium sulfate (epsom salts), calcium chloride, and magnesium chloride in solution.

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

Individual - A single living human being.

Installer - An individual who holds a valid certificate with the agency and is compensated by another to perform services, construct, install, alter, or repair an OSSF.

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

Maintenance - The normal or routine upkeep, cleaning, or mechanical adjustments to an OSSF.

Maintenance company- A person in the business of maintaining OSSFs. At least one individual in the company must hold an Installer II certificate or a Class D or higher wastewater operator certificate and be certified by the appropriate manufacturer's maintenance program for the proprietary unit being maintained.

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

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

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

NSF International - National Sanitation Foundation International testing laboratories located in Ann Arbor, Michigan.

Natural soil - Earthen materials deposited into place by natural processes and not disturbed by artificial processes.

Non-standard disposal - All on-site disposal systems, components and materials not described in this chapter as standard and not marketed for sale in the state as a proprietary item.

Non-standard treatment - All on-site sewage treatment processes not described in this chapter as "standard" or "proprietary" treatment processes.

Nuisance -

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

(B) an overflowing septic tank or similar device, including surface discharge from or groundwater contamination by a component of an OSSF, or a blatant discharge from an OSSF.

On-site sewage disposal system - One or more systems of treatment devices and disposal facilities that:

(A) produce not more than 5,000 gallons of waste each day; and

(B) are used only for disposal of sewage produced on the site where the system is located.

On-site sewage facility (OSSF) - An on-site sewage disposal system.

On-site waste disposal order - An order adopted by local governmental entity and approved by the executive director. Approval of this order by the executive director grants authorized agent status to the local governmental entity.

Owner - A person who owns an OSSF.

Permit - An authorization, issued by the permitting authority, to install, construct, alter, extend, repair, or operate an OSSF. The permit consists of the authorization to construct (including the approved planning materials) and the license to operate.

Permitting authority- The executive director or an authorized agent.

Planning material - Plans and other supporting materials submitted to the permitting authority for the purpose of obtaining a permit to construct and operate an OSSF.

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

Pretreatment tank- A tank placed ahead of a treatment unit that functions as an interceptor for material such as plastics, clothing, hair, and grease that are potentially harmful to treatment unit components.

Probation- A formal procedure in which an individual or authorized agent is subject to an evaluation for a trial period to ascertain whether an individual should retain possession of a registration or certification as issued by the executive director or an authorized agent should retain delegation as an authorized agent.

Proprietary disposal - Any OSSF, component, or material marketed for sale and used in the construction of a subsurface sewage facility that is not identified in this chapter as a standard system.

Proprietary system - An OSSF in which all or part of the treatment or disposal process is owned by a person and has a registered trademark or patent.

Proprietary treatment - Any processes developed to treat domestic sewage and marketed for sale by a person and has a registered trademark or patent.

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

Restrictive horizon - A layer of the soil profile with a significant observable change in density, clay content, or particle size which restricts the vertical movement of water.

Revocation - A formal procedure initiated by the executive director in which an authorized agent's delegation or an installer's, site evaluator's, or designated representative's registration or certification is rescinded by the commission.

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

Seepage pit - An unlined covered excavation in the ground which operates in essentially the same manner as a cesspool.

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

allow the clarified liquid to be disposed of by an approved method in accordance with this chapter.

Sewage - waste that:

(A) is primarily organic and biodegradable or decomposable; and

(B) generally originates as human, animal, or plant waste from certain activities, including the use of toilet facilities, washing, bathing, and preparing food.

Sewage disposal plan - A technical report prepared by either a registered professional engineer or registered sanitarian, having demonstrated expertise in on-site sewage disposal planning. The plan shall describe the circumstances involved with sewage disposal on a land tract that has been, or is proposed to be, subdivided into lots of less than ten acres. The plan must include, but is not limited to, the location of structures, easements, wells, and disposal areas.

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

Site evaluator - An individual who holds a valid certificate with the agency and visits a site and conducts a pre-construction site evaluation which includes performing soil analysis, a site survey, and other criteria necessary to determine the suitability of a site for a specific OSSF.

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

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

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

Standard disposal - An OSSF that consists of a drainfield which disperses effluent into adjacent soil or into the surrounding air through evapotranspiration and transpiration.

Standard treatment - A water-tight container which receives raw sewage and serves the purpose of settling and digesting sludge from the sewage and retaining floating scum by the use of retention baffles.

Subsurface sewage facility - A system which treats sewage and distributes the pretreated sewage effluent into a below ground level disposal area.

Uniform gravel size - Gravel to be used in standard absorption drainfields that has been processed through shaker screens to produce a size passing one size screen and retained on another. The smaller screen shall be at least 50 percent of the size of the larger screen.

Water softening- the removal from water of minerals causing hardness.

§285.3. *General Requirements.*

(a) *Applicability.*

(1) All aspects of the planning, installation, construction, alteration, extension, repair, operation, and maintenance of OSSFs must be in accordance with this chapter or in accordance with an order/ordinance or other published criteria of an authorized agent which has received the executive director's written approval.

(2) In the case of OSSFs proposed for installation, construction, alteration, extension, repair, operation, and maintenance in areas of the state void of an authorized agent, the executive director will be the permitting authority in accordance with this chapter.

(b) *Unauthorized systems.* Boreholes, cesspools, and seepage pits shall not be authorized for installation and use in Texas.

(c) *Variations.* Requests for variances from provisions of this chapter may be considered by the appropriate permitting authority on an individual basis. The variance request must demonstrate to the satisfaction of the permitting authority that the variance has been requested because conditions are such that the equivalent protection of the public health and the environment can be provided by alternate means.

§285.4. *Facility Planning.*

(a) *Land planning and site evaluation.* Land developments and land subdivided for building construction which will utilize OSSFs for sewage disposal shall be evaluated for overall site suitability and this submittal shall be reviewed and approved by the permitting authority prior to approval being granted for subdivision of the property. The following items shall be evaluated:

(1) *Residential lot sizing.*

(A) *General considerations.* The failure of an OSSF may be caused by a large number of circumstances, including inadequate soil percolation, improper construction, planning, installation, and misuse. The single most important factor concerning public health problems resulting from these failures is the residential dwelling density which is primarily a function of lot size. The failure of an OSSF in a highly populated area is the fundamental cause of public health hazards resulting from on-site sewage disposal. Surfacing sewage provides a medium for the transmission of disease and the fact that many people are in the vicinity causes concern over the spreading of disease. OSSFs using soil absorption for effluent disposal are more likely to malfunction in high population density situations because the soil available to absorb or evaporate the effluent is limited. The failure of an absorption system on a small lot can be financially disastrous to the owner because the lot may not contain sufficient room to construct a new absorption field in a new location.

(B) *Platted or unplatted subdivisions served by a public water supply.* Subdivisions of single family dwellings platted or designed after January 1, 1988, and served by a public water supply but utilizing individual OSSF methods for sewage disposal, shall provide for individual lots having surface areas of at least « acre, or shall have site-specific planning materials submitted by a registered professional engineer or registered sanitarian and approved by the permitting authority. The location of an OSSF under this paragraph shall be in accordance with §285.91(10) of this title (relating to Tables).

(C) *Platted or unplatted subdivisions served by individual water systems.* In subdivisions platted or designed after January 1, 1988, for single family dwellings where each lot maintains an individual water supply well and an OSSF with a subsurface soil system, the plat shall show the approved well location and a sanitary control easement around the well within a 100-foot radius in which no subsurface sewage system may be constructed. A water-tight sewage unit or lined evapotranspiration bed with leak detection capability may be placed closer to the water well than 100 feet, provided the permitting authority has granted a variance. To minimize

the possibility of the transmission of waterborne diseases due to the pollution of the water supplied for domestic use, each lot in a platted subdivision shall contain no less area than one acre, or shall have site-specific planning materials prepared by a registered professional engineer or a registered sanitarian and approved by the permitting authority. In no instance shall the area available for such systems be less than two times the design area.

(2) Mobile home parks and multi-use residential developments served by a central sewerage system. Mobile home parks and multi-use residential developments which are supplied water through a central water system and which are owned or controlled by a person and which rents or leases space, or mobile home parks and multi-use residential developments which are sold but ownership and control of a central water system and/or a central sewerage system are vested in a responsible person, may utilize smaller lots than stated in paragraph (1)(B) of this subsection, provided an overall sewerage plan is submitted to the permitting authority and approved. Developments of this type may connect no more than 20 units to a single sewerage system, provided planning materials for the system are prepared by a registered professional engineer or registered sanitarian. The total anticipated sewage production shall not exceed 5,000 gallons per day from the connected homes and the OSSF must conform to the definition of OSSFs in §285.2 of this title (relating to Definitions).

(3) Site evaluation. The subdivided property must be evaluated for soil suitability in accordance with §285.30 of this title (relating to Site Evaluation).

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

(1) Minimum separation distances in §285.31 of this title (relating to Separation/ Setback Requirements) are maintained; and

(2) The site has been determined by the site evaluator to be suitable in accordance with §285.30 of this title (relating to Site Evaluation).

(c) Review of subdivision or development plans. Persons proposing the platting of land for use as residential subdivisions, mobile home parks, multi-unit residential developments, business parks, or other similar uses and utilizing OSSFs for sewage disposal must submit planning materials for these plats to the permitting authority. The planning materials must include an overall site plan, topographic map, 100-year floodplain map, soil survey, location of water wells, and complete engineering report detailing the types of OSSFs to be considered and their compatibility with area wide drainage and groundwater. A comprehensive drainage and 100-year floodplain impact plan must also be included in these planning materials. A response to the submitted planning material from the permitting authority will be provided within 45 days of receipt.

§285.5. *Submittal Requirements for Planning Materials.*

Planning materials required under this chapter shall be submitted to the permitting authority for review and approval in accordance with this section. All planning materials shall be in compliance with the provisions of this chapter and shall be submitted in accordance with §285.91 (9) of this title (relating to Tables).

(1) Submittal of planning materials by an owner or installer. For OSSFs not requiring planning materials to be submitted in accordance with paragraphs (2) and (3) of this section, an owner

or installer must submit the appropriate planning materials for the proposed OSSF.

(2) Submittal of planning materials by a registered professional engineer or registered sanitarian. OSSF planning materials shall be submitted by a registered professional engineer or registered sanitarian as follows:

(A) proposals for treatment and/or disposal that are not standard as described in Subchapter D of this chapter (relating to Planning, Construction, and Installation Standards for OSSF Systems);

(B) any OSSF proposed to serve mobile home parks, recreational vehicle parks, multi-unit residential developments such as apartments or condominiums which are owned or controlled by a person who rents or leases such space.

(C) dwellings or structures not exempted by Section 20f of the Texas Engineering Practice Act.

(D) all standard or proprietary treatment systems that utilize surface irrigation disposal as detailed in Subchapter D of this chapter (relating to Planning, Construction, and Installation Standards for OSSF Systems).

(E) all non-standard treatment systems that utilize surface irrigation disposal as detailed in Subchapter D of this chapter and cluster systems shall have planning materials submitted by a registered professional engineer only.

(3) Review of non-standard planning materials. The executive director shall review initial plans for all non-standard planning material, as described in Subchapter D of this chapter. Any subsequent similar non-standard planning materials may be reviewed by the local authorized agent once the original concept and planning materials has received favorable review by the executive director.

§285.6. *Cluster Systems.*

Use of a cluster system can be considered when lot sizes, lot location, or soil conditions make a standard system unacceptable.

(1) Design. These systems shall be designed and constructed in accordance with the requirements of this chapter or Chapter 317 of this title (relating to Design Criteria for Sewerage Systems). These systems shall be designed and submitted to the permitting authority for review under seal of a registered professional engineer.

(2) Permits required. Each single family dwelling on a cluster system must be individually permitted by the permitting authority.

(3) Maintenance/Ownership agreement. Each permittee on a cluster system must be a party to a legally binding agreement regarding ownership, service, and maintenance of the cluster system. The minimum required elements of that agreement are as follows:

(A) The agreement must be legally binding to all parties;

(B) Each person who uses the system for treatment and/or disposal must be a party to the agreement;

(C) Each permittee must be a joint owner of the cluster system and the property on which the cluster system is located.

(D) The agreement must provide a reliable management structure for performing service, maintenance, and inspection of the system;

(E) The agreement must include a reliable plan for handling apportionment and collection of cost among the parties; and

(F) The agreement must denote that all parties are individually and severally responsible for the proper maintenance and functioning of the system.

(4) Property ownership. The parties to the agreement must obtain all necessary rights of way, easements, or ownership of properties necessary for operation of the cluster system. The site for a cluster system shall be owned by all of the parties to the maintenance/ownership agreement. The application for a cluster system shall include a certified copy of an affidavit, which has been duly recorded with the county/city clerk's office and added to the real property deed where the cluster system is located and the real property deed of each permittee. The affidavit shall state that the property shall not be transferred to a new owner without the new owner being advised that the property is part of a cluster system and shall be party to the agreement.

§285.7. *Cost Recovery Fee.*

The executive director shall be the regulatory authority in a local governmental entity's area of jurisdiction if that local governmental entity does not adopt an approved OSSF order/ordinance, it rescinds its authorized agent delegation or its delegation is revoked by the commission in accordance with Subchapter B of this chapter (relating to Local Administration of the OSSF Program). Personnel of the executive director shall perform all the duties associated with permitting and inspections. The executive director may assess the local governmental entity, having general authority and jurisdiction over the location of the OSSF, a fee of \$200 for each inspection of a new, altered, extended, or repaired OSSF to recover the administrative cost of the OSSF permitting program by the agency. For any authorized agent who has rescinded its delegation or the commission has revoked its delegation after September 1, 1989, the executive director may assess a cost recovery fee in accordance with this section.

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

Issued in Austin, Texas, on June 26, 1996.

TRD-9609615

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Earliest possible date of adoption: August 16, 1996

For further information, please call: (512) 239-4640



Subchapter B. Local Administration of the OSSF Program

30 TAC §285.10, §285.11

The new sections are proposed under Texas Water Code, §§5.103, 5.105, 5.120 and 26.040, and Texas Health and Safety Code, §366. 012, which provide the Texas Natural

Resource Conservation Commission (commission) with the authority to promulgate rules as necessary to carry out its powers and duties under the codes and under the laws of the state and to establish and approve all general policies of the commission.

§285.10. *Delegation to Authorized Agents.*

(a) Requirements/Procedures.

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

(2) Upon request, the executive director shall forward to the entity a description of the process of delegation and a copy of the model order/ordinance. Any changes to the model order/ ordinance by the local entity based on local conditions must be consistent with this chapter. The executive director shall be the sole and final authority in determining the acceptability of proposed changes from the model order/ordinance. A local government entity which wants to be designated an authorized agent for the OSSF program shall follow the following procedures:

(A) Upon request, the executive director shall provide model orders or ordinances to local entities.

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

(C) The local government entity shall draft an order or resolution regulating OSSFs within its jurisdiction which meets the requirements of §366.032 of the Texas Health and Safety Code. In the event that the local government entity drafts a proposed order which is different from the model order/ordinance, the local government entity shall submit the proposed order/ordinance to the executive director for review and comment prior to notice being published. Within 30 days of receipt of the proposed order/ordinance, the executive director shall review the proposal and provide comment to the local government entity on whether the proposed order/ordinance meets the agency's minimum requirements.

(D) The local government entity shall cause notice to be published, in a newspaper regularly published and of general circulation in the area of jurisdiction, of a public hearing to be held to discuss the adoption of the proposed order or resolution;

(E) The local government entity shall hold a public meeting to discuss the proposed order or resolution;

(F) The local government entity shall adopt that order or resolution;

(G) The local government entity shall send a certified copy of the minutes of the meeting which adopted the order or resolution;

(H) The local government entity shall send a certified copy of the order or resolution;

(I) Upon receipt of the complete package requesting delegation, the executive director will review to see that it complies with the requirements of this chapter and Chapter 366 of the Health and Safety Code. If found to be compliant, the executive director will notify the local entity by mail of their authorized agent status and the date the authorized agent shall assume jurisdiction of the OSSF program. The authorized agent shall administer its OSSF

program in accordance with its approved OSSF waste disposal order/ordinance. All authorized agents shall maintain their orders/ordinances in accordance with the minimum requirements of this chapter.

(b) Amendments to existing orders/ordinances. The amendment procedure may be initiated by the authorized agent in accordance with subsection (a) of this section. The executive director may require periodic revisions or renewals of OSSF orders/ordinances for compliance with new rules or regulations.

(c) Resolution of nuisance complaints by an authorized agent. A major activity of any authorized agent is the satisfactory resolution of nuisance complaints involving OSSFs. An authorized agent may require a property owner to repair a malfunctioning OSSFs on the owner's property not later than the 30th day after the date which the owner is notified by the authorized agent of the malfunctioning system.

(d) Authorized agent's reporting requirements. Each authorized agent shall provide to the executive director a detailed monthly report of OSSF activities as prescribed by the executive director. Categories in this report shall include, but not be limited to the following:

- (1) subdivision reviews;
- (2) complaint and enforcement activities;
- (3) information on the numbers and types of OSSFs permitted; and
- (4) administrative activities performed by the authorized agent.

(e) Relinquishment of authorized agent delegation. If an authorized agent decides to relinquish its delegation to regulate OSSFs under the regulatory authority granted by Chapter 366 of the Health and Safety Code and this chapter, the authorized agent shall adhere to the following procedures:

(1) The authorized agent shall inform the executive director by certified mail at least 30 days prior to publishing the notice that it wishes to relinquish its OSSF order.

(2) The authorized agent shall publish notice, indicating its intent to relinquish, in a newspaper regularly published or circulated in the area of jurisdiction prior to taking further action to relinquish.

(3) The authorized agent shall send the executive director copies of the following: the public notice, a publisher's affidavit of public notice, and a certified copy of the entity's minutes of the meeting in which it formally considered relinquishment of its delegation.

(4) The executive director shall process the request for relinquishment and may issue an order relinquishing the authority to regulate OSSFs within an authorized agent's jurisdiction or may refer the request to relinquish to the commission.

(5) Prior to issuance of a relinquishment order the local governmental entity and the executive director shall determine the exact date the authorized agent would surrender its authorized agent designation to the executive director.

(6) Upon relinquishment, the local government entity may be subject to the appropriate cost recovery fees for permitting and

inspection of OSSFs in accordance with §285.7 of this title (relating to Cost Recovery Fee).

(f) Revocation of authorized agent delegation.

(1) An authorized agent must consistently enforce this chapter and Chapter 366 of Health and Safety Code.

(2) An authorized agent's OSSF order may be revoked at any time by order of the commission for good cause after opportunity for public hearing is given in accordance with Subchapter C of the Texas Administrative Procedures Act.

(3) An authorized agent who has failed or is failing to consistently enforce this chapter, or Chapter 366 of the Health and Safety Code is good cause for revocation.

(4) When the executive director determines that revocation is warranted a petition seeking revocation may be filed by the executive director with the commission requesting that a public hearing be held.

(5) If the executive director files a petition for revocation with the commission, notice shall be given to the authorized agent of the time and place for the hearing not less than ten days prior to the hearing by certified mail, return receipt requested.

(6) If an authorized agent wants to consent to revocation, a written request or a written consent and waiver may be filed with the executive director not later than ten days after the receipt of notice of the petition to revoke. If the authorized agent requests or consents to revocation, the executive director may revoke without the necessity of a public hearing or commission action. The executive director shall notify the commission of each revocation of an authorized agent's authority.

(7) Upon completion of a public hearing the commission may do any of the following:

- (A) Issue an order revoking the authorized agent's delegation;
- (B) Issue an order placing the authorized agent on probation for a specified period of time; or
- (C) Take no action on the request.

(8) Upon issuance of a revocation order by the commission, the executive director shall assume responsibility for the OSSF program in the former agent's jurisdiction and the local governmental entity may be subject to the appropriate cost recovery fees for permitting and inspection of OSSFs in accordance with §285.7 of this title (relating to Cost Recovery Fee).

§285.11. Review of Locally Administered Programs.

The executive director shall review not more than once per year an authorized agent's locally administered program for adequate performance and compliance with requirements established by Chapter 366, Texas Health and Safety Code, this chapter, and the order/ordinance adopted by the authorized agent. If the executive director's review determines that an authorized agent does not enforce the commission's minimum requirements for OSSFs, the commission may hold a hearing to determine whether the entity shall lose its designation as an authorized agent in accordance with §285.10(f) of this title (relating to Delegation of Authorized Agents).

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

Issued in Austin, Texas, on June 26, 1996.

TRD-9609616

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Earliest possible date of adoption: August 16, 1996

For further information, please call: (512) 239-4640



Subchapter C. Commission Administration of the OSSF Program in Areas Where No Local Administration Exists

30 TAC §§285.20-285.22

The new sections are proposed under Texas Water Code, §§5.103, 5.105, 5.120 and 26.040, and Texas Health and Safety Code, §366.012, which provide the Texas Natural Resource Conservation commission (commission) with the authority to promulgate rules as necessary to carry out its powers and duties under the codes and under the laws of the state and to establish and approve all general policies of the commission.

§285.20. *Application Requirements- General.*

Procedures for obtaining an agency permit include:

(1) Application for OSSF permits shall be made to the appropriate agency regional office. Application for a permit shall be made on a standard form provided by the executive director and must include the appropriate planning material in accordance with §285.5 of this title (relating to Submittal Requirements for Planning Materials).

(2) Upon receipt of a complete application, the appropriate fee in accordance with this subchapter and a positive site evaluation performed by a certified site evaluator, the regional office shall issue an authorization to construct.

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

(4) Upon approval of the OSSF planning materials and construction inspection, the regional office shall issue a license to operate the OSSF with a unique identification number.

(5) The permit will be issued in the name of the owner of the OSSF. Permits shall be transferred to the new owner automatically upon legal sale of the OSSF.

(6) A reinspection shall be required if the OSSF failed to pass the construction inspection. The installer shall pay the appropriate reinspection fee in accordance with §285.22 of this title (relating to Fees).

§285.21. *Additional Application Requirements for Surface Irrigation Systems.*

(a) Technical report. Each application for an OSSF permit utilizing surface irrigation as a disposal method shall be accompanied by a report outlining the planning and operation of the entire wastewater treatment and disposal system. A basis of planning, construction drawings, calculations, and system flow diagram shall be included in this report. Proprietary aerobic systems may reference the agency's approval number instead of furnishing construction drawings for the unit. All other information except construction drawings will be required for proprietary submittal.

(b) Site drawing. A scale drawing and legal description of all land which is to be a part of the surface irrigation system will be included in the submittal of an application for a permit. The drawing will show the location of all existing and proposed buildings, wastewater disposal area, buffer zones, and water wells.

(c) Landscape plan. The application for a permit shall be accompanied by a landscape plan, which will describe, in detail, the type of vegetation to be maintained on the irrigated area during any calendar year. Installations may irrigate existing vegetation provided all areas of bare ground are seeded or covered with sod, capable of growth, prior to system start up.

(d) Maintenance requirements. Final permit approval will be issued after planning materials approval, provided the applicant furnishes a valid maintenance contract with a maintenance company. The maintenance company will verify that the surface irrigation system is operating properly and that they will provide on-going maintenance of the installation. The initial maintenance contract must be valid for a minimum of two years.

(e) Maintenance contract. A maintenance contract will authorize the maintenance company to maintain and repair the system as needed. A copy of the signed maintenance contract between the property owner and the approved maintenance company shall be provided to the permitting authority prior to final permit approval.

(f) Maintenance company. At least one employee of the company shall hold a valid Installer II certificate or attend an on-site maintenance training course approved by the executive director and certified by the appropriate manufacturer's maintenance program for the proprietary unit being maintained.

(g) On-going maintenance. On-going maintenance shall be provided by the maintenance company.

(1) The owner of each surface application system shall continuously maintain a signed written contract with a valid maintenance company and shall submit a copy of the contract to the permitting authority at least 30 days prior to expiration of the previous contract.

(2) If the property owner or maintenance company desires to discontinue the provisions of the maintenance contract, the maintenance company shall notify, in writing, the permitting authority at least 30 days prior to the date service will cease.

(3) If a maintenance company discontinues business, the property owner shall within 30 days of the termination date, contract with another approved maintenance company and provide the permitting authority with a copy of the newly signed maintenance contract.

(h) Affidavit. Prior to issuance of a permit, a certified copy of an affidavit, which has been duly recorded at the county/city clerk's office and added to the real property deed on which the surface

application system is to be installed, must be submitted. Such an affidavit for example, see §285.90(2) of this title (relating to Figures) shall state that the property shall not be transferred to a new owner without:

(1) the new owner being advised that the property contains a surface application system for wastewater disposal;

(2) the permit issued to the previous owner of the property being transferred to the new owner; and

(3) the new owner submitting a valid signed maintenance contract to the permitting authority.

(i) Testing and reporting. The maintenance company shall inspect each permitted surface irrigation system as directed by the testing and reporting schedule shown in §285.91(4) of this title (relating to Tables). The maintenance company shall report any responses to homeowner complaints and the results of its maintenance findings to the permitting authority within ten days of the specified reporting frequency. The number of site visits may be reduced to two per year for all systems having electronic monitoring and automatic telephone or radio access which will notify the maintenance company of system or component failure. This monitoring system shall also monitor effluent disinfection.

(j) Effluent disinfection. Treated effluent must be disinfected prior to surface application. Approved disinfection methods shall include but not be limited to chlorination, ozonization, or ultraviolet radiation. Tablets or other dry chlorinators shall use calcium hypochlorite of a type properly encapsulated and suitable for wastewater disinfection. The efficiency of the disinfection procedure will be established by monitoring the fecal coliform count or total chlorine residual from effluent grab samples as directed in the testing and reporting schedule. The frequency of testing and type of tests required are shown in §285.91(4) of this title.

§285.22. Fees.

(a) Application fees. The application fee for an OSSF permit is:

(1) \$200 for a single family dwelling OSSF; or

(2) \$400 for other types of OSSFs. The fee is payable upon application from the owner/agent to the Texas Natural Resource Conservation Commission for an OSSF permit. This fee shall be submitted to the appropriate agency regional office. Money orders or personal checks only, payable to the Texas Natural Resource Conservation Commission, shall be accepted. All applications shall expire one year from the date of the original application. No refunds of any amount shall be granted.

(b) Reinspection fee. A reinspection fee shall be equal to one half of the permit application fee required at the time of application and shall be assessed to the installer of record each time a reinspection is required.

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

Issued in Austin, Texas, on June 26, 1996.

TRD-9609617

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Earliest possible date of adoption: August 16, 1996

For further information, please call: (512) 239-4640



Subchapter D. Planning, Construction and Installation Standards for OSSFs

30 TAC §§285.30-285.39

The new sections are proposed under Texas Water Code, §§5.103, 5.105, 5.120 and 26.040, and Texas Health and Safety Code, §366.012, which provide the Texas Natural Resource Conservation commission (commission) with the authority to promulgate rules as necessary to carry out its powers and duties under the codes and under the laws of the state and to establish and approve all general policies of the commission.

§285.30. Site Evaluation.

(a) Soil analysis procedures. At least two soil borings or two backhoe pits shall be taken in opposite ends of the area to be used for soil absorption systems. These borings or backhoe pits shall be excavated to the depth of two feet below the proposed excavation or to a restrictive horizon whichever is less. The type and size of an OSSF shall be determined on the basis of the most restrictive soil class two feet below the bottom of the proposed excavation. Evaluation of these borings and overall site evaluation shall be performed by individuals currently certified as a site evaluator. Characteristics including soil texture, soil structure, soil drainage, and soil depth shall be evaluated.

(b) Soil texture analysis. The soil classes shall be determined by a general texture analysis in accordance with §285.91(6) of this title (relating to Tables).

(1) Soil Class Ia. Sandy texture soils which contain more than 30 percent gravel. This class is considered unsuitable with respect to texture.

(2) Soil Class Ib. Sandy soils which contain less than 30 percent gravel. This class is be considered suitable with respect to texture.

(3) Soil Class II. This class is considered suitable with respect to texture.

(4) Soil Class III. This class is considered suitable with respect to texture.

(5) Soil Class IV. This class is considered unsuitable with respect to texture.

(c) Soil structure analysis. Soils determined to be in Class Ib or Class II soils are generally considered suitable as to structure. Since Class IV soils are unsuitable with respect to texture, their structure analysis need not be considered for OSSF purposes. Three soil structures significant to the movement of sewage effluent through Class III soils are blocky, platy, and massive.

(1) Massive soil structure. A massive soil structure is considered unsuitable with respect to structure.

(2) Blocky soil structure. A blocky soil structure is considered suitable with respect to structure.

(3) Platy soil structure. A platy soil structure is considered unsuitable with respect to structure.

(d) Soil depth analysis. The depth of soils classified suitable as to texture and structure shall be at least 24 inches below the bottom of the proposed disposal area when standard ground absorption systems are to be utilized. Soils without at least 24 inches of suitable soil beneath the proposed drainfield shall be considered unsuitable.

(e) Restrictive horizons evaluation. Dense clay subsoils, rock and plugged laminar caliche are considered to be restrictive horizons. They can be recognized by an abrupt change in texture from a sandy or loamy surface horizon to a clayey subsoil or rock like material which an auger will not penetrate. Soils in which restrictive horizons are less than 24 inches below the bottom of the proposed drainfield shall be considered unsuitable.

(f) Groundwater evaluation. The presence of groundwater shall be determined by a site evaluator. Any soil profile that is indicative of high water tables within 24 inches below the bottom of the proposed drainfield shall be considered unsuitable.

(g) Topography. Uniform slopes under 30 percent are considered suitable with respect to topography. When slopes are less than 2 percent, provisions shall be made to insure good surface drainage of rainfall or runoff from covering the soil absorption field. The drainfield excavation shall follow the contour of the ground. Soil absorption systems shall not be located in a depression or in areas of complex slope patterns where slopes are dissected by gullies and ravines.

(h) Flood hazard. Sites located within the mapped regulated floodway shall be subject to special planning requirements to eliminate tank flotation.

(i) Percolation tests. Percolation test results will not be accepted as the sole criteria for soil permeability or drainfield size requirements.

(1) Location and number of tests. A minimum of two test holes will be required with the holes uniformly spaced over the proposed absorption field site. In lieu of the previously mentioned procedure, four holes may be dug and tested and the results averaged at the same time to reduce the amount of time required to conduct the test. Disposal systems such as evapotranspiration beds and mounds may not require percolation tests. The actual number of holes required for an individual soil evaluation should be determined by the site evaluator.

(2) Type of test hole. Dig or bore a hole with a diameter of from six to 12 inches with vertical sides to the depth of the proposed absorption trench. The bottom of the hole must be at the same elevation as the bottom of the proposed drainfield. It may be required on a case-by-case basis by the permitting authority, that test pits with a back hoe or other heavy excavating equipment be done prior to performing the test from a bored hole in the bottom of the test pit. The permitting authority may require borings to a depth greater than the depth of the bottom of the proposed disposal system, if a high groundwater table or impermeable layer is suspected to be present.

(3) Preparation of test holes. Carefully scratch the bottom and sides of the hole with a knife blade or sharp-pointed instrument in order to remove any smeared soil surfaces and to provide a natural soil interface into which water may percolate. Remove all loose material from the hole and carefully place approximately one inch of coarse sand or fine gravel into the bottom of the hole to protect the bottom from scouring.

(4) Saturation and swelling of the soil. It is important to distinguish between saturation and swelling. Saturation means that the void spaces between soil particles are full of water. This can be accomplished in a short period of time. Swelling is caused by intrusion of water into the individual soil particle. This is a slow process, especially in a clay-type soil, and is the reason for requiring a prolonged soaking period.

(5) Filling of test holes. In conducting the percolation test, carefully fill the hole with clear water to a minimum depth of 12 inches. In most soils, it is necessary to refill the hole by supplying a surplus reservoir of water manually or by means of an automatic siphon, to keep water in the hole until saturation occurs (approximately 24 hours). Determine the percolation rate 24 hours after water is first added to the hole. This procedure is to insure that the soil is given ample opportunity to swell and to approach the condition it will be in during the wettest season of the year. Thus, the test will give comparable results in the same soil, whether made in a dry or in a wet season. In sandy soils containing little or no clay, the test may be made as described in paragraph (7) of this subsection after the 24-hour saturation period.

(6) Percolation rate measurement- general. Percolation rate measurements shall be made on the day following the procedure described in paragraph (5) of this subsection. After the overnight swelling period, adjust the water depth to approximately 12 inches from the bottom. From a fixed reference point, measure the drop in water level over a 30-minute period. This drop is used to calculate the percolation rate. If the rate is slower than 30 minutes per inch, continue with measuring the rate for an additional 30 minutes. The slower rate of the two consecutive one-half hour tests should be used.

(7) Percolation rate measurement- sandy soils. In sandy soils (or other soils in which the first six inches of water seeps away in less than 30 minutes, after the overnight swelling period), the hole should be filled to a depth of six inches and that depth maintained by adding water for 30 minutes. After 30 minutes, the drop in water level should be measured over an additional 10-minute period and the percolation rate calculated from this measurement.

(j) Determination of over-all site suitability. The following criteria shall determine if the site can be utilized for standard subsurface disposal methods without need of any significant modification of the site. §285.91(5) of this title (relating to Tables) summarizes soil and site criteria for construction of a standard treatment and disposal system.

(1) If all of the soil or site criteria categories are determined to be suitable, standard subsurface disposal methods may be utilized.

(2) If the site and soil evaluation proves to be suitable, the size of the subsurface absorption system may be calculated using data in §285.91(5) of this title (relating to Tables). Unsuitable sites must use appropriate proprietary or non-standard systems.

(3) If one or more of the soil or site criteria categories are evaluated as unsuitable, standard subsurface disposal methods cannot be utilized. However, the site may still be utilized for standard on-site wastewater treatment by using non-standard disposal methods.

§285.31. Setback and Separation Requirements.

The construction of an OSSF (treatment and disposal systems) must be isolated from certain areas such as water wells, lakes, roads, fences and other objects subject to contamination from the OSSF or

which may prevent the proper operation of the system. The minimum requirements for the state are described in §285.91(10) of this title (relating to Tables) for OSSFs subject to the following provisions:

(1) Surface irrigated areas shall be considered as drainfields for determining separation distances.

(2) Private and public water wells shall be completed in accordance with §§290 and 338 of this title (relating to Water Hygiene and Water Well Drillers).

§285.32. *Criteria for Sewage Treatment Systems.*

(a) Treatment processes - standard.

(1) Septic tanks (gravity flow). The septic tank is attached to wastewater fixtures through a watertight pipe identified as a building "stub out" or "house sewer". The septic tank is connected to the house sewer by an inlet device. Effluent from the septic tank, having undergone primary treatment, flows out of the tank through an outlet device into additional treatment processes or a disposal system. A septic tank, constructed in accordance with this chapter, shall meet the following material, component, construction, and approval requirements:

(A) Tank volumetric capacity. Measured from the bottom of the outlet, the liquid volume of a septic tank shall not be less than established in §285.91(2) of this title (relating to Tables). The liquid depth of the tank shall not be less than 30 inches.

(B) Inlet and outlet devices. The flowline of the inlet device shall be at least three inches higher than the flowline of the outlet device. The entry point of the outlet device shall be below the liquid level of the tank at a depth between 25 percent to 50 percent of the overall liquid depth of the tank. The inlet and outlet devices shall be "T" branch fittings, constructed baffles or other structures or fittings approved by the executive director. All outlet devices must use a "T" unless a executive director approved fitting is installed on the outlet. All inlet and outlet devices shall be installed water tight to the septic tank walls and be a minimum of three inches in diameter.

(C) Baffles and series tanks. All septic tanks shall be divided into two or three compartments by the use of baffles or by connecting two or more tanks in series. In a baffled tank, the baffle shall be located so that one half to two thirds of the total tank volume is located in the first of two compartments. Two or three tanks may be arranged in series to achieve the required liquid capacity. The first tank in a two tank system shall contain at least one half the required volume. The first tank in a three tank system shall contain at least one third of the total required volume, but no less than 500 gallons. Interconnecting inlet and outlet devices may be installed at the same elevation for multiple tank installations. Baffles shall be constructed the full width and height of the tank with a gap between the top of the baffle and the tank top. The baffle shall have an opening located below the liquid level of the tank at a depth between 25 percent and 50 percent of the liquid level. The opening may be a slot or hole and a "T" may be fitted. If a "T" is fitted, the inlet to the fitting shall be at the stated depth in this paragraph. Any metal structures, fittings, or fastenings shall be stainless steel.

(D) Inspection and cleanout ports. All septic tanks shall have an inspection and/or cleanout port located on the tank top, but not directly over, the inlet and outlet devices. These ports may be any configuration with the smallest dimension of the opening not less than 15 inches. Septic tanks buried more than 12 inches below the ground surface shall have risers over the port openings. These

risers shall extend from within six inches of the ground surface up to the ground surface and be sealed to the tank and capped.

(E) Septic tank construction materials. The septic tank shall be of sturdy, water-tight construction. Materials used shall be steel-reinforced poured-in-place concrete, steel-reinforced pre-cast concrete, fiberglass, reinforced plastic polyethylene, or other materials approved by the executive director. Metal septic tanks are prohibited. The septic tank shall be structurally designed to resist buckling from internal hydraulic loading and exterior loading caused by earth fill and additional surface loads. Tanks exhibiting obvious deflections, leaks, or structural defects shall not be used. Where concrete tanks are installed, sweating at construction joints is acceptable.

(F) Precast concrete tanks. In addition to the general requirements aforementioned in subparagraph (E) of this paragraph, precast concrete tanks shall conform to requirements in the Materials and Manufacture Section and the Structural Design Requirements Section of American Society for Testing and Materials (ASTM) Designation: C 1227- 93, Standard Specification for Precast Concrete Septic Tanks (1993).

(G) Fiberglass and plastic polyethylene tank specifications.

(i) General. The tank shall be fabricated to perform its intended function when installed. The tank shall not be adversely affected by normal vibration, shock, climate conditions, nor typical household chemicals. The tank shall be free of rough or sharp edges that would interfere with installation or service of the tank.

(ii) Watertight integrity. The tank shall be designed and constructed so that all joints, seams, component parts, and fittings prevent the entrance of groundwater and prevent the exit of wastewater, except through designed inlet and outlet openings.

(iii) Structural characteristics. Full or empty tanks shall not collapse or rupture when subjected to earth and hydrostatic pressures.

(H) Special requirements for poured-in-place concrete tanks. Concrete tanks shall be structurally sound and water-tight. The concrete structure shall be designed by a registered professional engineer with relevant experience in the field.

(I) Tank manufacturer specifications. Beginning 180 days after the effective date of these rules, all pre-cast or prefabricated tanks shall be clearly and permanently marked, tagged, or stamped with the manufacturer's name, address, and tank capacity near the level of the outlet so as to be clearly visible. Direction of flow into and out of the tank shall be indicated by arrows or other identification clearly marked at the inlet and outlet.

(J) Installation of tanks. Septic tanks must be installed so as to provide at least 12 inches of drop in elevation from the bottom of the outlet pipe to the bottom of the disposal area. A minimum of four inches of sand, sandy loam, clay loam, or pea gravel free of rock shall be placed under and around all prefabricated tanks. Tank excavations should be left open until such time that they have been inspected by the permitting authority. Tank excavations must be backfilled with sand, sandy loam, clay loam, or pea gravel free of rock. It is acceptable to mound soil over a septic tank, which would normally be exposed, to maintain slope to the drainfield.

(K) Pretreatment (Trash) tanks. The executive director may require the use of a pretreatment tank for use in conjunction with aerobic treatment units. Plastics and other non-digestible sewage can impair or prevent an aerobic unit from functioning properly. Those aerobic treatment units that do not prevent non-digestible sewage from interfering with aeration lines and diffusers may be required by the executive director to use pretreatment tanks for all units installed in the state.

(2) Intermittent sand filters.

(A) Overview. An intermittent sand filter (a secondary treatment unit) applies wastewater received from a septic tank (the primary treatment unit) through a coarse porous media layer above a bed of sand by means of pressure distribution. The wastewater moves downward through the coarse sand media receiving further treatment on the surface of the sand particles. The treated wastewater is collected at the bottom of the sand filter and discharged, via gravity or pressure, to an appropriate disposal method discussed in this subchapter. A typical layout and cross-section of an intermittent sand filter is presented in §285.90(8) of this title (relating to Figures).

(B) Filter Bed.

(i) Sand media specifications. Sand filter media must meet ASTM C-33 specifications as outlined in §285.91(11) of this title (relating to Tables).

(ii) Loading rate. Shall not exceed 1.2 gallons/day/square foot.

(iii) Surface area. Minimum surface area shall be calculated using the formula: $Q/1.2 = \text{Surface Area (Square Feet)}$, where Q is the wastewater flow in gallons per day.

(iv) Depth (thickness) of sand media. There shall be a minimum of 24 inches of sand media.

(v) Filter bed containment. The filter bed shall be constructed of an impervious lined pit. Acceptable liners specifications are detailed in §285.33(a)(2)(A) of this title (relating to Criteria for Sewage Disposal Systems).

(vi) Underdrains. For gravity discharge of effluent to a drainfield, place a three inch layer of pea gravel over a six inch layer of 0.75 inch gravel containing the underdrain collection pipe. When pumpwells are to be used to pump the effluent from the underdrain to the drainfield, they must be constructed of concrete or plastic sewer pipe. The pumpwell must contain a sufficient number of holes so that effluent can flow from the gravel void space as rapidly as the effluent is pumped out of the pumpwell, refer to §285.90(9) of this title (relating to Figures).

(b) Treatment processes - proprietary.

(1) System maintenance. On-going maintenance contracts in accordance with the maintenance provisions of §285.21 of this title (relating to Additional Application Requirements for Surface Irrigation Systems) shall be required for all proprietary systems.

(2) Electrical wiring. Electrical wiring for proprietary systems shall be in accordance with §285.34(b)(4) of this title (relating to Other Requirements).

(3) Approval of all proprietary systems. All proprietary treatment and disposal systems shall be approved by the executive

director prior to their use in the State. Approval of proprietary systems shall be handled utilizing the procedures found in this section.

(4) Approval of proprietary aerobic treatment systems. All agency approved proprietary aerobic treatment systems will be identified and published in a list of approved systems which may be obtained from the executive director. Only treatment systems which have been tested by and are currently listed by NSF International as Class I systems under NSF Standard 40 (1990) or have been tested and approved as a Class I system in accordance with NSF Standard 40 by an American National Standard Institute (ANSI) or NSF International accredited testing institution shall be considered for approval by the executive director. All agency approved systems at the time of the effective date of this rule shall continue to be listed on the list of approved systems subject to retesting under the requirements of NSF Standard 40. In addition, all proprietary aerobic treatment systems undergoing testing by a testing institution recognized by the executive director at the time of the effective date of this rule shall be considered for inclusion on the list of approved systems notwithstanding the fact that the testing institution does not have NSF or ANSI accreditation. The manufacturers of proprietary treatment systems and the accredited testing institution must comply with all the provisions of NSF International Standard 40 and Certification Policies for Wastewater Treatment Devices (1991).

(5) For systems which NSF International, NSF International or ANSI accredited third party testing institutions will not accept for testing because of system size or type, the manufacturer shall seek approval in the following manner:

(A) These proprietary systems, components, or materials shall be tested by an independent third party in accordance with this subsection and with the supporting data submitted to the executive director for approval before being marketed for sale in the state.

(B) Testing may be accomplished by allowing a number of the items (usually 20 to 50) to be installed via a temporary authorization in areas typical of the site conditions for which the system would be installed. The temporary authorization may be issued by the executive director and, if issued, shall be specific and pertinent to the proposed proprietary process and shall contain provisions as to how the proprietary process is installed and maintained; the testing protocol for collecting and analyzing samples from the system; the monitoring of equipment, if applicable, and provisions for recording data and data retention necessary to evaluate the performance as well as the effect of the proprietary system on public health, groundwater, and surface waters.

(C) Authorized agents may issue installation permits upon receipt of the temporary authorization. The homeowner must be advised in writing that the system is temporarily approved for testing. System failures, regardless of the material or component, shall be replaced by the manufacturer at the manufacturer's expense.

(D) Upon completion of the two year test period, the executive director may issue conditional approval for installations only in areas similar to the area in which the system was tested and for a specified performance and evaluation (monitoring) period, not to exceed an additional five years. The system must be monitored by an entity approved by the executive director. Approval or disapproval of these systems, components or materials will be based on their performance during this five-year monitoring period. Failure of one or more of the installed units may be cause for disapproval of the proprietary item. The monitoring method for the units shall be

established by the executive director. System failures, regardless of the material or component, shall be replaced by the manufacturer at the manufacturer's expense. The homeowner must be advised in writing that the system is conditionally approved.

(E) Upon successful completion of the monitoring period without failure, systemic or otherwise, the monitoring requirements may be lifted by the executive director and the system deemed suitable for use in conditions similar to areas in which the system was tested and monitored.

(c) Treatment processes - non-standard. All OSSFs not described or defined in subsections (a) and (b) of this section will be considered to be non-standard treatment systems. These systems shall be submitted to the permitting authority for review by a registered professional engineer in accordance with §285.5(3) of this title (relating to Submittal Requirements for Planning Materials). Upon approval, a permit will be issued by the permitting authority.

(1) Types of systems considered non-standard include, but are not limited to, all forms of the activated sludge process, rotating biological contactors, trickling filters, submerged rock biological filters, sand filters not described in subsection (a)(2) of this section.

(2) Non-standard systems submitted for review will be analyzed on basic engineering principles and the criteria established in this chapter. These systems will be reviewed as one of a kind, site specific installations.

(3) Electrical wiring. Electrical wiring for non-standard systems shall be in accordance with §285.34(b)(4) of this title (relating to Other Requirements).

§285.33. *Criteria for Sewage Disposal Systems.*

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

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

(A) Excavation. The excavation must be constructed in suitable soils as described in §285.30 of this title (relating to Site Evaluation). The excavation shall not exceed a depth of three feet or six inches below the soil freeze depth, whichever is the larger. However, in areas of the state where annual precipitation is less than 26 inches of rainfall per year (as identified in the Climatic Atlas of Texas, (1983) published by the Texas Department of Water Resources and suitable soils (Class Ib, II, or III) lie below unsuitable soil caps, the maximum permissible excavation shall be five feet. Multiple excavations must be separated horizontally by at least three feet of undisturbed soil. After excavation the excavated surfaces (sidewalls and bottom) must be scarified as needed. The bottom of the excavation shall be level to within four inches over the entire

excavation. The size of the excavation shall be calculated using data from §285.91(8) of this title (relating to Tables). The formula $A = Q/Ra$ shall be used to determine drainfield area where:

Figure 1: 30 TAC §285.33 (a)(1)(A)

(i) The usable surface area shall be calculated by adding the excavation bottom area to the total excavated perimeter (in feet) multiplied by one foot (bottom area + perimeter X 1.0).

Figure 2: 30 TAC §285.33 (a)(1)(A)(i)

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

Figure 3: 30 TAC §285.33 (a)(1)(A)(ii)

(iii) For excavations three feet wide or less use the following formula or §285.91(8) of this title (relating to Figures) to determine L:

Figure 4: 30 TAC §285.33 (a)(1)(A)(iii)

(B) Porous media. The porous media shall consist of clean, washed and graded gravel, broken concrete, rock, crushed stone, chipped tires, or similar aggregate that is generally one uniform size ranging from 0.75 - 2.0 inches as measured along its greatest dimension.

(i) The permitting authority may consider and approve the use of chipped tire sizes greater than 0.75 - 2.0 inches along the greatest dimension.

(ii) When chipped tires are used in conjunction with geotextile fabric, a heavier duty geotextile fabric must be utilized to minimize fabric punctures and eliminate fabric tears due to protruding steel belt remnants.

(iii) Soft media such as oyster shell and soft limestone will not be approved.

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

(i) Three or four inch diameter polyvinyl chloride pipe with a standard dimension ratio (SDR) of 35 or less.

(ii) Four inch diameter corrugated polyethylene, ASTM F405 in rigid ten foot joints only.

(iii) Three or four inch diameter polyethylene smoothwall, ASTM F810.

(iv) Any other pipe approved by the executive director.

(D) Installation Requirements. Piping constructed from materials other than those listed in subparagraph (C) of this paragraph may be submitted to the permitting authority for approval. The drainline shall be placed in the porous media with at least six inches of media between the bottom of the excavation and the bottom of the drainline. The drainline shall be completely covered by the porous media and the drainline perforations shall be below the horizontal center line of the pipe. The drainlines shall be placed parallel to each other and parallel to the longest horizontal dimension of the excavation. The maximum separation distance between parallel drainlines shall be four feet (center to center). Multiple drainlines shall be manifolded together with solid or perforated pipe. The opposite ends of multiple drainlines shall be manifolded together with

solid line or looped together using perforated line and bedding. If drainfield is not to be looped, end caps must be used.

(E) Permeable soil barrier. A permeable soil barrier shall be placed between the top of the porous media and the excavation backfill. Geotextile fabric shall be used for the permeable soil barrier. Geotextile fabric shall conform to the following specifications for unwoven, spun-bounded polypropylene, polyester or nylon filter wrap:

Figure 5: 30 TAC §285.33(a)(1)(E)

(F) Backfilling. Backfilling is the process of replacing the soil removed during excavating back into the drainfield and on top of the geotextile fabric. Only soils identified as suitable as described in §285.30(b) and (c) of this title (relating to Site Evaluation) shall be used for backfill. Rock and high shrink swell clays are specifically prohibited for use as a backfill material. The backfill material shall be mounded over the excavated area so that the center of the excavation slopes down to the outer perimeter to allow for settling. The excavated area may be bermed or drainage swales may be used to divert surface runoff from the site.

(G) Drainfields on irregular terrain. Where topography or ground slope is greater than 15 percent but less than 30 percent slope for the construction of a level single drainfield, multiple long narrow drainfields may be constructed along descending contours. An overflow line shall be provided from the upper excavations to the lower excavations. This overflow line shall be constructed from solid pipe with an SDR of 35 or less and the excavation carrying the overflow pipe shall be backfilled with soil only.

(H) Drainfield plans. A number of approved sketches, specifications and details for drainfield construction are provided in §285.90(4) and (5) of this title (relating to Figures).

(2) Evapotranspirative drainfield (ET). An ET drainfield is a standard disposal process which may be used in soils which are classified as unsuitable in §285.30 of this title (relating to Site Evaluation) with respect to texture, structure, restrictive horizons and ground water. Water saving devices must be utilized in all structures for which ET beds are recommended. ET drainfields are generally constructed in accordance with the specifications for absorptive drainfields with the following exceptions:

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

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

Figure 6: 30 TAC §285.33 (a)(2)(B)

(C) Backfill material. Backfill material shall consist of soil Class II as described in §285.30 of this title (relating to

Site Evaluation). Excavations containing two or more drainlines may eliminate the porous media between the drainlines to allow the backfill material to contact the bottom of the excavation. This construction procedure will enhance the wicking action of the soil and improve water transfer. The porous media shall extend at least one foot beyond the edge of the drainline horizontally.

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

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

(F) Geographical location. ET drainfields shall only be used in those areas of the state where the annual mean pan evaporation exceeds the annual rainfall. As the annual rainfall approaches the annual evaporation, the required ET drainfield size becomes very large and expensive to construct (see data in §285.91(7) of this title).

(G) ET drainfield plans. A number of approved sketches for ET drainfield construction are provided in §285.90(4) and (5) of this title (relating to Figures).

(3) Pumped effluent drainfield. Pumped effluent drainfields must utilize low pressure dosed drainfield specifications described in subsection (c)(1) of this section, with the following exceptions:

(A) Applicability. Pumped effluent drainfields may only be utilized by single family dwellings and not commercial or institutional structures.

(B) Length of drainfield. There shall be at least 1,000 linear feet of perforated drain pipe for a two bedroom single family dwelling. For each additional bedroom, there shall be an additional 400 linear feet of perforated drain pipe. No individual lateral may exceed 70 feet in length.

(C) Trench width and horizontal separation. Trenches shall be at least six inches wide. There shall be at least three feet of separation between trenches.

(D) Lateral depth and vertical separation. All drainfield laterals shall adhere to a depth range from 1.5 feet to 3 feet. There shall be at a minimum vertical separation distance of 2.0 foot from the bottom of the excavation to a restrictive horizon or to ground water.

(E) Porous media. Each dosing pipe shall be placed with the drain holes facing down and placed on at least six inches of porous media (pea gravel or larger) between the bottom of the excavation and pipe.

(F) Pipe and hole size. Lateral drain pipe shall use 1.25-1.5 inch diameter line. Manifolds or headers shall use 1.25-1.5 inch diameter line, where the manifold or header lines must have a diameter as large or larger than the lateral line diameter. Lateral drain pipe hole sizes shall be 3/16-1/4 inch diameter spaced five feet apart.

(G) Pump size. Pumped effluent drainfields shall utilize at least a 1/2 horsepower pump.

(H) Topography. When slopes are greater than 2.0 percent, pumped effluent drainfields shall not be used.

(b) Disposal processes - proprietary.

(1) Gravel-less drainfield piping. Gravel-less pipe may be used only on sites suitable for standard subsurface sewage disposal methods. Gravel-less pipe is available in eight-inch or ten-inch diameter corrugated perforated polyethylene pipe. The pipe is enclosed in a layer of unwoven spun-bonded polypropylene, polyester or nylon filter wrap. Gravel-less pipe shall meet American Society for Testing and Materials, ASTM F-667 Standard Specifications for large diameter corrugated high density polyethylene (ASTM D 1248) tubing. The filter cloth must meet the same material specifications as described under subsection (a)(1)(E) of this section.

(A) Planning parameters. Gravel-less drainfield pipe may be substituted for pipe in both absorptive or ET drainfields. When gravel-less pipe is substituted, the porous media around conventional pipe will not be required. ET drainfields shall be backfilled with Class II soils only. Gravel-less pipe shall not be used for absorptive drainfields in Class IV soils. All other planning parameters for absorptive or ET drainfields apply to gravel-less pipe.

(B) Installation. The proper installation of adequate construction materials is vitally important to the success of gravel-less drainfield systems. Materials include gravel-less pipe, backfill, end caps, offset connectors and filter cloth. All connections from the house to the septic tank shall be in accordance with §285.34(a) of this title (relating to Other Requirements). The connection from the septic tank to the gravel-less line shall be made by using an eight or ten-inch offset connector. It is important that the gravel-less line be laid level with the continuous stripe up, and joined with couplings. The filter cloth must be pulled over the joint to eliminate soil infiltration. The gravel-less pipe must be held in place during initial backfilling to prevent movement of the pipe in the excavation. The end of each gravel-less line shall have an end cap and inspection port installed. An inspection port is required because the amount of sludge or suspended solids in the line can be easily monitored and the distribution lines can be back-flushed.

(C) Drainfield Sizing. Eight inch diameter gravel-less pipe shall use $W = 2.0$ and ten inch gravel-less pipe shall use $W = 2.5$ for absorptive drainfield sizing.

(2) Leaching chambers. Leaching chambers are bottom-less chambers which are planned for installation in a drainfield excavation with the open bottom of the chamber in direct contact with the excavation. The chambers are linked together with sewer pipe (no perforations) in such a manner as to completely cover the excavation with adjacent chambers in contact with each other. The chambers may be covered with the soil removed from the excavation provided it meets Class I, II or III soil as described in §285.30 of this title (relating to Site Evaluation). Other special conditions for leaching chambers are as follows:

(A) The excavation may be reduced by 40 percent from the value calculated using §285.91(1) of this title. The following formula may be used for leaching chambers in 3 foot wide excavations:

Figure 7: 30 TAC §285.33 (b)(2)(A)

(B) These chambers shall not be used for absorptive drainfields in Class Ia or IV soils.

(C) Backfill covering leaching chambers should be Class Ib, II, or III soil.

(3) Pressure emitters. Pressure emitters consist of small diameter pressurized lines directly buried in the soil to a nominal depth of six inches. The lines contain pressure reducing devices spaced at 30 inch maximum intervals. The purpose of the pressure reducing device is to restrict the flow of effluent from the pipe into the surrounding soil to a very low rate. This distribution method promotes uniform wetting of the soil in the root zone of surface vegetation. Since the near surface root zone of plants will absorb water, even in Class IV soils, this type of system may be used for on-site disposal in these soils. The system must be equipped with a filtering device capable of filtering to 100 microns.

(A) Drainfield layout. The drainfield shall consist of a matrix of lines and emitters arranged in almost any configuration provided the lines are separated by a minimum of two feet horizontally. The system must be equipped with a mechanism to backflush from drainfield back to the septic tank.

(B) Effluent quality. Treatment preceding this disposal process shall treat the wastewater to a degree to preclude plugging of the emitters. This quality shall be determined by the executive director. Direct septic tank discharge into the emitters without additional treatment will not be approved.

(C) System maintenance. On-going maintenance contracts in accordance with the maintenance provisions of §285.21 of this title (relating to Additional Application Requirements for Surface Irrigation Systems) shall be required for all emitter systems. Systems should be equipped to backflush the system back to the septic tank.

(D) Loading Rates. Pressure emitters can be used in all classes of soils using loading rates as specified in §285.91(1) of this title. Emitters are assumed to wet four square feet of absorptive area per emitter.

(E) There shall be a minimum vertical separation distance of one foot from the bottom of the excavation to a restrictive horizon and one foot vertical separation distance to ground water.

(4) Testing and monitoring of proprietary disposal systems. All proprietary disposal systems other than those described in this section shall be approved by the executive director prior to their use in the state. Proprietary systems shall be approved by the executive director utilizing the procedures established in §285.32(b) of this title (relating to Criteria for Sewage Treatment Systems).

(c) Disposal processes - non-standard. Non-standard disposal processes are all systems, components and materials not described as standard and not marketed for sale in the state as a proprietary item. The permitting authority may at its option review and either approve or disapprove the planning materials on a case-by-case basis. Planning criteria will be derived from basic engineering analysis and scientific investigation of the proposed disposal process.

(1) Low pressure dosed drainfield. A low pressure dosing system consists of an approved treatment system as specified in §285.32 of this title. Effluent from this system is pumped, under low pressure, into a solid wall force main and then into a perforated distribution pipe which is installed within the drainfield area.

(A) The effluent pump in the pump tank must be capable of an operating range that will assure that effluent is delivered to the most distant point of the perforated piping network, yet not be excessive to the point that "blow-outs" occur.

(B) A start/stop switch or timer must be included in the system to control the dosing pump. A high water alarm, on an electric circuit separate from the pump, must be provided.

(C) Drainfield criteria. Pressure dosing systems may be installed in accordance with design criteria in the North Carolina State University Sea Grant College Publication UNC-S82-03 (1982) or other publications containing criteria or data on pressure dosed systems which are acceptable to the permitting authority. The following parameters are required for all low pressure subsurface drainfields:

(i) The low pressure dosed drainfield area shall be sized in accordance with §285.91(1) of this title. Use three square feet of wetted area per linear foot of dosing pipe for all excavated areas less than one foot wide.

(ii) Each dosing pipe shall be placed with the drain holes facing down and placed on at least six inches of porous media (pea gravel or larger) between the bottom of the excavation and pipe.

(iii) Geotextile fabric or equivalent shall be placed over the pipe and the excavation filled with soil removed from the excavation.

(iv) There shall be a minimum vertical separation distance of one foot from the bottom of the excavation to a restrictive horizon and two feet vertical separation distance to ground water.

(v) Pump chambers shall be sized to provide one day's storage capacity above the "alarm on" level.

(vi) All other criteria in the North Carolina State University Sea Grant College Publication UNC-S82-03 (1982) may be used except for institutional and commercial systems.

(2) Surface irrigation systems. Surface irrigation methods include, but are not limited to, spray irrigation, landscape irrigation or any other method of applying treated effluent onto the surface of the ground.

(A) Types of wastewater treatment. The treatment system shall consist of any standard, proprietary or non-standard treatment methods described in §285.32 of this title and meeting the following effluent criteria:
Figure 8: 30 TAC §285.33 (c)(2)(A)

(B) Acceptable surface application areas. Acceptable land for surface application will include generally flat terrain covered with grasses, evergreen shrubs, bushes, trees or landscaped beds containing mixed vegetation. Sloped land may be acceptable if properly landscaped and terraced to minimize runoff.

(C) Unacceptable surface application areas. Land which cannot be used for surface irrigation includes land for growing food, gardens, orchards or crops which may be used for human

consumption. Additionally, effluent shall not be applied to bare ground under any circumstances.

(D) Minimum required application area. The minimum surface application area required shall be determined by dividing the daily usage rate (Q) as established in §285.91(3) of this title (relating to Tables) by the allowable surface irrigation application rate (R_i) found in §285.90(1) of this title (relating to Figures) or as approved by the permitting authority.
Figure 9: 30 TAC §285.33 (c)(2)(D)

(E) Uniform application of effluent. Distribution pipes, sprinklers, flow channels and other application methods/devices must provide uniform distribution of treated effluent. The application rate must be adjusted so as not to produce runoff.

(i) Sprinkler criteria. When sprinklers are used as the application method, the maximum inlet pressure shall be 40 psi. Low angle nozzles (13 degrees or less in trajectory) shall be used in the sprinklers to keep the spray stream low and reduce aerosols. Sprinkler operation shall be controlled by commercial irrigation timers.

(ii) Sprinkler head requirements. Circular spray patterns may overlap to cover all irrigated area including rectangular shapes. However, the overlapped area will be only counted once toward the total application area. For large systems, multiple sprinkler heads are preferred to single gun delivery systems.

(iii) Effluent storage requirements. Storage requirements and pump tank construction and installation shall be in accordance with §285.34(b) of this title. A sampling port shall be provided in the treated effluent line near the pump tank.

(3) Mound systems. A mound drainfield is an absorptive drainfield constructed above the native soil surface. A scarified interface (for absorptive mounds) between the native soil, a porous media around the distribution pipe, the distribution piping, and a topsoil cover are all components of the mound system. The depth of the material between the distribution pipe and the restrictive horizon or ground water shall be at least two feet. The preferred constructed shape is a long narrow rectangle, with the long dimension laid out along a contour. Effluent shall be pressure dosed into the distribution piping to ensure equal distribution and to control application rates. Planning criteria for mound construction may be as specified in the North Carolina State University Sea Grant College Publication UNC-SG-82-04 (1982), the United States Environmental Protection Agency's On-site Wastewater Treatment and Disposal Systems Design Manual (1980) or any technical publication containing mound system criteria and acceptable to the executive director. Shallow placement of the pressure distribution pipe is recommended to reduce mound height.

(4) Soil substitution drainfields. Soil substitution drainfields may be constructed in Class Ia soils, fractured rock, fissured rock, or other conditions of high permeability where septic tank effluent could rapidly reach ground water without undergoing adequate treatment through soil contact. A soil substitution drainfield is constructed similar to a standard absorptive drainfield with one exception. The exception consists of a 24-inch thick Class II or Class III soil buffer placed below and on all sides of the drainfield excavation. The Class II or Class III soil acts as a filter medium to remove contaminants from the wastewater prior to its contacting the highly permeable natural ground. Class IV soils may not be utilized for soil

substitution. It is recommended, but not mandatory, that low pressure dosing be used for effluent distribution.

(5) Drainfields Following Secondary Treatment and Disinfection. Subsurface drainfields following secondary treatment and disinfection may be constructed in Class Ia soils, fractured rock, fissured rock, or other conditions where insufficient soil depth will allow septic tank effluent to reach fractured rock, fissured rock, or a restrictive horizon before undergoing adequate treatment through soil contact. If this treatment technology is utilized, additional treatment may be needed for nitrate removal. The authorized agent is encouraged to contact the executive director for additional information.

(A) Drainfield Sizing

(i) If the unsuitable feature is Class Ia soils, the disposal area sizing should be based on the application rate for Class Ib soils. It is recommended, but not mandatory, that some form of pressure distribution be used for effluent disposal.

(ii) If the unsuitable feature is insufficient soil depth to fractured or fissured rock, the system sizing should be based on the application rate for Class III soils. It is recommended, but not mandatory, that some form of pressure distribution system be used for effluent disposal.

(B) Maintenance Requirements. The maintenance requirements of §285.21(c)-(g) of this title (relating to Additional Application Requirements for Surface Irrigation Systems) apply to these mound systems if pressure distribution is utilized for effluent transport.

§285.34. *Other Requirements.*

(a) House sewer. The sewer from the building's plumbing to the septic tank shall be constructed of cast iron, ductile iron, polyvinyl chloride (PVC) Schedule 40, SDR of 26 or other material approved by the executive director. The slope of the sewer shall be no less than 1/8 inch fall per foot of pipe. The sewer stub out should be as shallow as possible to facilitate gravity flow. A two-way cleanout plug must be provided between building's plumbing and the septic tank. All fittings used on this section shall be sanitary type. An additional cleanout plug shall be provided every 50 feet on long runs of pipe and may be of the single sanitary type. This sewer shall have a minimum inside diameter of three inches.

(b) Pump tanks. Pump tanks may be necessary when the septic tank outlet is at a lower elevation than the disposal field. All requirements in §285.32(a)(1)(D) and (E) of this title (relating to Criteria for Sewage Treatment Systems) are also applicable to pump tanks. The pump tank shall be constructed in accordance with the following specifications:

(1) Pump tank criteria. When effluent must be pumped to a disposal area, an appropriate pump shall be placed in a separate water-tight tank or chamber. A check valve may be required if the disposal area is above the pump tank. The tank shall be provided with an audio and visual high water alarm. If an electrical alarm is utilized the power circuit shall be separate from the pump and activated with a minimum of one-third reserve capacity remaining in the pump tank. All electrical components shall be approved by Underwriters Laboratories (UL).

(2) Pump tank sizing. Pump tanks shall be sized for one day of flow above the alarm-on level. Reserve capacity (capacity

above the alarm-on level) may be reduced to four hours average flow when pump tank is equipped with multiple pumps.

(3) Pump specifications. A single pump may be used for flows equal to or less than 1,000 gallons per day. Dual pumps are required for flows greater than 1,000 gallons per day. A dual pump system shall have the "alarm on" level below the "second pump on" level, and shall have a lock-on feature in the alarm circuit so that once it is activated it will not go off when the second pump draws the liquid level below the "alarm on" level. All audio and visual alarms shall have a manual "silence" switch. Pump switch-gear shall be selected such that both pumps shall operate as the first pump on an alternating basis. All pumps shall be rated by the manufactures for pumping sewage or sewage effluent.

(4) Electrical wiring. All electrical wiring shall be in accordance with the most recent edition of the National Electric Code. Connections shall be in approved junction boxes and all external power wiring shall be in approved electrical conduit, buried and terminated at a main circuit breaker panel or sub-panel. All electrical components should have an electrical disconnect within direct vision. Electrical disconnects must be weatherproof (approved for outdoor use) and have maintenance lockout provisions.

(c) Grease interceptors. Grease interceptor shall be used on kitchen waste-lines from institutions, hotels, restaurants, schools with lunchrooms, and other places that may discharge large amounts of greases and oils to the OSSF. The interceptor shall be installed near the plumbing fixture that discharges greasy wastewater and shall be easily accessible for cleaning. Grease interceptors shall be cleaned out periodically to prevent the discharge of grease to the disposal system. Grease interceptors shall be installed in accordance with the most recent requirements of the Uniform Plumbing Code or other prevailing code.

(d) Holding tanks. Tanks shall be constructed in accordance with subsection (b)(1) of this section. Inlet (no outlet shall be provided) fittings are required. A baffle is also not required. Holding tanks shall be used only on lots where no other methods of sewage disposal are feasible (these holding tank provisions do not apply to portable toilets). All holding tanks shall be equipped with a visual and audible alarm to indicate when the tank has been filled to within 75 percent of its rated capacity. A port with its smallest dimension being 15 inches or greater shall be provided in the tank lid for inspection, cleaning, and maintenance. This port shall be accessible from the ground surface and must be easily removable and watertight.

(1) Minimum capacity. Holding tank minimum capacity shall be sufficient to store the estimated or calculated daily wastewater flow for a period of one week (wastewater usage rate in gallons/day X 7 days).

(2) Location. Holding tanks shall be installed in an area readily accessible to the pump truck under all weather conditions, and at a location that meets the minimum distance requirements in accordance with §285.91(10) of this title (relating to Tables).

(3) Maintenance. A scheduled pumping contract with a licensed waste transporter, holding a valid registration with the executive director, must be provided to the permitting authority before any holding tanks are installed. Records of such activities must be retained for 5 years.

(e) Composting toilets. Composting toilets will be approved by the executive director provided the system complies with NSF International Standard 41 (1983).

(f) Condensation. If condensate lines are plumbed directly into a OSSF, the increased water volume must be accounted for (added to the usage rate) in the system planning materials.

§285.35. *Emergency Repairs.*

An emergency repair may be made to an OSSF providing that such repair is made for the abatement of an immediate, serious and dangerous health hazard, that such repair does not constitute an alteration of that OSSF system's planning materials and function, and includes such items as replacing tank lids, inlet and outlet devices and repair of solid lines and that such repair meets minimum state criteria established in this chapter. The permitting authority must have written notification within 72 hours of the repair and given a detailed description of the methods and materials used in said repair. An inspection of the emergency repairs may be required at the discretion of the permitting authority.

§285.36. *Abandoned Septic, Holding, and Pump Tanks.*

It is the responsibility of the property owner to conduct the following actions, in the order listed, to properly abandon an OSSF:

(1) All tanks, boreholes, cesspools, seepage pits, holding tanks, and pump tanks shall have the wastewater/septage removed by a licensed waste transporter, holding a valid registration with the executive director; and

(2) All tanks, boreholes, cesspools, seepage pits, holding tanks, and pump tanks shall be filled with clean sand or other suitable material, free of organic debris, and completely covered with soil.

§285.39. *OSSF Maintenance and Management Practices.*

An installer shall provide the owner of an OSSF the following maintenance and management practices and water conservation measures related to the OSSF installed, repaired or maintained by the installer.

(1) Maintenance and management practices.

(A) An OSSF should not be treated as if it were a normal city sewer system.

(B) The excessive use of in-sink garbage grinders and grease discarding should be avoided. In-sink garbage grinders can cause a rapid buildup of sludge or scum resulting in a requirement for more frequent cleaning and possible system failure.

(C) Do not use the toilet to dispose of cleaning tissues, cigarette butts, or other trash. This disposal practice will waste water and also impose an undesired solids load on the treatment system.

(D) Septic tanks shall be cleaned before sludge accumulates to a point where it approaches the bottom of the outlet device. If sludge or scum accumulates to this point, solids will leave the tank with the liquid and possibly cause clogging of the perforations in the drainfield line resulting in sewage surfacing or backing up into the house through the plumbing fixtures.

(E) Since it is not practical for the average homeowner to inspect his tank and determine the need for cleaning, a regular schedule of cleaning the tank at two-to-three year intervals should be established. Commercial cleaners are equipped to readily perform the cleaning operation. Owners of septic tank systems shall engage

only persons registered with the TNRCC to transport the septic tank cleanings.

(F) Do not build driveways, storage buildings, or other structures over the treatment works or its disposal field.

(G) Chemical additives or the so-called enzymes are not necessary for the operation of a septic tank. Some of these additives may even be harmful to the tank's operation.

(H) Soaps, detergents, bleaches, drain cleaners, and other household cleaning materials will very seldom affect the operation of the system. However, moderation should be exercised in the use of such materials.

(I) It is not advisable to allow water softener back flush to enter into any portion of the OSSF.

(J) The liquid from the OSSF is still heavily laden with bacteria. The surfacing of this liquid constitutes a hazard to the health of those that might come into contact with it.

(2) Water conservation measures/practices.

(A) Showers usually use less water than baths. Install a water saving shower head that uses less than two and 1/2 gallons per minute and saves both water and energy.

(B) If you take a tub bath, reduce the level of water in the tub from the level to which you customarily fill it.

(C) Leaky faucets and faulty commode fill-up mechanisms should be repaired as quickly as possible.

(D) Check commodes for leaks that may not be apparent. Add a few drops of food coloring to the tank. Do not flush. If the color appears in the bowl within a few minutes, the toilet fill or ball-cock valve needs to be adjusted to prevent water from overflowing the stand pipe or the flapper at the bottom of the toilet tank needs to be replaced.

(E) Reduce the amount of water used for flushing the commode by installing one of the following: a new toilet (1.6 gallon); a toilet tank dam; or filling and capping one-quart plastic bottles with water (usually one is all that will fit in smaller toilet tanks) and lowering them into the tank of the existing 3.5 gallon or larger toilet. Do not use bricks since they may crumble and cause damage to the fixture.

(F) Try to run the dishwasher with a full load, whenever possible.

(G) Avoid running the water continuously for brushing teeth, washing hands, rinsing kitchen utensils or for cleaning vegetables.

(H) Use faucet aerators that restrict flow to no more than 2.2 gallons per minute to reduce water consumption.

(I) Keep a container of drinking water in the refrigerator instead of running the faucet until the water turns cool.

(J) Insulate all hot water pipes to avoid long delays of wasted water while waiting for the heated water.

(K) Ask your city, county, or local government about their programs to conserve water and how they can help you save water.

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

Issued in Austin, Texas, on June 26, 1996.

TRD-9609618

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Texas Natural Resource Conservation Commission

Earliest possible date of adoption: August 16, 1996

For further information, please call: (512) 239-4640



Subchapter E. Special Requirements for OSSFs Located in the Edwards Aquifer Recharge Zone

30 TAC §285.40

The new section is proposed under Texas Water Code, §§5.103, 5.105, 5.120 and 26.040, and Texas Health and Safety Code, §366.012, which provide the Texas Natural Resource Conservation Commission (commission) with the authority to promulgate rules as necessary to carry out its powers and duties under the codes and under the laws of the state and to establish and approve all general policies of the commission.

§285.40. *OSSFs on the Recharge Zone of the Edwards Aquifer.*

(a) **Applicability.** In addition to the requirements given in this chapter, the following additional provisions apply to the Edwards Aquifer recharge zone as defined in §285.2 of this title (relating to Definitions) and is not intended to be applied to any other areas in the State of Texas.

(b) **Additional application requirements for new OSSFs.**

(1) All planning and design materials shall be submitted by a professional engineer registered in Texas.

(2) Site evaluation to be conducted by a certified site evaluator possessing a valid certificate.

(c) **Conditions for obtaining a permit to construct.** In order to obtain a permit to construct in the Edwards Aquifer recharge zone, the following conditions must be met.

(1) **Minimum lot sizes.** Each lot or tract of land on the recharge zone on which OSSFs are to be located must have an area of at least one acre (43,560 square feet) per single family dwelling.

(2) **Minimum separation distances from recharge features.** No sewage treatment tank or holding tank may be located within 50 feet of a recharge feature. No soil absorption system may be located within 150 feet of a recharge feature.

(3) **No OSSF may be installed closer than 75 feet from the banks of the Nueces, Dry Frio, Frio, or Sabinal Rivers downstream from the northern Uvalde county line to the recharge zone.**

(d) **Existing OSSFs.** OSSFs licensed by, or registered with, the appropriate permitting authority at the time of adoption of this section shall remain licensed or registered under the terms and conditions of the current license or registration. Any relicensing shall be performed in accordance with §285.3 of this title (relating to Applicability). An OSSF installed on the recharge zone prior to April

11, 1977, in either Uvalde or Kinney Counties is not required to be permitted or licensed, provided the OSSF is not causing pollution, is not a threat to the public health, or is not a nuisance, and has not been substantially modified.

(e) **Exceptions for certain lots.** Lots platted and recorded with the county in its official plat record, deed, or tax records of the following counties prior to the dates for the counties indicated in this subsection, are exempted from the one-acre minimum lot size requirement, pursuant to the conditions of subsection (g) of this section.

(1) Kinney, Uvalde, Medina, Bexar, and Comal Counties—March 26, 1974;

(2) Hays County—June 21, 1984;

(3) Travis County—November 21, 1983; and

(4) Williamson County—May 21, 1985.

(f) **Notice.** Any person, or his agents or assignees, desiring to construct a residential development with two or more lots in which OSSFs will be utilized in whole or in part on the recharge zone and desiring to sell, lease, or rent the lots therein, must inform in writing each prospective purchaser, lessee, or renter of the following.

(1) Each lot within the regulated development is subject to the terms and conditions of this section.

(2) A permit to construct shall be required before an OSSF can be constructed in the subdivision.

(3) A license to operate shall be required for the operation of an OSSF.

(4) Whether or not an application for a water pollution abatement plan as defined in Chapter 313 of this title (relating to Edwards Aquifer), has been made, and whether or not it has been approved, and whether any restrictions or conditions have been placed on that approval.

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

Issued in Austin, Texas, on June 26, 1996.

TRD-9609619

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Earliest possible date of adoption: August 16, 1996

For further information, please call: (512) 239-4640



Subchapter F. Registration, Certification and/or Training Requirements for Installers, Apprentices, Site Evaluators or Designated Representatives

30 TAC §§285.50-285.63

The new sections are proposed under Texas Water Code, §§5.103, 5.105, 5.120 and 26.040, and Texas Health and Safety Code, §366.012, which provide the Texas Natural Resource Conservation Commission (commission) with the authority to promulgate rules as necessary to carry out its

powers and duties under the codes and under the laws of the state and to establish and approve all general policies of the commission.

§285.50. *General Requirements for Registration and Certification.*

(a) The purpose of this section is to set forth a statewide uniform procedure for the training and registration of installers of OSSFs and training and certification of site evaluators and designated representatives and to assist individuals employed or seeking employment in the OSSF industry in meeting the educational and testing requirements for obtaining registration or certification.

(b) No individual shall install, construct, alter, extend, or repair an OSSF unless the individual holds a valid certification with the executive director or is expressly exempted from the installer's certification or registration requirements.

(c) No individual may represent himself or herself as an installer, site evaluator, or designated representative unless they possess a valid agency certificate for that profession.

(d) In addition to the requirements of this section, an installer shall comply with all requirements of this title and be responsible for the proper installation of all OSSFs installed under the installer's registration or certification.

(e) No individual shall work under an installer's certificate unless said individual is an apprentice of that installer or under direct supervision of that installer or the apprentice at the jobsite. Apprentices will be issued a registration card in accordance with §285.60 of this title (relating to Apprentice Program).

(f) The installer shall directly supervise all individuals working under the installer's certificate during the installation, construction, alteration, or repair of the OSSF and shall be present on the jobsite during each major phase, or may be represented by his or her apprentice.

(g) When required by the permitting authority, the installer or apprentice must be present at the job-site during the inspection or re-inspection of the OSSF.

(h) The executive director may allow reciprocity for an installer with a valid certificate from another state having certification requirements substantially equivalent to those of this state.

(i) Individuals who act in any capacity for a permitting authority which has jurisdiction over OSSFs shall not work as an installer or private site evaluator in that permitting authority's area of jurisdiction.

(j) Beginning 360 days after the effective date of this chapter, no individual shall be employed or compensated by an authorized agent as a designated representative without being registered with the executive director and possessing a valid designated representative's certificate.

(k) Beginning 360 days after the effective date of this chapter, no individual shall be compensated as a site evaluator conducting pre-construction site evaluation or soil analysis without being registered with the executive director and possessing a valid site evaluator's certificate.

§285.51. *Exceptions to Registration/Certification Requirements.*

A single family residential property owner shall not be subject to the training and registration requirements when installing, constructing, altering, extending or repairing his or her own OSSF on his or her

property, or an individual registered as an apprentice. However, the permitting authority must be contacted prior to construction of the OSSF regarding any permitting requirements to insure compliance with the commission's criteria or such criteria duly established by the authorized agent. The homeowner shall not compensate any person to perform any phase of the OSSF installation work where the individual performing the work is not a registered installer of the correct level. An exception shall be made for installation of electrical components by a licensed electrician where required.

§285.52. *Administration.*

The executive director shall be responsible for administering the certification and registration of installers, apprentices, site evaluators, and designated representatives. This administration includes:

- (1) accepting and reviewing applications to determine if qualifications are met and notifying applicants as to action taken;
- (2) preparing and administering examinations;
- (3) scoring examinations and promptly notifying applicants as to the results;
- (4) issuing and renewing registrations and certifications;
- (5) publishing of a roster with semi-annual updates of installers, site evaluators, and designated representatives holding valid registration or certification;
- (6) maintaining training records of installers, site evaluators, and designated representatives;
- (7) approving training schools, courses, and instructors for registration and certification purposes; and
- (8) collecting fees.

§285.53. *Applications.*

(a) Applications for registration or certification shall be made on a standard form provided by the executive director.

(b) Each applicant shall submit a non-refundable application and examination fee in accordance with §285.57 of this title (relating to Fees).

(c) The applicant shall furnish evidence of any training credit or any other information as requested by the executive director.

(d) Applicants shall meet the qualifications and training requirements established in this subchapter and submit the appropriate fee before taking the examination.

(e) An application is valid for 12 months from the initial date of the examination.

§285.54. *Qualifications.*

(a) All applicants shall be required to successfully complete the educational training program provided by or for the executive director in accordance with §285.59 of this title (relating to Training).

(b) Only training that has been approved by the executive director is acceptable for registration or certification.

(c) All applicants for installer registration shall be required to pass an examination covering the field of OSSFs.

(d) Installer I qualifications:

(1) beginning 360 days after the effective date of this chapter, an applicant shall have at least one year of experience as a

registered apprentice under the supervision of an Installer I or Installer II holding a valid certificate;

(2) successful completion of the Installer I training course; and

(3) must pass the Installer I examination.

(e) An Installer I is qualified to install, construct, alter, extend, or repair standard OSSFs as described in §285.91(9) of this title (relating to Tables). These systems consist of conventional trench drainfields, unlined E.T. beds, as well as the proprietary systems utilizing gravel-less pipe drainfields and leaching chambers.

(f) Installer II qualifications:

(1) must possess an Installer I certificate;

(2) have at least two years of verified experience in OSSF installation, construction, extension, alteration and or repair under said certification;

(3) must successfully complete the Installer II training course; and

(4) must pass the Installer II examination.

(g) An Installer II is qualified to install, construct, alter, extend, or repair all types of OSSFs. Only an Installer II is qualified to maintain proprietary and non-standard systems.

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

(i) All applicants for certification as a site evaluator or designated representative shall be required to pass an examination covering the field of OSSF installation, construction, repair, operation, disposal, planning, maintenance, soil analysis, site evaluation and program administration.

(j) Designated representative qualifications. Each individual appointed, employed or compensated by a permitting authority having duties and responsibilities for the regulation and inspection of OSSFs shall be required to take and complete designated representative training and pass an examination for designated representatives.

(k) Site evaluator qualifications:

(1) must have two years of verifiable experience in the OSSF field; possess an Installer II certificate, registered sanitarian certificate, or professional engineer registration;

(2) must successfully complete the site evaluator training course; and

(3) must pass the Site Evaluator examination.

(4) A site evaluator is qualified to conduct preconstruction site evaluation which includes performing soil analysis, a site survey and other criteria necessary to determine the suitability of a site for a specific OSSF.

§285.55. *Examinations.*

(a) An applicant shall take an examination for an Installer (I or II), Designated Representative, or Site Evaluator certificate after presenting qualifications acceptable to the executive director. The passing score for an examination shall be 70%. The examinee shall be informed, in writing only, as to the results of the examination.

(b) Any applicant who fails an examination may repeat the examination after waiting 60 days and paying the reexamination fee in accordance with §285.57 of this title (relating to Fees). The examination may be repeated not more than three times in a given 12-month period.

(c) Following the failure of the examination, the initial application shall be held by the executive director for not more than 12 months from the initial date of the examination. If after the 12-month period, the applicant has not passed the examination, the application will be deemed invalid and he or she must submit a new application with the appropriate fee and repeat the appropriate training course before taking the examination again.

(d) Examinations shall be administered and supervised by the executive director. Examinations shall be given at places and times established by the executive director. Examinations shall be graded by the executive director and the results shall be forwarded to the applicant no later than 45 days after the examination date.

§285.56. *Certificates/Renewal Applications.*

(a) Issuance of certificate.

(1) Upon satisfactory fulfillment of the requirements provided in this subchapter, the appropriate installer, designated representative, or site evaluator certificate shall be issued by the executive director.

(2) The installer, designated representative, or site evaluator shall inform the executive director in writing of any change in address and phone number during the validity period of the certificate. All certificates expire on August 31 of each year.

(3) The authorized agent shall notify the executive director in writing of any change in job status of its designated representative.

(4) An installer, designated representative, or site evaluator certification will be issued to individuals only and will not be transferable.

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

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

(b) Renewal application procedure.

(1) At least 30 days prior to the expiration date of the certificate, the executive director shall mail to the installer, designated representative, or site evaluator a renewal application showing the expiration date, and fee to be paid.

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

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

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

(5) If an installer, designated representative, or site evaluator needs a duplicate certificate the executive director shall upon request issue another certificate to the individual for a duplicate certificate fee in accordance with §285.57 of this title (relating to Fees).

(6) Applications for renewal shall be made according to this subchapter and on forms which may be obtained from the executive director.

(c) Denial of Certificate and Registration. The executive director may deny a certificate or a registration for the following grounds:

(1) when an applicant fails to submit the required documentation as required by §285.50 of this title (relating to General Requirements for Registration and Certification);

(2) when an applicant fails to pay the appropriate fee as required under §285.57 of this title;

(3) when an applicant submits an application with fraudulent or deceptive information; or

(4) for other cause(s) which in the opinion of the executive director constitute adequate ground(s) for denial.

§285.57. Fees.

(a) The fees applicable to the registration and certification program administered by the executive director shall be as follows:

(1) Application/Examination fee - \$125

(2) Installer Certification Fee/Renewal Fee - \$75

(3) Site Evaluator Certification/Renewal Fee - \$75

(4) Designated Representative Certification Fee/Renewal Fee - \$50

(5) Reexamination Fee - \$50

(6) Combination Installer II and Site Evaluator Certification Fee/Renewal Fee - \$125

(7) Late Fee - Any individual failing to make payment of fees when due will be assessed late payment penalties and interest at the maximum rates established for delinquency taxes under Texas Tax Code, §111.060(a) and (b) and §111.061.

(8) Apprentice Registration/Renewal Fee - \$25

(9) Duplicate Certificate Fee - \$20

(10) Renewal/Late Fees

(A) If an installer's, designated representative's or site evaluator's certification has not been renewed by August 31, the individual may renew the certification by submitting to the executive director the renewal fee in addition to a late fee and providing proof of the continuing educational course requirements. If an installer has not renewed his or her certificate in accordance with this section, the executive director shall terminate the registration of all apprentices registered under that installer's supervision.

(B) If an installer, designated representative or site evaluator renews after August 31, and their certification has been expired less than two years, the installer, designated representative

or site evaluator must pay all delinquent renewal and late fees and provide proof of the continuing educational course requirements to the executive director to obtain a current OSSF installer, designated representative or site evaluator certification.

(C) If an installer's, designated representative's or site-evaluator's certification has been expired for two years or more, the person may not renew the certification. The individual may obtain a new certification by taking the executive director approved training course, submitting to reexamination and complying with all other requirements and procedures for obtaining an original certification.

(b) An applicant shall pay all required fees before taking the examination or receiving a certificate. All fees shall be paid by personal check, cashier's check, or by money order. Cash cannot be accepted for payment of fees. If the applicant does not submit the appropriate payment with the new or renewal application, the certificate shall not be issued. The application fee for registration or certification shall not be prorated.

(c) All fees shall be made payable to the Texas Natural Resource Conservation Commission, and are not refundable.

§285.58. Duties and Responsibilities.

(a) An installer shall:

(1) use reasonable care, judgement or application of his or her knowledge in the performance of his or her duties;

(2) not practice theft, fraud or deceit in the application of his or her duties;

(3) obtain the necessary permitting authority's authorization before beginning to install, construct, alter, extend or repair an OSSF;

(4) not falsify information on any application or any other documentation;

(5) install the OSSF that is authorized by the permitting authority;

(6) install, construct, alter, extend, or repair the OSSF to meet the minimum criteria found in this chapter or more stringent design criteria of an authorized agent;

(7) use the proper materials in the installation, construction, alteration, extension or repair of an OSSF;

(8) be present during all phases of installation, construction, alteration, extension or repair of the OSSF at the jobsite or represented by the installer's apprentice;

(9) visit the jobsite at least once during each work day to verify the work performed by any apprentice under the installer's registration;

(10) not abandon, without just cause, an OSSF during the installation, construction, alteration, extension or repair before or after the final inspection. The failure of an installer to perform work without just cause for 30 consecutive days shall constitute an abandoned project;

(11) call for the required inspection(s) from the permitting authority; and

(12) not alter the OSSF after the final inspection.

(b) A designated representative shall:

(1) use reasonable care, judgment or application of knowledge in the performance of his or her duties;

(2) not practice theft, fraud or deceit in the application of his or her duties;

(3) enforce the rules and regulations of the permitting authority's OSSF program;

(4) maintain accurate records of permitting, inspections, and nuisance complaints;

(5) investigate and resolve nuisance complaints;

(6) not knowingly accept falsified information on any permit application or other documentation;

(7) only receive compensation for OSSF related services directly from the authorized agent or in accordance with a signed contract with the authorized agent;

(8) verify that an individual is an installer possessing a valid certification and the correct classification for installing, constructing, altering, extending or repairing that particular OSSF before the initial inspection;

(9) perform a satisfactory and valid final inspection of an OSSF at the job site to verify that minimum criteria of this chapter or the more stringent criteria of the authorized agent has been met;

(10) verify the existence of an adequate maintenance contract between the property owner and the maintenance company, if required; and

(11) not operate as a registered installer while employed or compensated by the permitting authority within their area of jurisdiction.

(c) A site evaluator shall:

(1) use reasonable care, judgement or application of his or her knowledge in the performance of his or her duties; and

(2) not practice theft, fraud, or deceit in the application of his or her duties.

§285.59. *Training.*

All training credits and instructors shall be approved by the executive director through the Occupational Certification Section.

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

(2) The basic training required for the Installer I certificate shall cover specific knowledge regarding the basic treatment and disposal of wastewater. The training will offer instruction to applicants on rules, regulations, permitting, an introduction to using soils for wastewater treatment, wastewater characteristics and operation, installation, and construction of basic or conventional OSSFs utilizing standard subsurface treatment and disposal methods. The applicant shall also be familiar with distribution mechanisms and shall have the ability to make calculations, determine slope and be familiar with the use of a leveling device.

(3) The advanced training required for the Installer II certificate shall cover specific knowledge regarding the subsurface treat-

ment and disposal of wastewater. The training will offer instruction to applicants on installation, construction and maintenance of alternative, standard, non-standard or proprietary OSSFs using non-standard treatment and disposal methods, ground water protection practices, basic soil analysis and site evaluation. The applicant shall also be familiar with distribution mechanisms and shall have the ability to make calculations and measure water flow rates.

(4) The training required for the designated representative's or site evaluator's certificate shall cover specific knowledge regarding the subsurface treatment and disposal of wastewater, concepts and theory of OSSF systems, operations, installation, construction and maintenance of all types of OSSFs, soil analysis and site evaluation, ground water, regulatory operations, health laws, and the judicial system as it relates to OSSF enforcement. The applicant shall also be familiar with wastewater characteristics, distribution mechanisms, shall have the ability to make calculations, measure water flow rates, be able to operate different surveying equipment and be acquainted with the proper inspection procedures, as well as having the ability to keep records.

(5) An individual holding an installer, designated representative and/or site evaluator certificate must successfully complete a minimum of 8 hours of continuing education training approved by the executive director prior to August 31 of each year in order to renew their certificate.

§285.60. *Apprentice Program.*

(a) An individual who wishes to undertake a training program under the supervision of an installer holding a valid certificate under this chapter shall register with the executive director and provide proof that the supervising installer has agreed to accept the responsibility for the apprentice. Revocation, Suspension, or Reinstatement of Certificate and Registration.

(b) A registration form and annual fee must be submitted by an installer for each individual desiring to register as an apprentice under his or her supervision. Registration shall be on forms which may be obtained from the executive director and shall include:

(1) the name, business address, and permanent mailing address of the apprentice;

(2) the name and business address of the installer who will supervise the apprentice;

(3) a detailed description of the apprentice program as set by the supervising installer;

(4) the effective commencement and termination dates of the apprentice training program (No apprentice program may be shorter in duration than one year);

(5) a statement by the supervising installer that he or she accepts financial responsibility for the activities of the apprentice undertaken on behalf of the installer; and

(6) the signatures of the apprentice and the supervising installer and a notarized statement from each that the information provided is true and correct.

(c) Commencement of the apprentice registration will take place upon receipt of the completed apprentice application and fee by the executive director. The executive director shall notify the apprentice and the supervising installer that the apprentice has been accepted as a registered apprentice and that the registration form shall

remain in the agency's files for the stated duration of the apprentice period.

(d) The registration of an apprentice shall remain on file only for the stated duration of the period specified in the application. Upon completion of the apprentice training period, an apprentice may decide to apply to the executive director to obtain certification as an installer. Either the supervising installer or the apprentice may terminate the apprentice training program by written notice to the executive director. No reason for termination is required, and, upon receipt of a letter stating that the apprentice training program has been terminated, the executive director shall terminate the apprentice's registration status.

(e) An apprentice shall:

(1) represent his supervising installer during operations at the site; and

(2) perform services associated with OSSF installation or repairs under direct supervision of an installer by directions on-site or by radio or other direct communication at all times.

(f) It is unlawful for an apprentice to act as or to offer to perform services as an installer on their own behalf. An apprentice may not perform any services associated with OSSF installation except under the supervision of an installer holding a valid certificate and/or according to the supervising installer's expressed directions. An apprentice's registration may be revoked if the apprentice is found to have engaged in prohibited activities.

§285.61. Revocation, Suspension or Reinstatement of Certificate and Registration.

(a) If the executive director determines good cause exists to suspend or revoke a certificate of a site evaluator, or designated representative; or a registration of an installer or apprentice, the executive director shall request that the commission schedule a hearing before the State Office of Administrative Hearings or the commission. Such hearing shall be held only after proper notice has been provided to the certificate holder or registrant. The commission may suspend or revoke the certificate or the registration if the commission finds that the certificate holder or registrant is responsible for violating the provisions of this chapter, for falsifying any information or documents submitted to the executive director, or for other good cause.

(b) A certificate or registration may be suspended for a period of up to one year, depending upon the seriousness of the offense(s). A certificate or registration is revoked automatically upon a second suspension. At the request of the certificate holder or registrant, or for other good cause shown, the certificate or registration may be suspended indefinitely by the commission.

(c) A certificate or registration may be permanently revoked by the commission, or may be revoked for a term designated by the commission. If the certificate or registration is revoked for a term designated by the commission, then the certificate holder or registrant may apply for a new certificate or registration, in accordance with §285.56 of this title (relating to Issuance, Renewal and Denial of Certificates and Registrations), upon the expiration of the term of revocation.

§285.62. Hearings.

(a) Notice for any hearing required by §285.61 of this title (relating to Revocation, Suspension or Reinstatement of Certificate

and Registration) shall be issued not less than 10 days prior to the hearing.

(b) Transmittal of the notice shall be by certified mail, return receipt requested.

(c) Persons to be notified include, but are not limited to, the following:

(1) the registrant or certificate holder;

(2) the complainant (if any); and

(3) any other person who may be affected by the outcome of the hearing, as determined by the executive director.

§285.63. Type of Hearing.

Any hearing related to the suspension or revocation of a certificate or registration is subject to the Administrative Procedure Act (Texas Government Code, Ann. §2001.001 et seq).

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

Issued in Austin, Texas, on June 26, 1996.

TRD-9609620

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Earliest possible date of adoption: August 16, 1996

For further information, please call: (512) 239-4640



Subchapter G. OSSF Enforcement

30 TAC §285.70

The new section is proposed under Texas Water Code, §§5.103, 5.105, 5.120 and 26.040, and Texas Health and Safety Code, §366.012, which provide the Texas Natural Resource Conservation Commission (commission) with the authority to promulgate rules as necessary to carry out its powers and duties under the codes and under the laws of the state and to establish and approve all general policies of the commission.

§285.70. Agency Enforcement of OSSFs.

(a) The executive director may investigate matters concerning on-site systems, apprentices, installers of on-site systems, site evaluators, designated representatives or authorized agents and may take appropriate enforcement action, as necessary, under Chapters 70 and 80 of this title (relating to Enforcement and Contested Case Hearings).

(b) If the executive director determines that an OSSF is creating a nuisance as defined in §285.2 of this title (relating to Definitions), the OSSF must be brought into compliance to abate the nuisance. The executive director may require a property owner to initiate repair of a malfunctioning OSSF on the owner's property not later than the 30th day after the date on which the owner is notified by the executive director of the malfunctioning system.

(c) If the executive director determines that enforcement action is warranted in response to the complaint, such action shall be

taken under Chapters 70 and 80 of this title (relating to Enforcement and Contested Case Hearings).

(d) The commission may assess an administrative penalty, or take any appropriate action described in Chapters 70 and 80 of this title (relating to Enforcement and Contested Case Hearings) or Texas Water Code, Chapter 26 (relating to Water Quality); or Texas Health and Safety Code Chapters 366 and 341 (relating to On-site Sewage Disposal Systems and Nuisance Conditions) for violations of the statutes or commission rules.

(e) The commission, before revoking or suspending a certification, or reprimanding a certificate holder, shall notify the certificate holder in writing of the alleged violation and provide the certificate holder with an opportunity for a hearing. The notice shall be given not later than the 10th day before the date set for the hearing. The notice shall be made by registered mail to the last known address of the certificate holder.

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

Issued in Austin, Texas, on June 26, 1996.

TRD-9609621
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: August 16, 1996
For further information, please call: (512) 239-4640

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Subchapter H. Treatment and Disposal of Greywater

30 TAC §285.80

The new section is proposed under Texas Water Code, §§5.103, 5.105, 5.120 and 26.040 and Texas Health and Safety Code, §366.012, which provide the Texas Natural Resource Conservation Commission (commission) with the authority to promulgate rules as necessary to carry out its powers and duties under the codes and under the laws of the state and to establish and approve all general policies of the commission.

§285.80. Treatment and Disposal of Greywater.

New construction or modification to an existing greywater system must be carried out in accordance with the Uniform Plumbing Code, Standard Plumbing Code or any other plumbing requirements adopted by the State Board of Plumbing Examiners and with the provisions of this chapter.

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

Issued in Austin, Texas, on June 26, 1996.

TRD-9609622
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: August 16, 1996

For further information, please call: (512) 239-4640

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Subchapter I. Appendices

30 TAC §285.90, §285.91

The new sections are proposed under Texas Water Code, §§5.103, 5.105, 5.120 and 26.040, and Texas Health and Safety Code, §366.012, which provide the Texas Natural Resource Conservation Commission (commission) with the authority to promulgate rules as necessary to carry out its powers and duties under the codes and under the laws of the state and to establish and approve all general policies of the commission.

§285.90. Figures.

The following figures are necessary for the proper location, planning, construction, and installation of an OSSF.

(1) Figure 1. Maximum Application Rates for Surface Irrigation of Treated Effluent in Texas.

Figure 1: §285.90(1)

(2) Figure 2. Affidavit to the Public.

Figure 2: §285.90(2)

(3) Figure 3. Sample Testing and Reporting Period.

Figure 3: §285.90(3)

(4) Figure 4. Typical Drainfields - Sectional View.

Figure 4: §285.90(4)

(5) Figure 5. Typical Drainfields - Plan View.

Figure 5: §285.90(5)

(6) Figure 6. Two Compartment Septic Tank.

Figure 6: §285.90(6)

(7) Figure 7. Two Septic Tanks in Series.

Figure 7: §285.90 (7)

(8) Figure 8. Intermittent Sand Filters.

Figure 8: §285.90(8))

(9) Figure 9. Intermittent Sand Filter Underdrain & Pumpwell.

Figure 9: §285.90(9)

§285.91. Tables.

The following tables are necessary for the proper location, planning, construction, and installation of an OSSF.

(1) Table I. Effluent Loading Requirements Based on Soil Classification.

Figure 1: §285.91(1)

(2) Table II. Septic Tank Minimum Liquid Capacity.

Figure 2: §285.91(2)

(3) Table III. Wastewater Usage Rate.

Figure 3: §285.91(3)

(4) Table IV. Required Testing and Reporting.

Figure 4: §285.91(4)

(5) Table V. Criteria for Standard Subsurface Disposal Methods.

Figure 5: §285.91(5)

(6) Table VI. USDA Soil Textural Classifications.

Figure 6: §285.91(6)

(7) Table VII. Yearly Average Net Evaporation (Evaporation - Rainfall)

Figure 7: §285.91(7)

(8) Table VIII. OSSF Excavation Length (3 Feet in Width or Less)

Figure 8: §285.91(8)

(9) Table IX. OSSF System Designation.

Figure 9: §285.91(9)

(10) Table X. Minimum Required Separation Distances for On-Site Sewage Facilities.

Figure 10: §285.91 (10))

(11) Table XI. Intermittent Sand Filter Media Specification (ASTM C-33).

Figure 11: §285.91 (11)

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

Issued in Austin, Texas, on June 26, 1996.

TRD-9609623

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Earliest possible date of adoption: August 16, 1996

For further information, please call: (512) 239-4640



Chapter 285. On-Site Wastewater Treatment Facilities

30 TAC §285.11-285.18

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

The repeals are proposed under Texas Water Code, §§5.103, 5.105, 5.120 and 26.040, and Texas Health and Safety Code, §366.012, which provide the Texas Natural Resource Conservation Commission (commission) with the authority to promulgate rules as necessary to carry out its powers and duties under the codes and under the laws of the state and to establish and approve all general policies of the commission.

§285.11. *General Procedures and Information.*

§285.12. *Design Standards for Sewerage Systems.*

§285.13. *Design Standards for Effluent Disposal Systems.*

§285.14. *Disposal Alternatives/Special Applications.*

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

§285.16. *Unsatisfactory On-Site Disposal Systems.*

§285.17. *Tables and Figures.*

§285.18. *On-Site Sewerage Facilities on Recharge Zones of the Edwards Aquifer.*

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

Issued in Austin, Texas, on June 26, 1996.

TRD-9609624

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Earliest possible date of adoption: August 16, 1996

For further information, please call: (512) 239-4640



30 TAC §285.51-285.63

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

The repeals are proposed under Texas Water Code, §§5.103, 5.105, 5.120 and 26.040, and Texas Health and Safety Code, §366.012, which provide the Texas Natural Resource Conservation Commission (commission) with the authority to promulgate rules as necessary to carry out its powers and duties under the codes and under the laws of the state and to establish and approve all general policies of the commission.

§285.51. *General Procedures and Information.*

§285.52. *Sewage Collection System.*

§285.53. *Lift Stations.*

§285.54. *Wastewater Treatment Facilities.*

§285.55. *Sludge Processing.*

§285.56. *Disinfection.*

§285.57. *Safety.*

§285.58. *Design and Operation Features.*

§285.59. *Appendix A-Formulas.*

§285.60. *Appendix B-Land Disposal of Sewage Effluent.*

§285.61. *Appendix C-Hyacinth Basins.*

§285.62. *Appendix D.*

§285.63. *Appendix E-Separation Distances .*

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

Issued in Austin, Texas, on June 26, 1996.

TRD-9609625

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Earliest possible date of adoption: August 16, 1996

For further information, please call: (512) 239-4640



30 TAC §285.101-285.109

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

The repeals are proposed under Texas Water Code, §§5.103, 5.105, 5.120 and 26.040, and Texas Health and Safety Code, §366.012, which provide the Texas Natural Resource Conservation Commission (commission) with the authority to promulgate rules as necessary to carry out its powers and duties under the codes and under the laws of the state and to establish and approve all general policies of the commission.

§285.101. *Purpose.*

§285.102. *Definitions.*

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

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

§285.105. *Delegation, Procedures/Sections for Local Entities.*

§285.106. *Review of Locally Administered Programs.*

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

§285.108. *Emergency Repairs.*

§285.109. *Penalties.*

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

Issued in Austin, Texas, on June 26, 1996.

TRD-9609626

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Earliest possible date of adoption: August 16, 1996

For further information, please call: (512) 239-4640



Chapter 313. Edwards Aquifer

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

The Texas Natural Resource Conservation Commission (commission) proposes the repeal of §313.1-313.6, 313.8-313.15, 313.21-313.27, concerning the Edwards Aquifer.

The proposed repeal of Chapter 313 imposes a numbering change that implements a reorganization of commission rules, by moving this chapter to the area of Title 30 of the Texas Administrative Code that is being reserved for rules related to water programs in Chapters 200-299.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period these proposed repeals are in effect, there will be fiscal implications as a result

of enforcement and administration of the repeals. There are no significant fiscal implications anticipated for state government, although some changes in the costs of projects could be realized by state agencies operating in the geographical areas affected by these repeals. These fiscal implications could be positive or negative depending on the type of project. These impacts are not anticipated to represent major changes in the costs to any state agency. Fiscal implications are also anticipated for units of local government. For example, local government will be impacted by the requirement to construct temporary erosion and sedimentation controls pursuant to proposed §213.5(g). Also, while the notification and inspection requirements for sewer line trenches are not new, this process has been expanded to include lift station excavations under §213.5 (f). However, some cost savings to local governments may occur. These cost effects cannot be estimated at this time and are not anticipated to vary as a direct result of any provision of the proposed rules.

Mr. Minick has also determined that for the first five years these proposed repeals are in effect the public benefit anticipated as a result of enforcement of and compliance with the repeals will be the prevention of further degradation of the quality of water resources in newly developed urban and suburban areas, reduction of the risk to human health and safety from degradation of water quality, the preservation of aquatic and related biological resources, and the maintenance of the quality of public and recreational resources.

Economic costs are anticipated for persons required to comply with the new requirements under this proposed chapter. Unless otherwise provided under this chapter, the owner of an existing or proposed site such as a residential or commercial development, sewage collection system, or aboveground or underground storage tank facility for static hydrocarbons or hazardous substance, who proposes new or additional regulated activities under this chapter, must file all appropriate applications and planning material with the executive director for approval. No changes to the application fees are proposed. Costs implications of the rule may be associated with the following changes.

Under proposed §213.5(b)(3), a geologic assessment will not be required for single-family residential subdivisions on less than ten (10) acres. However, there will be a potential increase in cost because the current rule does not require a geologic assessment for a single-family residential subdivision with less than 24 lots. The potential difference is that, under the current rules, 24 lots could be proposed on 100 acres and no geologic assessment would be required.

Under proposed §213.5(b)(3), the requirement for a downgradient assessment of area geology has been decreased from 1 mile to one-half mile. This will result in a cost savings.

Under proposed §213.5(c)(4)(D), a geologic assessment will have to be performed 50 feet on each side of the path of the proposed sewer line. While this new requirement will result in an initial cost, a cost savings should result ultimately during the construction phase since it allows for pre-planning to address sensitive features. Under the current rule, all construction must stop while plans are designed and approved.

Under proposed §213.5(d)(1)(B), new UST systems are required be located a minimum horizontal distance of 150 feet

from any well or sensitive feature unless the system uses tertiary containment. This will result in an increased cost depending on the location of the UST.

Proposed §§213.5(b)(4) and 213.5(e)(3), require description of measures to contain spills for temporary ASTs storing greater than 250 gallons and require these facilities be located a minimum horizontal distance of 150 feet from any well or sensitive feature. Both temporary and permanent facilities that store greater than 500 gallons are required to be constructed within a controlled drainage area of impervious material that is sized to contain one and one-half times the storage capacity of the facility. This new requirement represents a cost increase because the current rules do not require containment for temporary ASTs. However clean-up of spills of hazardous substances has always been required under the Texas Hazardous Substances Spill Prevention and Control Act. This section also requires permanent AST facilities of 500 gallon to 1,000 gallon to file and comply with an ASTFP.

Under §213.5(f)(2)(A)(i), a geologist must certify that a lift station excavation has been inspected for sensitive features. Section 213.5(f)(2)(B) also requires a geologist to certify that a UST excavation has been inspected for sensitive features. These new requirements could result in a cost, however, the current rule already requires that sensitive features be address if they are encountered during construction.

Under §213.5(g), temporary erosion and sedimentation controls will be required for the installation of utility lines that do not carry pollutants. This will result in an additional cost because these types of facilities are currently exempt from requirements under Chapter 313.

Under §§213.8(a)(5) and (b)(3), new Type I municipal solid waste landfills are prohibited on the recharge or transition zone. This should not result in either a cost increase or decrease because the topography, availability of soil liner materials, and geologic factors are unsuitable and uneconomical for locating these facilities in these areas.

The cost implications of these requirements for any project will vary on a case-by-case basis with the type of project, its size and location, the type of construction and other site-specific conditions. For large or particularly complex developments with significant potential for impact, the total monetary implications could be significant. It is not anticipated that the total, incremental financial effects of the new requirements will increase total construction and development costs by a significant percentage. Many projects have no significant increases and could, in fact, realize some cost savings. There may also be indirect cost savings as a result of the reduction of contamination risks and the associated liability cost. Many of these fiscal implications will affect small businesses. However, the magnitude of costs or costs savings will vary with the size and individual characteristics of proposed developments, but not directly with the size of the affected firm.

The commission has prepared a Takings Impact Assessment for this rule pursuant to Texas Government Code, Annotated §2007.043. The following is a summary of that Assessment. The specific purpose of the rule is to regulate activities having the potential for causing pollution of the Edwards Aquifer. The rule will substantially advance this specific purpose by clarifying

the procedures and criteria to be used by the commission in the review and approval of Edwards Aquifer plans for regulated activities under this section. Promulgation and enforcement of this rule could affect private real property which is the subject of the rule.

However, there are exceptions to the application of Chapter 2007 of the Texas Government Code. One exception exists since the possibility of degradation to the quality of the water supply presents a real and substantial threat to public health and safety (see Texas Government Code, §2007.003(b)(13)). The proposed rule will significantly contribute to the prevention of this threat. The Edwards Aquifer is the sole or primary source of water for over 1.5 million people. To the extent this rule regulates activities which have the potential for causing significant pollution of the Edwards Aquifer over the recharge and transition zones, it significantly advances health and safety. This rule is necessary to carry out the stated authority of the commission to protect human health and the environment.

Additionally, regardless of the applicability of §2007.003(b)(13) of the Act, §2.007.003(c) also applies to this rule. Subsection (c) exempts the enforcement or implementation of a statute, ordinance, order, rule, regulation, requirement, resolution, policy, guideline, or similar measure that was in effect September 1, 1995 and that prevents the pollution of a reservoir or an aquifer designated as a "sole source" aquifer. This exception applies to the enforcement or implementation of the entire rule even though only part of the Edwards has been designated as a sole source aquifer (See 40 Fed.Reg. 58344 (1975) and 53 Fed.Reg. 20897 (1988)). Current Chapter 313 rules regulating activities over the recharge or transition zones of the Edwards Aquifer have been in effect since March 1990.

The activities addressed by the rule are those that may pose a threat to water quality. This rule specifically applies to the Edwards Aquifer and is not intended to be applied to any other aquifers in the state of Texas. Unless otherwise provided under this chapter, the owner of an existing or proposed site such as a residential or commercial development, sewage collection system, or aboveground storage tank facility for static hydrocarbons or hazardous substance, who proposes new or additional regulated activities under this chapter, must file all appropriate applications with the executive director for approval.

Changes in the proposed rule would prohibit Type I, II or III municipal solid waste disposal facilities to be located over the recharge zone. However, there are no known permitted or proposed Type I, II or III municipal solid waste facilities currently located within the recharge or transition zones of the aquifer. Generally, the topography, availability of soil liner materials, and geologic factors are unsuitable and uneconomical for locating municipal solid waste landfills on the recharge zone. Other activities with high potential for pollution, including new confined animal feeding operations and disposal of hazardous waste, are already prohibited under the existing Edwards Aquifer rule.

Public hearings on the proposal will be held in San Antonio on September 4th at 7:00 p.m. in the San Antonio City Council Chambers, Municipal Plaza Building at Main and Commerce Streets, 103 Main Plaza, San Antonio; and in Austin on September 10th at 2:00 p.m. at the Texas Natural Resource Conservation Commission Office Complex, Building E., Room

201S, 12100 Park 35 Circle, Austin. The hearing is structured to receive oral or written comments by interested persons. Individuals may present oral statements when called upon in the order of registration. There will be no open discussion by the audience during the hearing; however, a commission staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments on the proposal should reference Rule Log No. 96114-213-WT and may be submitted to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC 205, P. O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640. Written comments must be received by 5:00 p.m., September 16, 1996. For further information concerning this proposal, please contact Mary Ambrose, Water Policy and Regulations Division at (512) 239-4813.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

Subchapter A. Edwards Aquifer in Medina, Bexar, Comal, Kinney, Uvalde Hays, Travis and Williamson Counties

30 TAC §§313.1-313.6, 313.8-313.15

The repeals are proposed under Texas Water Code, §§5.103, 5.105, 26.011, 26.341 and Texas Health and Safety Code, §§361.024 and 366.012, which provide the commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by the Codes and other laws. Texas Water Code, §26.046, which require the commission to hold public hearing to receive evidence from the public on actions the commission should take to protection the Edwards Aquifer from pollution and §26.0461, which allows the commission to impose fees for processing plans or amendments that are subject to review or approval under the commissions' Edwards Aquifer rules, §26.121, prohibiting unauthorized discharges, and §28.011, which provides for the commission to make and enforce rules and regulations for the protection and preservation of the quality of underground water.

There are no other codes, statutes, or rules that will be effected by this proposal.

§313.1. *Purpose.*

§313.2. *Applicability.*

§313.3. *Definitions.*

§313.4. *Water Pollution Abatement Plan for Regulated Development.*

§313.5. *Organized Sewage Collection Systems.*

§313.6. *Wastewater Treatment and Disposal Systems.*

§313.8. *Plugging of Abandoned Wells.*

§313.9. *Prohibited Activities.*

§313.10. *Static Hydrocarbon and Hazardous Substance Storage in Underground Storage Tanks.*

§313.11 *Static Hydrocarbon Storage in Aboveground Storage Tanks.*

§313.12 *Exceptions.*

§313.13 *Review of Decisions of the Executive Director.*

§313.14. *Enforcement.*

§313.15. *Underground Water Conservation Districts*

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

Issued in Austin, Texas, on July 3, 1996.

TRD-9609744

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Proposed date of adoption: September 16, 1996

For further information, please call: (512) 239-4640



Subchapter B. Application Requirements and Processing Fees For Approval of Plans and Amendments

30 TAC §§313.21-313.27

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

The repeals are proposed under the Texas Water Code, §§5.103, 5.105, 26.011, 26.046, and 28.011 which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties as provided by the Code and other state law and under the Texas Water Code, §26.0461, which provides the commission with the authority to impose fees for the filing of certain plans subject to review by the agency under its rule for the protection of the Edwards Aquifer.

§313.21. *Required Submission.*

§313.22. *Person or Entity Required to Apply.*

§313.23. *Signatories to Applications.*

§313.24. *Contents of Application.*

§313.25. *Application Fees.*

§313.26. *Fees Related to Requests for Extensions.*

§313.27. *Fee Schedule.*

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

Issued in Austin, Texas, on July 3, 1996.

TRD-9609742

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Proposed date of adoption: September 16, 1996

For further information, please call: (512) 239-4640



Chapter 327. Spill Prevention and Control

Spill Reporting

30 TAC §327.1, §327.5

The Texas Natural Resource Conservation Commission (commission or agency) proposes amendments to §327.1 and §327.5, concerning spill prevention and control.

On April 24, 1996, the commission adopted new rules that establish reporting and response action requirements for discharges or spills of hazardous substances, oil, used oil, petroleum product, industrial solid waste and other substances. The new rules are codified as 30 TAC §§327.1-327.5 and were published in the May 14, 1996, issue of the *Texas Register* (21 TexReg 4228), and became effective May 23, 1996. Section 327.1 of the new rules establishes applicability, and §327.1(b) explicitly identifies those discharges or spills that are not subject to the new rules.

The proposed amendment to §327.1(b) would remove §327.1(b)(9) which states that Chapter 327 does not apply to discharges or spills occurring during the normal course of transportation about which carriers are required to give notice and report under U.S. Department of Transportation (U.S. DOT) regulations in 49 Code of Federal Regulations (CFR) §§171.15 and 171.16. The agency is responsible for ensuring that responses to all spills are timely and properly conducted. The commission is concerned that transportation spills are, for the most part, in areas accessible to the public, and, if the exemption is retained, the agency will not be informed of potentially dangerous incidents. Unless clearly preempted by federal law, the commission firmly believes that transportation spills should be reported to the State. In order to ensure consistency with U.S. DOT regulations concerning hazardous materials, the commission is proposing to amend §327.5(c) to not require the 30-day written follow-up for spills or discharges reported to U.S. DOT under 49 CFR §§171.15 and 171.16.

Although initial notification is not preempted by 49 CFR §§171.15 and 171.16 under the Hazardous Materials Transportation Act, 49 U.S.C. App. §1811(a), the commission is seeking comment to determine if other federal laws, such as the Federal Railway Safety Act, may preempt state reporting regulations for spills or discharges occurring during transportation. The commission requests that persons submitting comments in support of preemptive rights of other federal transportation laws provide specific statutory and regulatory cites, the applicable language from the federal law, and a list of administrative rulings or court cases that address the preemption of state spill reporting requirements under the federal law.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five years the sections as proposed are in effect, there will be fiscal implications as a result of enforcement and administration of the sections. The effect on state government will be an increase in cost. This cost increase, however, is not anticipated to be significant. No increases in revenue to state government are anticipated and any increases

in cost will be met within existing financial resources of the state. There are no fiscal implications for local governments anticipated except for those associated with a local government that is a responsible person within the meaning of Chapter 327 and the rules relating to spill prevention and control. To the extent that a local government may be a waste generator or a person responsible for the reporting of and response to a discharge or spill, the fiscal implications would be equivalent to those for any other group or class of affected party.

The proposed rules will extend new spill reporting and response requirements to certain spill incidents by removing the current exemption from the application of Chapter 327 to spills or discharges that are also subject to reporting in accordance with U.S. Department of Transportation regulations. New state regulations relating to spills clarify current policy, strengthen existing regulations and establish more detailed and specific requirements for compliance with existing statutory authority for the prevention, control and management of discharges and spills. These sections do not represent substantially new or increased compliance efforts, however, and significant cost effects on responsible persons and those affected by these sections are not anticipated. Other potential costs are prospective and based on the occurrence of events subject to the proposed sections, such as a spill or other release of a hazardous substance.

In addition to potential costs, coordinating the proposed rules with the rules for specific-constituent cleanup standards (Risk Reduction Rules, 30 TAC §335.8) may represent significant cost savings. Clarifying the application of site-specific, health-based standards for cleanup of spills will reduce the potential costs of response to such discharges relative to absolute cleanup criteria. Actual cost savings will vary with specific sites and circumstances and cannot be predetermined. The magnitude of these cost savings that may occur will likely exceed the moderate costs that are otherwise anticipated as a result of compliance with these sections.

Businesses affected by these rules will include small businesses. Costs to small business will be equivalent to those imposed on larger concerns and will vary based on the same factors - the size of the facility, the amounts of regulated materials handled and the number of potential sources of release. The effects of these rules, while not considered to be substantial for any class of business, may have some disproportionate impact on small businesses if certain fixed costs must be distributed over a smaller workforce or recovered from lower gross revenues.

Mr. Minick has also determined that for the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcement of and compliance with the sections will be improvement in the prevention, control and management of spills and releases of hazardous substances; efficiency and effectiveness of actions taken in response to spill events; notification of existing releases of hazardous substances; and compliance with statutory provisions for protection of public health and safety. There are no anticipated costs to any individual required to comply with these proposed sections except those identified above for parties subject to these rules.

The commission has prepared a Takings Impact Assessment for these rules under Texas Government Code, Annotated §2007.043. The following is a summary of that Assessment. The purpose of the spill rules is to clarify the reporting requirements in the Texas Water Code, §26.039, and achieve the policy stated in the Texas Water Code, Texas Hazardous Substances Spill Prevention and Control Act §26.262, which is to prevent the discharge or spill of hazardous substances into the waters in the state and to cause the removal of discharges or spills without undue delay. The rule substantially advances this purpose by establishing clear reporting and response action guidelines, which should improve the timeliness, adequacy, coordination, efficiency, and effectiveness of responses to discharges or spills subject to the commission's regulatory jurisdiction. The proposed changes to this rule further the purpose of the rule by requiring spills in transportation to be reported and responded to. Promulgation and enforcement of these changes should not affect private real property that is the subject of the rules.

Written comments may be mailed to Bettie Bell, TNRCC Office of Policy and Regulatory Development, MC205, P.O. Box 13087, Austin, Texas 78711-3087. All comments should reference Rule Log Number 96133-327-WS. Comments must be received by 5:00 p.m., 30 days from the date of publication of this proposal in the *Texas Register*. For further information, contact Marianne Baker, Legal Division, at (512) 239-0475 or Stennie Meadours, Pollution Cleanup Division, at (512) 239-2505.

The amendments are proposed under Texas Water Code, §5.103, which provides the commission with the authority to adopt any regulation necessary to carry out its powers and duties under the Texas Water Code and other laws of this state, and Texas Water Code, §26.264, which provides the commission with the authority to issue rules necessary and convenient to carry out the purposes of Texas Water Code, Chapter 26, Subchapter G.

The amendments are also proposed under Texas Water Code, §26.039, which authorizes the commission to issue reasonable rules establishing safety and preventive measures concerning activities that are inherently or potentially capable of causing or resulting in the accidental discharge or spillage of waste or other substances and which pose serious or significant threats of pollution. Further, they are proposed under Texas Health and Safety Code, Solid Waste Disposal Act, §361.024, which authorizes the commission to adopt and promulgate rules consistent with the general intent and purposes of the Act and to establish minimum standards of operation for all aspects of the management and control of municipal hazardous waste and industrial solid waste.

§327.1. *Applicability.*

(a) (No change.)

(b) This chapter does not apply to:

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

[(9) discharges or spills occurring during the normal course of transportation about which carriers are required to give notice and report in accordance with 49 CFR §§171.15 and 171.16.]

§327.5. *Actions Required.*

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

(c) **Except for discharges or spills occurring during the normal course of transportation about which carriers are required to file a written report with the U.S. Department of Transportation under 49 CFR §171.16, the** [The] responsible person shall submit written information, such as a letter, describing the details of the discharge or spill and supporting the adequacy of the response action, to the appropriate agency regional manager within 30 working days of the discovery of the reportable discharge or spill. The regional manager has the discretion to extend the deadline. The documentation shall contain one of the following items:

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

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

Issued in Austin, Texas, on July 8, 1996.

TRD-9609740

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Earliest possible date of adoption: August 16, 1996

For further information, please call: (512) 239-4640

◆ ◆ ◆
TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 47. Primary Home Care

Service Requirements

40 TAC §47.2902

The Texas Department of Human Services (DHS) proposes an amendment to §47.2902, concerning requesting prior approval for primary home care, in its Primary Home Care chapter. The purpose of the amendment is to reflect the streamlined prior approval process.

Burton F. Raiford, commissioner, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Raiford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be fewer breaks in services to primary home care clients. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of the proposal may be directed to Frances Barraza at (512) 438-3216 in DHS's Community Care Section. Written comments on the proposal may be submitted to Supervisor, Rules Unit, Media and Policy Services-323, Texas Department of Human Services E-205, P.O. Box 149030,

Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements §§22.001-22.030 and 32.001-32.041 of the Human Resources Code.

§47.2902. *Requesting Prior Approval for Primary Home Care.*

(a) Provider agencies must obtain, from the regional nurse, prior approval of medical need for applicants and renewal of prior approval for certain clients.

(1) Except as indicated in paragraph (2) of this subsection, only initial prior approval of medical need by the department regional nurse is required for applicants who have a [chronic] medical condition causing functional impairment in personal care. [that is expected to be long-standing. However, annual reauthorization of service by the caseworker is required.]

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

(b) When a provider agency receives a referral from a caseworker, the [RN] supervisor must make every effort to request prior approval for the client within 14 days of the referral date on the approval for CCAD services-referral response form. [The request must include the following forms:

- [(1) client intake;
- [(2) summary of client need for service;
- [(3) approval for CCAD services - referral response;
- [(4) client health assessment/proposed service plan; and
- [(5) physician's orders for primary home care.]

(c)-(i) (No change.)

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

Issued in Austin, Texas, on July 8, 1996.

TRD-9609728

Glen Scott

General Counsel, Legal Services

Texas Department of Human Services

Proposed date of adoption: September 1, 1996

For further information, please call: (512) 438-3765



Part III. Texas Commission on Alcohol and Drug Abuse

Chapter 148. Facility Licensure

Subchapter B. Facility Management

40 TAC §148.118

The Texas Commission on Alcohol and Drug Abuse proposes new §148.118, concerning training requirements relating to abuse, neglect, and unprofessional or unethical conduct. The new section is being proposed to formally adopt an interagency memorandum of understanding between the commission, the Texas Department of Health, and the Texas Department of Mental Health and Mental Retardation.

Terry Faye Bleier, Executive Director, has determined that for the first five-year period the new section is in effect there will be no fiscal implications for state or local government as a result of enforcing the new section.

Ms. Bleier also has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the new section will be easier access to information about mandated training requirements. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the new section as proposed, as compliance with the memorandum of understanding (MOU) is already required under current regulations.

Comments on the proposal may be submitted to Tamara Allen, Program Compliance, Texas Commission on Alcohol and Drug Abuse, 710 Brazos Street, Austin, Texas 78701.

The new section is proposed under the Texas Health and Safety Code, §464.009, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules for licensing chemical dependency treatment facilities.

The code affected by the proposed new section is the Texas Health and Safety Code, Chapter 464.

§148.118. *Training Requirements Relating to Abuse, Neglect, and Unprofessional or Unethical Conduct.*

(a) Introduction. The commission is a party to a joint memorandum of understanding (MOU) with the Texas Department of Health and the Texas Department of Mental Health and Mental Retardation concerning training requirements for identifying abuse, neglect, and unprofessional or unethical conduct in health care facilities.

(b) Memorandum of understanding. The purpose of the MOU is to implement certain requirements enacted by Acts 1993, 73rd Legislature, Regular Session, Chapter 573 (Senate Bill 210), which amends Health and Safety Code, Chapter 161, by adding Subchapter K, relating to, "abuse, neglect, and unprofessional or unethical conduct in health care facilities." Section 161.133 requires the Texas Board of Mental Health and Mental Retardation (TXMHMR), the Texas Board of Health (TDH) and the Texas Commission on Alcohol and Drug Abuse (TCADA) to adopt by rule a joint MOU, as set out below, detailing the health facility inservice training requirement for identifying patient abuse or neglect and illegal, unprofessional, or unethical conduct by or in the health care facility. In accordance with the referenced legislation, each health care facility is required to annually provide, as a condition of continued licensure, a minimum of eight hours of inservice training designed to assist employees and health care professionals associated with the facility in identifying patient abuse or neglect and illegal, unprofessional, or unethical conduct by or in the facility, as such

terms are defined in Health and Safety Code, Subchapter K, Chapter 161. Accordingly, TXMHMR, TDH, and TCADA agree as follows.

(c) Application. If a health care facility provides inpatient mental health, chemical dependency, or comprehensive medical rehabilitation services in a separate and distinct unit of the hospital, the requirements of this MOU shall apply to all employees and associated health care professionals who are assigned to, or who provide services on such units.

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

(1) Health care facility An inpatient mental health facility, inpatient treatment facility, or hospital that provides comprehensive medical rehabilitation services.

(2) Hospital that provides comprehensive medical rehabilitation services Includes a general hospital and a special hospital.

(3) Illegal conduct Conduct prohibited by law.

(4) Inpatient mental health facility As defined in Texas Health and Safety Code Chapter §571.003, a mental health facility that can provide 24-hour residential and psychiatric services and that is:

(A) a facility operated by the TXMHMR;

(B) a private mental hospital licensed by the TDH;

(C) a community center;

(D) a facility operated by a community center or other entity designated by the TXMHMR to provide mental health services;

(E) an identifiable part of a general hospital in which diagnosis, treatment, and care for persons with mental illness is provided and that is licensed by the TDH; or

(F) a hospital operated by a federal agency.

(5) Inpatient treatment facility - A treatment facility that can provide 24-hour residential and chemical dependency services and that is:

(A) a public or private hospital;

(B) a detoxification facility;

(C) a primary care facility;

(D) an intensive care facility;

(E) a long-term care facility;

(F) a community mental health center;

(G) a recovery center;

(H) a halfway house;

(I) an ambulatory care facility; or

(J) any other facility that offers or purports to offer chemical dependency treatment.

(6) Unethical conduct Conduct prohibited by the ethical standards adopted by state or national professional organizations for their respective professions or by rules established by the state licensing agency for the respective profession.

(7) Unprofessional conduct Conduct prohibited under rules adopted by the state licensing agency for the respective profession.

(e) Minimum standards of training program.

(1) The inservice training program shall address, at a minimum, the following elements:

(A) Applicable laws and regulations governing patient abuse and neglect, as well as policies and procedures adopted by the governing board of the facility with regard to patient abuse and neglect.

(B) Applicable laws and regulations governing illegal, unprofessional, and unethical conduct, as well as policies and procedures adopted by the governing board of the facility with regard to illegal, unprofessional, and unethical conduct.

(C) Applicable laws and regulations governing patient rights, as well as policies and procedures adopted by the governing board of the facility with respect to patient rights.

(D) Specific types of patient abuse and neglect and how to identify when abuse or neglect is occurring or has occurred.

(E) Specific types of illegal, unprofessional, and unethical conduct and how to identify when illegal, unprofessional, or unethical conduct is occurring or has occurred.

(F) Requirements and procedures for reporting an incident of patient abuse and neglect, together with the applicable penalties for non-reporting.

(G) Requirements and procedures for reporting illegal, unprofessional, and unethical conduct, together with the applicable penalties for non-reporting.

(H) The legal protection afforded to employees and associated health care professionals who report patient abuse and neglect and illegal, unprofessional, and unethical conduct.

(2) In addition, the training program may include training designed to improve patient care or to prevent abuse or neglect and illegal, unprofessional, and unethical conduct from occurring. This additional training may be customized according to the type of tasks performed by the various employees and health care professionals, their amount of direct patient contact, and the likelihood of their being exposed to patient abuse or neglect and illegal, unprofessional, or unethical conduct. Courses related to improving patient care may include things such as the "Prevention and Management of Aggressive Behavior" (PMAB) or other programs designed to deal with aggressive behavior and crisis intervention, some aspects of existing employee orientation courses, and continuing education courses (continuing medical education, continuing nursing education, continuing education unit) related to improving patient care.

(3) Each full-time employee or associated health care professional shall receive a minimum of eight hours inservice training on identifying patient abuse or neglect and illegal, unprofessional, or unethical conduct. The inservice training program shall include the topics outlined in paragraph 1 of this section; in addition, the training may include other topics as outlined in paragraph 2 of this section.

(4) Although each part-time employee or associated health care professional must receive training as outlined in paragraphs 1 and 2 above, the amount and type of training provided

to each part-time employee or associated health care professional may be determined based on a number of factors, including, but not limited to:

(A) the amount of direct contact the employee or associated health care professional has with patients;

(B) the amount of time the employee or associated health care professional spends at the health care facility (for example, a consultant who is at the hospital 20 hours a week versus a consultant who works at the health care facility once a month).

(5) An interim training program that does not meet the minimum requirements set forth in subsection (e), paragraph 1, above, is acceptable until June 1, 1994, to allow for development of a training program that meets the minimum standards of this MOU.

(f) Means of reporting compliance with requirements.

(1) Each facility subject to the inservice training requirement shall keep a record of the exact content of training provided.

(2) Each facility subject to the inservice training requirement shall furnish documentation to show that each employee has completed the required training. Documentation shall include:

(A) course title;

(B) instructor's name;

(C) date(s) of course(s);

(D) employee or associate health professional's social security number;

(E) signature block for employee or associated health care professional to verify that training was received and that he/she is aware of the training objectives; and

(F) length of program presented.

(3) The health care facility shall keep the records required in paragraphs (1) and (2) above for five years.

(4) A health care facility that utilized an independent contracting agency that supplies health care professionals and/or contract personnel to serve on a full or part time basis in a health care facility may rely on written representations by the independent contracting agency that such health care professionals and/or contract personnel have received inservice training on identifying patient

abuse or neglect and illegal, unprofessional or unethical conduct. An independent contracting agency shall meet all other requirements of this MOU and shall supply evidence documenting each healthcare professional's and/or contract personnel's compliance with such requirements.

(5) Employees and associated health care professionals may fulfill all or some of the training requirement by attending a continuing education program on patient abuse or neglect or illegal, unprofessional, or unethical conduct, provided such program meets the minimum requirements set forth in subsection (e) paragraph (1), above. In addition, briefings regarding the Code of Ethics for the appropriate discipline provided by the discipline head or other individual may be used to fulfill a portion of the requirement.

(6) Each health care facility shall be in compliance with the annual requirement if it can demonstrate that each employee or associated health care professional received the required training over a twelve month period, and that the health care facility provided the required eight hours of inservice training over the 12-month period.

(g) Miscellaneous provisions.

(1) This memorandum of understanding shall be jointly adopted as a rule by the Texas Board of Mental Health and Mental Retardation, the Texas Board of Health, and the Texas Commission on Alcohol and Drug Abuse and shall be effective upon final joint adoption of the rules by the signatory agencies.

(2) This memorandum may be amended at any time upon the mutual agreement of the agencies and such amendments shall also be made to the jointly adopted rules.

(3) Each agency shall review and modify the memorandum as necessary not later than the last month of each state fiscal year.

Issued in Austin, Texas, on July 2, 1996.

TRD-9609714

Mark S. Smock

Assistant Deputy for Finance

Texas Commission on Alcohol and Drug Abuse

Earliest possible date of adoption: August 16, 1996

For further information, please call: (512) 867-8720

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WITHDRAWN RULES

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

TITLE 16. ECONOMIC REGULATION

Part VIII. Texas Racing Commission

Chapter 321. Pari-mutuel Wagering

Subchapter A. Regulation and Totalisator Operations

Mutuel Tickets

16 TAC §321.38

The Texas Racing Commission has withdrawn from consideration for permanent adoption the proposed amendment §321.38,

which appeared in the February 9, 1996, issue of the Texas Register (21 TexReg 926).

Issued in Austin, Texas, on July 2, 1996.

TRD-9609477

Paula Cochran Carter

General Counsel

Texas Racing Commission

Effective date: July 2, 1996

For further information, please call: (512) 833-6699



ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 16. ECONOMIC REGULATION

Part IV. Texas Department of Licensing and Regulation

Chapter 65. Boiler Division

16 TAC §§65.10, 65.20, 65.50, 65.80

The Texas Department of Licensing and Regulation adopts amendments to 65.10, 65.20, 65.50 and 65.80 concerning boiler installers. Section 65.10 is adopted with changes to the proposed text as published in the May 31, 1996, issue of the *Texas Register* (21 TexReg 4879). Sections 65.20, 65.50, and 65.80 are adopted without changes to the proposed text as published in the May 31, 1996, issue of the *Texas Register* (21 TexReg 4879) and will not be republished.

The amendments as adopted will eliminate improper or incomplete boiler installations by determining the scope and capabilities of the installers, reduce the economic impact on owner/operators due to down time for installation completion or correction, and increase public safety by ensuring the completed installation meets minimum safety standards. In §65.10 the definition of installer was reworded for clarification.

The amendments as adopted will increase public safety by determining boilers and their appurtenances meet all requirements of the appropriate construction codes and the Texas Boiler Law and Rules prior to operation, decrease the risk of accidents, and reduce expense and equipment down time for owner/operators to correct installation deficiencies.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Health and Safety Code, Chapter 755, which provides the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules in keeping with standard usage for the construction, inspection, installation, use, maintenance, repair, alteration, and operation of boilers.

§65.10. Definitions.

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

Installer—Any person, firm, or corporation who installs boilers and appurtenances within the state.

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

Issued in Austin, Texas, on July 5, 1996.

TRD-9609688

Tommy V. Smith

Executive Director

Texas Department of Licensing and Regulation

Effective date: August 1, 1996

Proposal publication date: May 31, 1996

For further information, please call: (512) 463-7357



Chapter 70. Industrialized Housing and Buildings

16 TAC §§70.50, 70.51, 70.60, 70.61, 70.70, 70.73, 70.75, 70.77

The Texas Department of Licensing and Regulation adopts amendments to §§70.50, 70.51, 70.60, 70.61, 70.70, 70.73, 70.75, and 70.77 concerning industrialized housing and buildings. Section 70.70 is adopted with changes to the proposed text as published in the April 5, 1996, issue of the *Texas Register* (21 TexReg 2897). Sections 70.50, 70.51, 70.60, 70.61, 70.73, 70.75, and 70.77 are adopted without changes to the proposed text as published in the April 5, 1996, issue of the *Texas Register* (21 TexReg 2897) and will not be republished.

The amendment to §70.50 identifies the minimum time period manufacturers and builders must keep reports on file and clarifies the information that must be reported to the Department. This amendment also requires manufacturers and builders to file amended reports when the final destination is not known at the time of the original report.

The amendment to §70.51 identifies which copy of the inspection report must be filed with the Department.

The amendment to §70.60 amended the requirement that a representative of a design review agency has to be present during the manufacturer's certification inspection. The rule now requires a representative of the design review agency to be present for the certification inspection only when the certification inspection team feels that it is necessary. This rule was amended because having a representative of the design review agency present for the certification inspection can be

very costly for the manufacturer when there is no need for that representative.

The amendment to §70.61 changed the requirement that every module be inspected at least at one point during the manufacturing process to at one point prior to completion of the structural, plumbing, mechanical, or electrical phase and to require system testing to be observed by the inspector at least once every third inspection.

The amendment to §70.70 deleted the choice of the Department as a design review agency because the Department does not have adequate manpower to perform this function and added the National Electrical Code to the section requiring resubmission of plans upon adoption of the new code editions. This was amended to clarify that adoption of any new code edition requires resubmission of plans.

The amendment to §70.73 deleted the choice of the Department to perform site inspections because the Department does not have adequate manpower to perform this function. §70.73(e) was deleted because it was basically the same as §70.73(d). Section 70.73(f) was changed to §70.73(e) and the minimum time period a builder must keep inspection reports on file was defined. Section 70.73(g) was deleted as unnecessary because the adopted building codes define when a certificate of occupancy is issued and where it shall be posted.

The amendment to §70.75 added the requirement that the manufacturer provide the industrialized builder with documentation that will assist the builder to obtain a permit from the city where the industrialized house or building is to be sited and also clarified the information the builder must provide the owner of the building.

The amendment to §70.77 added that it is the responsibility of the manufacturer to assure that his facility has been certified and that it is the manufacturer's responsibility to assure that an in-plant inspection has been performed before a decal or insignia is affixed to the unit.

The justification for the amendments is to clarify the responsibilities of the registrants which will ensure clearer implementation of the statute. In §70.70 the word election was changed to selection in subparagraph (a)(1). The manufacturer is selecting a third party, not electing a third party.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 5221f-1 which authorizes the department to regulate industrialized housing and buildings.

§70.70. Responsibilities of the Registrants-Manufacturer's Design Package.

(a) REVIEW AND APPROVAL. The manufacturer's design package must be reviewed and approved in accordance with the following.

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

(5) Upon adoption of a new edition of the Uniform Building Code, the Standard Building Code, and the National Electrical Code in §70.100 of this title (relating to Mandatory State Codes), approvals dated before the effective date of the adoption are

no longer valid for industrialized housing, buildings, modules, and modular components constructed after the effective date of adoption. Manufacturers will be notified of the change in code editions 180 days before the effective date of the change. Manufacturers who wish to continue building to previously approved documents must resubmit these documents to their DRA for review and approval to the new code editions. Approval of these documents will be evidenced by application of a new approval date and the council's stamp of approval to each document. The manufacturer may make the transition from current code edition to new code edition in any of the following ways.

(A) (No change.)

(B) The manufacturer may transition approval of documents in his design package 180 days prior to the effective date of adoption of the new edition of the Uniform Building Code, the Standard Building Code, and the National Electrical Code. The manufacturer must notify the department of their intent to do so. All documents approved within the 180 day transition period must be approved to both the current and the new editions of the Uniform Building Code group, the Standard Building Code group, and the National Electrical Code.

(C) (No change.)

(6)-(8) (No change.)

(b)-(f) (No change.)

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

Issued in Austin, Texas, on July 5, 1996.

TRD-9609689

Tommy V. Smith

Executive Director

Texas Department of Licensing and Regulation

Effective date: August 1, 1996

Proposal publication date: April 5, 1996

For further information, please call: (512) 463-7357

◆ ◆ ◆
16 TAC §70.100, §70.101

The Texas Department of Licensing and Regulation adopts amendments to §70.100 and §70.101 concerning industrialized housing and buildings. §70.100 is adopted with changes to the proposed text as published in the April 5, 1996, issue of the *Texas Register* (21 TexReg 2897). Section 70.101 is adopted without changes to the proposed text as published in the April 5, 1996, issue of the *Texas Register* (21 TexReg 2897) and will not be republished.

The amendment to §70.100 adopts the current editions of the model building codes. Article 5221f-1 gives the Industrialized Building Code Council the authority to adopt more recent editions of the building code if the council determines that the revision is in the public interest and consistent with the purposes of the Act. The council determined that it would be in the public interest and consistent with the purposes of the Act to adopt the current code editions. The code groups responsible for publishing the International Plumbing Code was changed because it was incomplete as originally stated in the proposal.

Section 70.101 was changed to amend the Uniform Building Code and the Standard Building Code to adopt the same edition of the One and Two Family Dwelling Code; to adopt the Texas Accessibility Standards; and to adopt the CABO Model Energy Code and ASHRAE/IES 90.1/89 energy code. The same edition of the One and Two Family Dwelling Code was adopted because the Council wanted to be consistent in the code requirements for industrialized housing. The Texas Accessibility Standards were adopted because the Council did not feel that industrialized housing and buildings should have to meet two different codes for accessibility. The CABO Model Energy Code and ASHRAE 90.1/89 were adopted to comply with federal requirements for energy efficiency in new construction.

The justification for the amendments is to adopt the latest edition of the applicable building codes to ensure clearer implementation of the statute.

The comment received was favorable to the amendments but advised that the code groups responsible for publishing the International Building Code as stated in the proposal was incomplete.

The amendments are adopted under Texas Civil Statutes, Article 5221f-1 which authorizes the department to regulate industrialized housing and buildings.

§70.100. Mandatory State Codes.

All industrialized housing and buildings, modules, and modular components, shall be constructed in accordance with the following codes and their appendices:

(1) National Fire Protection Association - National Electrical Code, 1996 Edition; and

(2) either:

(A) the Uniform Building Code, 1994 Edition, published by the International Conference of Building Officials; the Uniform Mechanical Code, 1994 Edition, published by the International Conference of Building Officials; and the International Plumbing Code, 1995 Edition, published by the International Code Council, and Building Officials and Code Administrators International, and International Conference of Building Officials and Southern Building Code Congress International; or

(B) (No change.)

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

Issued in Austin, Texas, on July 5, 1996.

TRD-9609690

Tommy V. Smith

Executive Director

Texas Department of Licensing and Regulation

Effective date: December 7, 1996

Proposal publication date: April 5, 1996

For further information, please call: (512) 463-7357



TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 39. Primary Health Care Services Program

Medically Underserved Community-State Matching Incentive Program

30 TAC §§39.61-39.75

The Texas Department of Health (department) adopts new §§39.61-39.75, concerning assistance to communities in recruiting primary care physicians to high need areas. Section 39.70 is adopted with changes to the proposed text as published in the April 12, 1996, issue of the *Texas Register* (21 Tex Reg 3117). Sections 39.61-39.69, and 39.71-39.75 are adopted without changes and therefore the sections will not be republished.

The new sections will implement the Medically Underserved Community-State Matching Incentive Program as established by Health and Safety Code, Chapter 46, which directs the department to allocate funds to qualified community groups in medically underserved areas to cover certain costs of establishing physicians' practices.

These sections define eligibility criteria for contributing communities, participating physicians, and state designation as a medically underserved area; establish procedures for applying for funds and the prioritization of need among eligible applicant communities; and establish specifications for matching fund contracts, including requirements for community contributions of funds.

A summary of comments received and the department's responses follow.

COMMENT: Concerning §39.63(2), one commenter questioned the requirement that contributing communities must be non-profit entities to apply for matching funds.

RESPONSE: Because limited funds are available, the department believes they should be directed to community-based organizations, as corporate and other for-profit entities already have resources to support practice start-up costs. However, physicians who are recruited to partner with the community organizations are not required to practice as non-profit entities.

COMMENT: Concerning §39.63(2)(C), two commenters questioned the reason for requiring at least \$15,000 in contributions toward the physician recruitment project from communities applying for funding.

RESPONSE: The department feels the \$15,000 minimum is reasonable to ensure that total project funding will be significant enough to launch a successful project beneficial to both the physician and the community involved, since start up costs are expected to be substantial. Also, adding necessary administrative costs to contracts for significantly lesser amounts could prove uneconomical for the state.

COMMENT: Concerning §39.64(2), one commenter asked about the requirement that physicians recruited must have completed a primary care residency program within seven years of their application for this program.

RESPONSE: The department wishes to enable communities to address their primary care needs for many years into the future. Requiring that physicians have completed their residency training no more than seven years from the date of the application should foster recruitment of physicians with longer career potentials for community service.

COMMENT: Concerning §39.67(3)(B), one commenter noted the potential cost and difficulty associated with providing a financial viability statement with the application to the program.

RESPONSE: The department believes that the rule as proposed allows communities sufficient flexibility in selecting the provider of this assurance, while also protecting the state's interest in sound project financial management.

COMMENT: Concerning §39.70(4), one commenter questioned the appropriateness of including the number of physician assistants or nurse practitioners practicing in the community as one of the indicators of need.

RESPONSE: The department feels this is a valid indicator of primary care service delivery capacity and notes that this is only one of at least ten indicators that will be used to prioritize need among eligible communities.

COMMENT: Concerning §39.70, department staff suggested that flexibility in applying additional indicators of community need after their announcement to applicants would be desirable.

RESPONSE: The department agrees and has amended §39.70 accordingly.

Comments on the proposal were received from the Texas Medical Association, the Texas Medical Association Rural Health Committee, and the City of Marfa, Texas. Comments were also received from the office of Senator David Sibley. The commenters were neither for nor against the sections in their entirety; however, they had questions and offered suggestions regarding changes.

The new sections are adopted under Health and Safety Code §46.004, which requires the Board of Health (board) to adopt rules to implement this program; and under Health and Safety Code §12.001(b), which authorizes the board to adopt rules for the performance of every duty imposed by law on the board, the department and commissioner of health.

§39.70. *Methodology for Prioritizing Neediest Communities.*

The department will prioritize the communities found eligible for participation in the program to assure that the neediest communities are provided grants. The prioritization process will quantify indicators of need (not listed in any assigned priority order) which include, but are not limited to, the following:

- (1) no practicing primary care physicians;
- (2) with only one primary care physician and a population of at least 2,000;
- (3) no federally or state-funded primary health care clinic;
- (4) no practicing physician assistants or nurse practitioners;
- (5) the participating physician will be the only physician practicing in one of the primary care specialties;

(6) large minority population, if the participating physician is a member of the same minority group;

(7) designation by the United States Department of Health and Human Services as a primary care Health Professional Shortage Area (HPSA) for at least the last five years;

(8) a population-to-primary care provider ratio in the top 25% of all counties in the state;

(9) poverty rates above the state average; and

(10) median family incomes at least 25% below the state average.

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

Issued in Austin, Texas, on July 3, 1996.

TRD-9609594

Susan K. Steeg

General Counsel

Texas Department of Health

Effective date: July 24, 1996

Proposal publication date: April 12, 1996

For further information, please call: (512) 458-7236

Chapter 97. Communicable Diseases

The Texas Department of Health (department) adopts amendments to §97.1, §97.3, and §97.4; the repeal of §97.11 and §97.13; and new §97.11 and §97.13. Sections §97.1, §97.11 and §97.13 are adopted with changes to the proposed text published in the March 8, 1996, issue of the *Texas Register* (21 Tex Reg 1845). Sections §97.3, and §97.4 are adopted without changes and will not be republished.

Specifically these sections add diseases to the list of reportable disease (ie, cryptosporidiosis and ehrlichiosis), and modify an existing disease (ie, *Haemophilus influenzae* infections, invasive). These changes will allow the department to conduct specific surveillance activities in its efforts to better understand the epidemiology of these diseases. This information will form the basis for developing prevention and control measures as appropriate in the future.

These sections also contain major revisions to those processes involving notification of emergency response employees of possible exposures to selected reportable diseases and mandatory testing of persons suspected of exposing certain other persons to selected reportable diseases. The sections simplify and clarify the processes for managing postexposure activities involving emergency response employees and other public safety employees as defined by the sections.

A summary of comments received regarding the proposed sections and the department's responses are as follows:

COMMENT: Concerning §97.11, two commenters requested the department to develop a standard form for notification requests as described in this section.

RESPONSE: The department agrees. In anticipation of this request, the Infectious Disease Epidemiology and Surveillance Division has already contacted representatives of local health

departments, the Texas Society of Infection Control Practitioners, and the department's Bureau of Emergency Management in efforts to develop a model form for use in the notification process.

COMMENT: Concerning §97.11, one commenter requested that emergency response employees report possible exposures to diseases directly to the local health authority instead of to the hospital.

RESPONSE: The department disagrees. The Texas Health and Safety Code, §81.048 specifically states that emergency responders are to report possible exposures to the hospital. The hospital then reports to the local health authority.

COMMENT: Concerning §97.11, one commenter felt the health authority's involvement in the assessment of exposure was unnecessary.

RESPONSE: The department disagrees. The health authority should evaluate the circumstances involving the possible exposure and determine whether a real risk of transmission exists. Assessment of exposures is a duty of health authorities that is consistent with those described in the Texas Health and Safety Code, Chapter 121, §121.024 entitled "Duties."

COMMENT: Concerning §97.11(b)(1) and (b)(2), one commenter suggested that diphtheria and pertussis should be moved from subsection (b)(2) of this section to (b)(1).

RESPONSE: The department agrees, and has made the necessary changes.

COMMENT: Concerning §97.11 (b)(1) and (b)(2), one commenter suggested that poliomyelitis, rubella, mumps, and Q fever pneumonia should be moved from subsection (b)(2) of this section to (b)(1).

RESPONSE: The department disagrees. Airborne transmission of Q fever from person to person has never been documented to our knowledge. Rather than being airborne, the viral agents for mumps, poliomyelitis, and rubella are spread by droplets or direct contact with nasopharyngeal secretions of infected persons.

COMMENT: Concerning §97.11 (b)(1) and (b)(2), two commenters suggested that chickenpox should be moved from subsection (b)(2) of this section to (b)(1).

RESPONSE: The department agrees, and has made the necessary change.

COMMENT: Concerning §97.11 (b)(1) and (b)(2), five commenters suggested that meningococcal infections should be moved from subsection (b)(2) of this section to (b)(1).

RESPONSE: The department disagrees. Close proximity for short periods of time does not place an individual at increased risk of acquiring meningococcal infections due to *Neisseria meningitidis*.

COMMENT: Concerning §97.11(b)(1), six commenters suggested that the disease listed as tuberculosis should be modified to specify pulmonary tuberculosis and laryngeal tuberculosis.

RESPONSE: The department agrees, and has made the necessary changes. Tuberculosis diagnosed in body sites other

than the lungs and larynx is not infectious to persons in enclosed spaces.

COMMENT: Concerning §97.11 (b)(2), one commenter suggested deleting meningitis (specific type) from this subsection, since this general category of disease is not likely to be transmissible by procedures such as examination of the throat, oral or tracheal intubation or suctioning, or mouth-to-mouth resuscitation.

RESPONSE: The department disagrees. Some etiologic agents of meningitis, such as *Streptococcus pyogenes*, are transmissible via this mode of exposure.

COMMENT: Concerning §97.13, one commenter suggested that this section be deleted.

RESPONSE: The department disagrees. The Texas Health and Safety Code, §81.050 instructs the Board of Health to promulgate rules governing testing of persons suspected of exposing emergency responders to a reportable disease. The current §97.13, therefore, cannot be deleted.

COMMENT: Concerning §97.13, one commenter requested that before mandatory testing as provided by this section can be requested, the emergency responder should have initially complied with §97.11.

RESPONSE: The department disagrees. The Texas Health and Safety Code, §81.050 does not require this.

COMMENT: Concerning §97.13, one commenter requested clarification concerning who determines the disease(s) for which the source patient will be tested.

RESPONSE: The department agrees with the request, and has made the necessary changes. The health authority will determine the disease(s) for which the source patient will be tested. A new paragraph will be added to subsection (f) which will further delineate the health authority's responsibilities.

COMMENT: Concerning §97.13, two commenters requested clarification regarding who pays for tests ordered under this section.

RESPONSE: The Texas Health and Safety Code, §81.050 does not address who pays for the laboratory tests. It would seem reasonable to expect the emergency responder's employer to underwrite the costs of these tests, but the department has no legal authority to apportion these costs.

COMMENT: Concerning §97.13, the Texas Workers' Compensation Commission was specifically concerned about the potential confusion between the persons covered by the Texas Health and Safety Code, §81.050 and §85.116. The Commission suggests revising the title of §97.13 by adding the phrase "and Required Procedures for Employers and Employees Related to Workers' Compensation or Similar Benefits." According to this comment, "this would advise those who may not be interested in required testing of a source that they may need to read the rule to determine how to qualify for certain benefits."

RESPONSE: The department disagrees. The department's rulemaking authority under §81.050 is limited to prescribing the criteria that constitute exposure, and designating a person to evaluate the report of the exposure. The rule as written complies with these requirements, and restates provisions

from the statute. The department does not feel it has the authority to make a further explanation of the law relating to Workers' Compensation in this rule. Adding wording to the section title that mentions Workers' Compensation would mislead readers about the purpose and content of the rule. The department's only authority under the Texas Health and Safety Code, §85.116 is prescribing the criteria that constitute exposure to the human immunodeficiency virus (HIV), and this has been done in a separate rule (Title 25, Texas Administrative Code, §97.140).

COMMENT: Concerning §97.13, the Texas Workers' Compensation Commission suggested that placing information about Workers' Compensation insurance in a rule entitled "Mandatory Testing of Persons Suspected of Exposing Certain Other Persons to Selected Reportable Diseases" is confusing.

RESPONSE: The department agrees that putting subsections relating to Workers' Compensation is confusing, but this reflects the current organization of the statute. Placing this language in a new section would be more appropriate, but this cannot be done without new rulemaking.

COMMENT: Concerning §97.13 (k)(1), the Texas Workers' Compensation Commission suggested that the department amend this subsection by changing "employee" to "emergency responder," as "emergency responder" is defined in the rule, and "employee" is not.

RESPONSE: The department agrees, and has made the necessary changes.

COMMENT: Concerning §97.13 (k)(2), the Texas Workers' Compensation Commission suggested that the department amend "employee" in subsection (k)(2) to use the definition of "employee" in Chapter 607 of the Texas Government Code (which is limited to public safety employees and emergency medical services employees of the state or political subdivisions).

RESPONSE: The department disagrees. See the department's response to the previous comment. The term "employee" will not be used in subsections (k) and (l), and therefore the term need not be defined. The definition of "employee" in Chapter 607 of the Texas Government Code is more restrictive than the list of employees covered by the Texas Health and Safety Code, §81.050 and this rule.

COMMENT: Concerning §97.13 (k)(3), the Texas Workers' Compensation Commission suggested that the department revise the text of this subsection by changing "reportable disease" to "HIV infection," as the Texas Health and Safety Code §85.116 includes only HIV infection, rather than all reportable diseases.

RESPONSE: The department agrees, and has made the necessary changes.

COMMENT: Concerning §97.13 (k)(3), the Texas Workers' Compensation Commission suggested that the department revise the text of this subsection to change "should" to "must," as the Texas Health and Safety Code §85.116 mandates the postexposure procedure to qualify for Workers' Compensation.

RESPONSE: The department agrees, and has made the necessary changes.

COMMENT: Concerning §97.13, the Texas Workers' Compensation Commission suggested that the department revise the rule to include a notice posting requirement for employers of the employees subject to the postexposure requirements of the Texas Health and Safety Code, §81.050 and §85.116, and a requirement that the postexposure testing for emergency responders be paid by the employer or Workers' Compensation insurance carrier and, for state employees, by paid by the Workers' Compensation Division of the Attorney General's Office.

RESPONSE: The department disagrees. The department's rulemaking authority under the Texas Health and Safety Code §81.050 is limited to prescribing the criteria that constitute exposure and designating a person to evaluate the report of the exposure. The department's only authority under §85.116 is prescribing the criteria that constitute exposure to HIV, and this has been done in a separate rule (Title 25, Texas Administrative Code, §97.140). The department is not aware of any other statutory authority to require or enforce the provisions embodied in the suggested changes.

COMMENT: Concerning §97.13 (k), a representative from the Texas Workers' Compensation Commission addressed the board reiterating the Commission's concern that there be some mention of notice posting requirements in these rules, and that a statement be included which advises emergency responders and their employers to contact the Commission for more information on Workers' Compensation. The Commission also suggested the title for this section be revised to include mention of Workers' Compensation.

RESPONSE: The board agreed with these suggested revisions, and the changes have been made. However, because of statutory limitations on the department in the area of Workers' Compensation issues, the changes to §97.13 (k) are limited to referrals to the Texas Workers' Compensation Commission and their rules.

Minor editorial changes were made for clarification purposes.

Several individuals and the following associations presented written comments on the proposed rules: the Texas Worker's Compensation Commission; the City of Houston Health and Human Services Department; the Galveston County Health District; the Texas Society of Infection Control Practitioners; the Dallas/Ft. Worth Regional Chapter of the Association for Professionals in Infection Control and Epidemiology, Inc. (APIC); Parkland Hospital, Dallas; Methodist Hospital, Lubbock; Southwest Texas Methodist Hospital, San Antonio; All Saints Health System, Ft. Worth; and Texas Department of Health staff. The commenters were generally supportive of the rules. However, they had questions, comments, suggestions, and concerns about specific sections.

Control of Communicable Diseases

25 TAC §§97.1, 97.3, 97.11, and 97.13

The amendments are proposed under the Health and Safety Code, Chapter 81, which provides the Board of Health (board) with the authority to prevent and control communicable disease; and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health. The statutory basis for the notification of emergency

responders is found in §81.048 of the Health and Safety Code, while §81.050 serves as the statutory basis for the mandatory testing of persons suspected of exposing certain other persons to selected reportable diseases.

§§97.1. *Definitions.*

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

AIDS-Acquired immune deficiency syndrome as defined by the Center for Disease Control and Prevention of the United States Public Health Service. The publication designating the most current definition may be requested from: Texas Department of Health, HIV/STD Epidemiology Division, 1100 West 49th Street, Austin, Texas 78756, (512) 490-2555 or 1-800-299-2973.

Exposure-A situation or circumstance in which there is significant risk of becoming infected with the etiologic agent for the disease involved.

Significant risk-A determination relating to a human exposure to an etiologic agent for a particular disease, based on reasonable medical judgments given the state of medical knowledge, relating to the following:

- (A) nature of the risk (how the disease is transmitted);
- (B) duration of the risk (how long an infected person may be infectious);
- (C) severity of the risk (what is the potential harm to others); and
- (D) probability the disease will be transmitted and will cause varying degrees of harm.

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

Issued in Austin, Texas, on July 3, 1996.

TRD-9609631

Susan K. Steeg

General Counsel

Texas Department of Health

Effective date: July 26, 1996

Proposal publication date: March 8, 1996

For further information, please call: (512) 458-7236



25 TAC §97.11, §97.13

The repeals are proposed under the Health and Safety Code, Chapter 81, which provides the Board of Health (board) with the authority to prevent and control communicable disease; and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health. The statutory basis for the notification of emergency responders is found in §81.048 of the Health and Safety Code, while §81.050 serves as the statutory basis for the mandatory testing of persons suspected of exposing certain other persons to selected reportable diseases.

Issued in Austin, Texas, on July 3, 1996.

TRD-9609632

Susan K. Steeg

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Texas Department of Health

Effective date: July 26, 1996

Proposal publication date: March 8, 1996

For further information, please call: (512) 458-7236



The new sections are proposed under the Health and Safety Code, Chapter 81, which provides the Board of Health (board) with the authority to prevent and control communicable disease; and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health. The statutory basis for the notification of emergency responders is found in §81.048 of the Health and Safety Code, while §81.050 serves as the statutory basis for the mandatory testing of persons suspected of exposing certain other persons to selected reportable diseases.

§§97.11. *Notification of Emergency Medical Service Employee, Fire Fighter, or Peace Officer of Possible Exposure to a Disease.*

(a) Purpose. The Communicable Disease Prevention and Control Act (Act), §81.048, requires a licensed hospital to notify a health authority in certain instances when an emergency medical service employee, peace officer, or fire fighter may have been exposed to a reportable disease during the course of duty from a person delivered to the hospital under conditions that were favorable for transmission.

(b) Disease and criteria which constitute exposure. The following diseases and conditions constitute a possible exposure to the disease for the purposes of the Act, §81.048:

(1) chickenpox; diphtheria; measles (rubeola); pertussis; pneumonic plague; pulmonary or laryngeal tuberculosis; and any viral hemorrhagic fever, if the worker and the patient are in the same room, vehicle, ambulance, or other enclosed space;

(2) *Haemophilus influenzae* type b infection, invasive; meningitis (specify type); meningococcal infections, invasive; mumps; poliomyelitis; psittacosis; Q fever (pneumonia); rabies; and rubella, if there has been an examination of the throat, oral or tracheal intubation or suctioning, or mouth-to-mouth resuscitation;

(3) acquired immune deficiency syndrome (AIDS); anthrax; brucellosis; dengue; ehrlichiosis; hepatitis, viral; human immunodeficiency virus (HIV) infection; malaria; plague; syphilis; tularemia; typhus; any viral hemorrhagic fever; and yellow fever, if there has been a needlestick or other penetrating puncture of the skin with a used needle or other contaminated item; or either a splatter or aerosol into the eye, nose, or mouth or any significant contamination of an open wound or non-intact skin with blood or body fluids; and

(4) amebiasis; campylobacteriosis; cholera; cryptosporidiosis; *Escherichia coli* O157:H7 infection; hepatitis A; salmonellosis, including typhoid fever; shigellosis; and *Vibrio* infections, if fecal material is ingested.

(c) Notification processes. The following notification processes shall apply when possible exposures to reportable diseases occur.

(1) If the hospital has knowledge that, on admission to the hospital, the person transported has any of the reportable diseases listed in subsection (b)(1) of this section, then notice of a possible exposure of an emergency medical service employee, peace officer, or fire fighter to the disease shall be given to the health authority for the jurisdiction where the hospital is located.

(2) For possible exposures to any of the diseases listed in subsection (b)(2)-(4) of this section, the emergency medical service employee, peace officer, or fire fighter shall provide a medical professional at the hospital with notice, preferably written, or the circumstances of the possible exposure. Once the hospital has knowledge of a possible exposure, then notice shall be given as follows.

(A) The hospital shall report the following information to the health authority for the jurisdiction where the hospital is located:

- (i) the name of the emergency medical service employee, peace officer, or fire fighter possibly exposed;
- (ii) the date of the exposure;
- (iii) the circumstances of the exposure;
- (iv) whether laboratory testing was performed for diseases potentially transmitted by such exposures; and
- (v) positive test results for these diseases.

(B) The health authority shall determine whether or not significant risk of disease transmission exists and report his/her assessment of the possible exposure event to the director of the entity that employs the emergency medical service employee, peace officer, or fire fighter.

(C) The director of the entity that employs the emergency medical service employee, peace officer, or fire fighter shall inform the employee of the health authority's assessment.

(D) A person notified of a possible exposure under this section shall maintain the confidentiality of the information provided to him or her.

(d) Obligation to test. This section does not create a duty for a hospital to perform a test that is not necessary for the medical management of the person delivered to the hospital.

§§97.13. *Mandatory Testing of Persons Suspected of Exposing Certain Other Persons to Reportable Diseases, and Workers' Compensation Issues Relevant to Postexposure Management of Emergency Responders.*

(a) Purpose. The Communicable Disease Prevention and Control Act, Health and Safety Code, §81.050, provides a mechanism by which an emergency medical service employee, paramedic, fire fighter, correctional officer, or law enforcement officer, who receives a bona fide exposure to a reportable disease in the course of employment or volunteer service may request the Texas Department of Health (department) or the department's designee to order testing of the person who may have exposed the worker.

(b) Definitions. For the purposes of this section, the following words and/or terms will have the following meanings, unless the context clearly indicates otherwise.

(1) Correctional officer-A public safety worker employed by either a county or the Texas Department of Criminal Justice whose

normal duties and responsibilities include management or supervision of incarcerated persons.

(2) Emergency responder-An emergency medical services employee, paramedic, fire fighter, correctional officer, or law enforcement officer who is employed by or volunteers for an employer with the responsibility of answering emergency calls for assistance.

(3) Requestor-An emergency responder who presents a sworn affidavit to a health authority to request testing of a person who may have exposed him/her to a reportable disease in the course of his/her duties.

(4) Source-The person who may have exposed an emergency responder to a reportable disease during the emergency responder's course of duties.

(c) Diseases and criteria that constitute exposure. The reportable diseases and the criteria that constitute exposure to such diseases are as outlined in §97.11 (b)(1)-(4) of this title (relating to Notification of Emergency Medical Service Employee, Fire Fighter, or Peace Officer of Possible Exposure to a Disease).

(d) The department's designee. For the purposes of implementing the Health and Safety Code, §81.050 (d),(e), and (h), the following physicians have been delegated by the department to be the department's designee who will determine if a risk of exposure to a reportable disease has occurred:

(1) the health authority for the jurisdiction in which the emergency responder is employed;

(A) if the health authority does not choose to make a determination of the risk of exposure, a licensed physician employed by the local health department who has responsibility for the control of reportable diseases in the jurisdiction served by the health department; or

(B) if the health authority does not choose to make a determination of the risk of exposure and there is not a separate physician employed by the county or municipal health department with responsibility for the control of reportable disease, or for counties which do not have an appointed health authority, the regional director of the department of which the county or municipality is a part; and

(2) for the Texas Department of Criminal Justice (TDCJ), the TDCJ Deputy Director of Health Services (Institutional Division) shall serve as the designated health official in determining risk of exposure to correctional officers employed by the TDCJ.

(e) Criteria under which a request for mandatory testing can be made. A request under this section may be made only if the emergency responder:

(1) has experienced the exposure in the course of his or her employment or volunteer service;

(2) believes that the exposure places him or her at risk of a reportable disease; and

(3) presents to the department's designee a sworn affidavit that delineates the reasons for the request.

(f) Initial actions required of the department's designee. Upon receiving a request for mandatory testing in accordance with subsection (e) of this section, the department's designee shall:

(1) review the emergency responder's request and inform him or her whether the request meets the criteria establishing risk of infection with a reportable disease;

(2) determine which diagnostic tests may be indicated to verify exposure to certain reportable diseases;

(3) give the source who is subject to the order prompt and confidential written notice of the order which must include the following items:

(A) the grounds and provision of the order, and the factual basis for its issuance;

(B) a referral to appropriate health care facilities where the source can be tested for certain reportable diseases;

(C) a notice to the source who is subject to the order of the right to refuse to be tested; and

(D) a statement of the authority of the department's designee to ask for a court order requiring the test; and

(4) request the prosecuting attorney who represents the state in district court to petition said court for a hearing on the order, in the event that the source who is subject to the order refuses to comply.

(g) Source's right to an attorney. If the source who is subject to the order refuses to comply, and a hearing in district court ensues, then:

(1) the source has a right for an attorney to be present at the hearing;

(2) the court shall appoint an attorney for a source who cannot afford legal representation; and

(3) the source may not waive the right to an attorney unless he/she has consulted with an attorney.

(h) Court proceedings. The district court proceedings include:

(1) a determination as to whether exposure occurred and whether the exposure presents a possible risk of infection as outlined in §97.11 (b)(1)-(4) of this title;

(2) consideration of evidence if introduced by either the attorney for the state and/or the attorney for the source;

(3) at the conclusion of the hearing, taking appropriate action being either:

(A) an order requiring counseling and testing of the person for certain reportable diseases; or

(B) a refusal to issue an order if the court has determined that the counseling and testing of the source is unnecessary; and

(4) the option to assess court costs against the requestor if the court finds that there was not reasonable cause for the request.

(i) Additional actions required of the department's designee. The department's designee shall be responsible for the following actions with respect to testing:

(1) develop protocols for coding test specimens to ensure that any identifying information concerning the source will be destroyed as soon as the testing is complete;

(2) inform the requestor of the test results;

(3) inform both the requestor and the source of the need for medical follow up and counseling services in the event that the source is found to have a reportable disease; and

(4) advise appropriate postexposure medical follow up as recommended by the United States Public Health Service.

(j) HIV counseling and testing. HIV counseling and testing conducted under this section must conform to the model protocol on HIV counseling and testing required under the Health and Safety Code, §85.081.

(k) Workers' compensation issues. For the purposes of qualifying for workers' compensation or any other similar benefits for compensation, the following shall apply:

(1) An emergency responder who claims a possible work-related exposure to a reportable disease must provide the employer with a sworn affidavit of the date and circumstances of the exposure and document that, not later than the tenth day after the date of the exposure, the emergency responder had a test result that indicated an absence of the reportable disease.

(2) An emergency responder exposed to a reportable disease during the course of employment shall be entitled to the benefits described in the Texas Government Code, Chapter 607.

(3) A state emergency responder claiming an exposure to HIV infection in the normal course of his/her duties must follow the postexposure procedure mandated by the Health and Safety Code, §85.116 and §97.140 of this title (relating to Counseling and Testing for State Employees Exposed to Human Immunodeficiency Virus (HIV) Infection on the Job).

(4) For posting and notice requirements, refer to the rules of the Texas Workers' Compensation Commission in Title 28, Texas Administrative Code, Chapter 110 (relating to Required Notice of Coverage General Provisions).

(5) For further clarification of workers' compensation issues, emergency responders and their employers should contact the Texas Workers' Compensation Commission at 1-800-252-7031.

(l) Testing of the exposed person. An emergency responder who may have been exposed to a reportable disease, may not be required to be tested.

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

Issued in Austin, Texas, on July 3, 1996.

TRD-9609633

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Effective date: July 26, 1996

Proposal publication date: March 8, 1996

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Chapter 289. Radiation Control

Irradiator Regulations

25 TAC §289.258

The Texas Department of Health (department) adopts new §289.258, concerning licensing and radiation safety requirements for irradiators, with changes to the proposed text as published in the February 16, 1996, issue of the *Texas Register* (21 TexReg 1240);

The new section covers licensing and specific safety requirements for the use of sealed sources containing radioactive material in irradiators used to irradiate objects or materials. This section is an item of compatibility with the United States Nuclear Regulatory Commission (NRC), and as an agreement state, Texas must adopt it.

Following is a summary of changes that were made to the section as a result of comments received.

The title of the section was changed from "Licenses and Radiation Safety Requirements for Irradiators" to "Licensing and Radiation Safety Requirements for Irradiators" to provide consistency with other section titles in this chapter. In subsection (b), paragraph (12) was deleted because the term "sealed source" is already defined in §289.201 of this title. In subsection (d)(4), the words "an outline" and "listed" were changed to "a copy" and "as outlined" to clarify the requirements an applicant for a specific license must meet before an application is approved by the department. In subsection (o)(2), the words "remain locked in the event of" were deleted and substituted with the words "not be deactivated by" to make it more clear that the loss of electric power itself would not cause the door to become unlocked. In subsection (w)(2), the wording "and the irradiator not used until the repairs have been made" at the end of the sentence was deleted and another sentence was added to read "If repairs are required, the irradiator shall not be operated unless alternative methods are utilized to provide an equivalent level of safety until repairs are completed" to clarify that the operator could continue to operate in the case of minor defects and malfunctions that are not significant to the safe operation of the irradiator. Other minor grammatical changes were made to the section.

The following are the public comments made concerning the proposed section and the department's responses to those comments.

Comment. Concerning subsection (d)(4), one commenter suggested that the requirements in this paragraph be changed to more specifically describe the requirements needed to apply for a specific license for irradiators.

Response. The department acknowledged the comment and made changes to reflect that a copy of the written operating, safety, and emergency procedures be submitted with the application rather than just an outline of the procedures.

Comment. Concerning the section in general, one commenter requested that the existing facilities currently licensed in the state of Texas be granted a grace period for compliance of at least six months to allow for the installation of equipment and/or manufacturers retro fits that may be required for compliance.

Response. Most of the requirements in this section are currently required by license condition for existing facilities. The requirements for new irradiator licenses being constructed after

August 1, 1996 are designated in this section. The department acknowledged the comment and made no change as a result of the comment.

Comment. Concerning subsection (h)(2), one commenter was uncertain about what was required. Is the chain that is located behind the personnel access door, releases air pressure to the sterilizer unit, and lowers the source into the pool, considered a "backup access control"? If not, what type of detection system is required (photocells, pressure mats?...). The commenter felt that this requirement needed to be more specific.

Response. The chain system or backup system in the particular case of this commenter appears to meet the requirements of this section. The department acknowledged the comment and made no change as the result of the comment.

Comment. Concerning subsection (o)(2), one commenter suggested that the wording be changed to clarify the requirement that the loss of electric power itself would not cause the door to become unlocked.

Response. The department agreed with the comment and changed the subsection accordingly.

Comment. Concerning subsection (w)(2), two commenters suggested that the department consider modifying the provision that the irradiator not be used until repairs have been made. The provisions should clarify that the operator could continue to operate in the case of minor defects and malfunctions that are not significant to the safe operation of the irradiator.

Response. If repairs are required, the irradiator shall not be operated unless alternative methods are utilized to provide an equivalent level of safety until repairs are completed. The department acknowledged the comments and made the appropriate changes to the paragraph.

Comment. Concerning subsection (cc)(1)(E), one commenter stated that this subsection needed to be more specific as to what "inoperability of the access control system" meant. For example, if the key switch at the control panel needed to be replaced, was this considered a reportable accident?

Response. As long as the access control systems functions to prevent unauthorized access to the sources, it is operable and would not need to be reported. The department acknowledged the comment and made no change as a result of the comment.

Commenters included representatives from Johnson & Johnson Medical Inc. of El Paso; Baxter of El Paso; SteriGenics of Charlotte, North Carolina; and the U.S. Nuclear Regulatory Commission of Washington, D.C. The commenters were generally in favor of the proposal; however, they presented comments and suggestions for changes to the proposal as previously discussed.

The new section is adopted under the Health and Safety Code, Chapter 401, which provides the Texas Board of Health with authority to adopt rules and guidelines relating to the control of radiation; and §12.001, which authorizes the board to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

§289.258. *Licensing and Radiation Safety Requirements for Irradiators.*

(a) Purpose and scope.

(1) This section contains requirements for the issuance of a license authorizing the use of sealed sources containing radioactive material in irradiators that irradiate objects or materials using gamma radiation. This section also contains radiation safety requirements for operating irradiators. In addition to the requirements of this section, all licensees, unless otherwise specified, are subject to the requirements of §289.112 of this title (relating to Hearing and Enforcement Procedures), §289.114 of this title (relating to Notices, Instructions, and Reports to Workers; Inspections), §289.126 of this title (relating to Fees for Certificates of Registration, Radioactive Material(s) Licenses, Emergency Planning and Implementation, and other Regulatory Services), §289.201 of this title (relating to General Provisions), §289.202 of this title (relating to Standards for Protection of Radiation), and §289.252 of this title (relating to Licensing of Radioactive Material). Nothing in this section relieves the licensee from complying with other applicable federal, state and local regulations governing the siting, zoning, land use, and building code requirements for industrial facilities.

(2) The requirements in this section apply to panoramic irradiators that have either dry or wet storage of the radioactive sealed sources and to underwater irradiators in which both the source and the product being irradiated are underwater. Irradiators whose dose rates exceed 500 rads (5 grays) per hour at 1 meter from the radioactive sealed sources in air or in water, as applicable for the irradiator type, are covered by this section.

(3) The requirements in this section do not apply to self-contained, dry-source-storage irradiators (those in which both the source and the area subject to irradiation are contained within a device and are not accessible by personnel), medical radiology or teletherapy, radiography (the irradiation of materials for nondestructive testing purposes), gauging, or open-field (agricultural) irradiations.

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

(1) Annually - At intervals not to exceed 390 days.

(2) Doubly encapsulated sealed source - A sealed source in which the radioactive material is sealed within a capsule and that capsule is sealed within another capsule.

(3) Irradiator - A facility that uses radioactive sealed sources for the irradiation of objects or materials and in which radiation doses rates exceeding 500 rads (5 grays) per hour exist at 1 meter from the sealed radioactive sources in air or water, as applicable for the irradiator type, but does not include irradiators in which both the sealed source and the area subject to irradiation are contained within a device and are not accessible to personnel.

(4) Irradiator operator - An individual who has successfully completed the training and testing described in subsection (r) of this section and is authorized by the terms of the license to operate the irradiator without a supervisor present, who has completed the requirements of subsection (r)(1)-(3) of this section.

(5) Panoramic dry-source-storage irradiator - An irradiator in which the irradiations occur in air in areas potentially accessible to personnel and in which the sources are stored in shields made of solid materials. The term includes beam-type dry-source-storage ir-

radiators in which only a narrow beam of radiation is produced for performing irradiations.

(6) Panoramic irradiator - An irradiator in which the irradiations are done in air in areas potentially accessible to personnel. The term includes beam-type irradiators.

(7) Panoramic wet-source-storage irradiator - An irradiator in which the irradiations occur in air in areas potentially accessible to personnel and in which the sources are stored under water in a storage pool.

(8) Pool irradiator - Any irradiator in which the sources are stored or used in a pool of water, including panoramic wet-source-storage irradiators and underwater irradiators.

(9) Product conveyor system - A system for moving the product to be irradiated to, from, and within the area where irradiation takes place.

(10) Radiation room - A shielded room in which irradiations take place. Underwater irradiators do not have radiation rooms.

(11) Seismic area - Any area where the probability of horizontal acceleration in rock of more than 0.3 times the acceleration of gravity in 250 years is greater than 10%, as designated by the United States Geological Survey.

(12) Underwater irradiator - An irradiator in which the sources always remain shielded underwater and humans do not have access to the sealed sources or the space subject to irradiation without entering the pool.

(c) Application for a specific license. Applications for specific licenses shall be filed in accordance with §289.252(d) of this title.

(d) Specific licenses for irradiators.

(1) The agency will approve an application for a specific license for the use of licensed material in an irradiator if the applicant meets the requirements contained in this section.

(2) The applicant shall satisfy the general requirements specified in §289.252 of this title and the requirements contained in this section.

(3) The application shall describe the training provided to irradiator operators including:

(A) classroom training;

(B) on-the-job or simulator training;

(C) safety reviews;

(D) means employed by the applicant to test each operator's understanding of the agency's regulations and licensing requirements and the irradiator operating, safety, and emergency procedures; and

(E) minimum training and experience of personnel who may provide training.

(4) The application shall include a copy of the written operating, safety, and emergency procedures as outlined in subsection (s) of this section that describes the radiation safety aspects of the procedures.

(5) The application shall describe the organizational structure for managing the irradiator, specifically the radiation safety responsibilities and authorities of the radiation safety officer and those management personnel who have radiation safety responsibilities or authorities. In particular, the application shall specify who, within the management structure, has the authority to stop unsafe operations. The application shall also describe the training and experience required for the position of radiation safety officer.

(6) The application shall include a description of the access control systems required by subsection (h) of this section, the radiation monitors required by subsection (k) of this section, the method of detecting leaking sources required by subsection (v) of this section including the sensitivity of the method, and a diagram of the facility that shows the locations of all required interlocks and radiation monitors.

(7) If the applicant intends to perform and analyze leak tests of dry-source-storage sealed sources, the applicant shall establish procedures for leak testing and submit a description of these procedures to the agency. The description shall include at least the following:

- (A) instruments to be used;
- (B) methods of performing the analysis; and
- (C) pertinent experience of the individual who analyzes the samples.

(8) If licensee personnel are to load or unload sources, the applicant shall describe the qualifications and training of the personnel and the procedures to be used. If the applicant intends to contract for source loading or unloading at its facility, the loading or unloading shall be done by a person specifically authorized by the agency, the commission, an agreement state, or a licensing state to load or unload irradiator sources.

(9) The applicant shall describe the inspection and maintenance checks, including the frequency of the checks required by subsection (w) of this section.

(e) Start of construction. The applicant may not begin construction of a new irradiator prior to the submission to the agency of both an application for a license for the irradiator and the fee required by §289.126 of this title. As used in this section, the term "construction" includes the construction of any portion of the permanent irradiator structure on the site but does not include: engineering and design work; purchase of a site; site surveys or soil testing; site preparation; site excavation; construction of warehouse or auxiliary structures; and other similar tasks. Any construction activities undertaken prior to the issuance of a license are entirely at the risk of the applicant and have no bearing on the issuance of a license with respect to the requirements of the Texas Radiation Control Act (Act), rules, regulations, and orders issued under the Act.

(f) Applications for exemptions. Any applications for a license or for amendment of a license authorizing use of a teletherapy-type unit for irradiation of materials or objects may include proposed alternatives for the requirements of this section. The agency will approve the proposed alternatives if the applicant provides adequate rationale for the proposed alternatives and demonstrates that they are likely to provide an adequate level of safety for workers and the public.

(g) Performance criteria for sealed sources.

(1) Sealed sources. Sealed sources installed after August 1, 1996 shall:

(A) have been evaluated in accordance with §289.252(i) of this title;

(B) be doubly encapsulated;

(C) use radioactive material that is as nondispersible as practical and that is as insoluble as practical if the source is used in a wet-source-storage or wet-source-change irradiator;

(D) be encapsulated in a material resistant to general corrosion and to localized corrosion, such as 316L stainless steel or other material with equivalent resistance if the sources are for use in irradiator pools; and

(E) have been leak tested and found leak-free in prototype testing of the sealed source after each of the tests described in paragraphs (2)-(7) of this subsection.

(2) Temperature. The test source shall be held at -40 degrees C for 20 minutes, 600 degrees C for 1 hour, and then be subjected to thermal shock test with a temperature drop from 600 degrees C to 20 degrees C within 15 seconds.

(3) Pressure. The test source shall be twice subjected for at least 5 minutes to an external pressure (absolute) of 2 million newtons per square meter.

(4) Impact. A 2-kilogram steel weight, 2.5 centimeters in diameter, shall be dropped from a height of 1 meter onto the test source.

(5) Vibration. The test source shall be subjected three times for 10 minutes each to vibrations sweeping from 25 hertz to 500 hertz with a peak amplitude of five times the acceleration of gravity. In addition, each test source shall be vibrated for 30 minutes at each resonant frequency found.

(6) Puncture. A 50-gram weight and pin, 0.3-centimeter pin diameter, shall be dropped from a height of 1 meter onto the test source.

(7) Bend. If the length of the source is more than 15 times larger than the minimum cross-sectional dimension, the test source shall be subjected to a force of 2000 newtons at its center equidistant from two support cylinders, the distance between which is 10 times the minimum cross-sectional dimension of the source.

(h) Access control requirements in addition to the requirements of §289.202(u) of this title.

(1) Each entrance to a radiation room at a panoramic irradiator shall have a door or other physical barrier to prevent inadvertent entry of personnel if the sources are not in the shielded position. Product conveyor systems may serve as barriers as long as they reliably and consistently function as a barrier. It shall not be possible to move the sources out of their shielded position if the door or barrier is open. Opening the door or barrier while the sources are exposed shall cause the sources to return promptly to the shielded position. The personnel entrance door or barrier shall have a lock that is operated by the same key used to move the sources. The doors and barriers shall not prevent any individual in the radiation room from leaving.

(2) In addition, each entrance to a radiation room at a panoramic irradiator shall have an independent backup access control to detect personnel entry while the sources are exposed. Detection of entry while the source are exposed shall cause the sources to return to their fully shielded position and shall also activate a visible and audible alarm to make the individual entering the room aware of the hazard. The alarm shall also make at least one other individual who is onsite aware of the entry. That individual shall be trained on how to respond to the alarm and be prepared to promptly render or summon assistance.

(3) A radiation monitor shall be provided to detect the presence of high radiation levels in the radiation room of a panoramic irradiator before personnel entry. The monitor shall be integrated with personnel access door locks to prevent room access when radiation levels are high. Attempted personnel entry while the monitor measures high radiation levels shall activate the alarm described in paragraph (2) of this subsection. The monitor may be located in the entrance (normally referred to as the maze) but not in the direct radiation beam.

(4) Before the sources move from their shielded position in a panoramic irradiator, the source control shall automatically activate conspicuous visible and audible alarms to alert people in the radiation room that the sources will be moved from their shielded position. The alarms shall give individuals enough time to leave the room and to operate the control described in paragraph (5) of this subsection before the sources leave the shielded position.

(5) Each radiation room at a panoramic irradiator shall have a clearly visible and readily accessible control that allows an individual in the room to return the sources to their fully shielded position.

(6) Each radiation room of a panoramic irradiator shall contain a control that prevents the sources from moving from the shielded position unless the control has been activated and the door or barrier to the radiation room has been closed within a preset time after activation of the control.

(7) Each entrance to the radiation room of a panoramic irradiator and each entrance to the area within the personnel access barrier of an underwater irradiator shall have a sign bearing the radiation symbol and the words, "CAUTION (or DANGER), RADIOACTIVE MATERIAL." Panoramic irradiators shall also have a sign stating "CAUTION (or DANGER), HIGH RADIATION AREA," or "GRAVE DANGER, VERY HIGH RADIATION AREA," whichever is applicable, but the sign may be removed, covered, or otherwise made inoperative when the sources are fully shielded.

(8) If the radiation room of a panoramic irradiator has roof plugs or other movable shielding, it shall not be possible to operate the irradiator unless the shielding is in its proper location. The requirement may be met by interlocks that prevent operation if shielding is not placed properly or by an operating procedure requiring inspection of shielding before operating.

(9) Underwater irradiators shall have a personnel access barrier around the pool that shall be locked to prevent access when the irradiator is not attended. Only operators and facility management may have access to keys to the personnel access barrier. There shall be an intrusion alarm to detect unauthorized entry when the personnel access barrier is locked. Activation of the intrusion alarm shall alert

an individual (not necessarily onsite) who is prepared to respond or summon assistance.

(i) Shielding.

(1) The radiation dose rate in areas that are normally occupied during operation of a panoramic irradiator may not exceed 2 millirems (0.02 millisievert) per hour at any location 30 centimeters or more from the wall of the room when the sources are exposed. The dose rate shall be averaged over an area not to exceed 100 square centimeters having no linear dimension greater than 20 centimeters. Areas where the radiation dose rate exceeds 2 millirems (0.02 millisievert) per hour shall be locked, roped off, or posted.

(2) The radiation dose at 30 centimeters over the edge of the pool of a pool irradiator may not exceed 2 millirems (0.02 millisievert) per hour when the sources are in the fully shielded position.

(3) The radiation dose rate at 1 meter from the shield of a dry-source-storage panoramic irradiator when the source is shielded may not exceed 2 millirems (0.02 millisievert) per hour and at 5 centimeters from the shield may not exceed 20 millirems (0.2 millisievert) per hour.

(j) Fire protection.

(1) The radiation room at a panoramic irradiator shall have heat and smoke detectors. The detectors shall activate an audible alarm. The alarm shall be capable of alerting a person who is prepared to summon assistance promptly. The sources shall automatically become fully shielded if a fire is detected.

(2) The radiation room at a panoramic irradiator shall be equipped with a fire extinguishing system capable of extinguishing a fire without the entry of personnel into the room. If water is used, the system for the radiation room shall have a shut-off valve to control flooding into unrestricted areas.

(k) Radiation monitors.

(1) Irradiators with automatic product conveyor systems shall have a radiation monitor with an audible alarm located to detect loose radioactive sources that are carried toward the product exit. If the monitor detects a source, an alarm shall sound and product conveyors shall stop automatically. The alarm shall be capable of alerting an individual in the facility who is prepared to summon assistance. Underwater irradiators in which the product moves within an enclosed stationary tube are exempt from the requirements of this paragraph.

(2) Underwater irradiators that are not in a shielded radiation room shall have a radiation monitor over the pool to detect abnormal radiation levels. The monitor shall have an audible alarm and a visible indicator at entrances to the personnel access barrier around the pool. The audible alarm may have a manual shut-off. The alarm shall be capable of alerting an individual who is prepared to respond promptly.

(l) Control of source movement.

(1) The mechanism that moves the sources of a panoramic irradiator shall require a key to actuate. Actuation of the mechanism shall cause an audible signal to indicate that the sources are leaving the shielded position. Only one key may be in use at any time, and only operators or facility management may possess it. The key shall be attached to a portable radiation survey meter by a chain or cable.

The lock for source control shall be designed so that the key may not be removed if the sources are in an unshielded position. The door to the radiation room shall require the same key.

(2) The console of a panoramic irradiator shall have a source position indicator that indicates when the sources are in the fully shielded position, when they are in transit, and when the sources are in the fully exposed position.

(3) The control console of a panoramic irradiator shall have a control that when activated, shall return the source to its fully shielded position within its normal transit time.

(4) Each control for a panoramic irradiator shall be clearly marked as to its function.

(m) Irradiator pools.

(1) For licenses initially issued after August 1, 1996, irradiator pools shall either:

(A) have a water-tight stainless steel liner or a liner metallurgically compatible with other components in the pool; or

(B) be constructed so that there is a low likelihood of substantial leakage and have a surface designed to facilitate decontamination. In either case, the licensee shall have a method to safely store the sources during repairs of the pool.

(2) For licenses initially issued after August 1, 1996, irradiator pools shall have no outlets more than 0.5 meter below the normal low water level that could allow water to drain out of the pool. Pipes that have openings more than 0.5 meter below the normal low water level and that could act as siphons shall have siphon breakers to prevent the siphoning of pool water.

(3) A means shall be provided to replenish water losses from the pool.

(4) A visible indicator shall be provided in a clearly visible location to indicate if the pool water level is below the normal low water level or above the normal high water level.

(5) Irradiator pools shall be equipped with a purification system designed to be capable of maintaining the water during normal operation at a conductivity of 20 microsiemens per centimeter or less and with a clarity so that the sources can be seen clearly.

(6) A physical barrier, such as a railing or cover, shall be used around or over irradiator pools during normal operation to prevent personnel from accidentally falling into the pool. The barrier may be removed during maintenance, inspection, and service operations.

(7) If long-handled tools or poles are used in irradiator pools, the radiation dose rate on the handling areas of the tools may not exceed 2 millirems (0.02 millisievert) per hour.

(n) Source rack protection. If the product to be irradiated moves on a product conveyor system, the source rack and the mechanism that moves the rack shall be protected by a carrier or guides to prevent products and product carriers from hitting or touching the rack or mechanism.

(o) Power failures.

(1) If electrical power at a panoramic irradiator is lost for longer than 10 seconds, the sources shall automatically return to the shielded position.

(2) The lock on the door of the radiation room of a panoramic irradiator shall not be deactivated by a power failure.

(3) During a power failure, the area of any irradiator where sources are located may be entered only when using an operable and calibrated radiation survey meter.

(p) Design requirements for irradiators. Design requirements for irradiators that have construction beginning after August 1, 1996.

(1) Shielding. For panoramic irradiators, the licensee shall design shielding walls to meet generally accepted building code requirements for reinforced concrete and design the walls, wall penetrations, and entrance ways to meet the radiation shielding requirements of subsection (i) of this section. If the irradiator will use more than 5 million curies (2×10^{17} becquerels) of activity, the licensee shall evaluate the effects of heating of the shielding walls by the irradiator sources.

(2) Foundations. For panoramic irradiators, the licensee shall design the foundation, with consideration given to soil characteristics, to ensure it is adequate to support the weight of the facility shield walls.

(3) Pool integrity. For pool irradiators, the licensee shall design the pool to assure that it is leak resistant, that it is strong enough to bear the weight of the pool water and shipping casks, that a dropped cask would not fall on sealed sources, that all outlets or pipes meet the requirements of subsection (m)(2) of this section, and that metal components are metallurgically compatible with other components in the pool.

(4) Water handling system. For pool irradiators, the licensee shall verify that the design of the water purification system is adequate to meet the requirements of subsection (m)(5) of this section. The system shall be designed so that water leaking from the system does not drain to unrestricted areas without being monitored.

(5) Radiation monitors. For all irradiators, the licensee shall evaluate the location and sensitivity of the monitor to detect sources carried by the product conveyor system as required by subsection (k)(1) of this section. The licensee shall verify that the product conveyor is designed to stop before a source on the product conveyor would cause a radiation overexposure to any person. For pool irradiators, if the licensee uses radiation monitors to detect contamination under subsection (v)(2) of this section, the licensee shall verify that the design of radiation monitoring systems to detect pool contamination includes sensitive detectors located close to where contamination is likely to concentrate.

(6) Source rack. For pool irradiators, the licensee shall verify that there are no crevices on the source or between the source and source holder that would promote corrosion on a critical area of the source. For panoramic irradiators, the licensee shall determine that source rack drops due to loss of power will not damage the source rack and that source rack drops due to failure of cables (or alternate means of support) will not cause loss of integrity of sealed sources. For panoramic irradiators, the licensee shall review the design of the mechanism that moves the sources to assure that the likelihood of a stuck source is low and that, if the rack sticks, a means exists to free it with minimal risk to personnel.

(7) Access control. For panoramic irradiators, the licensee shall verify from the design and logic diagram that the access

control system will meet the requirements of subsection (h) of this section.

(8) Fire protection. For panoramic irradiators, the licensee shall verify that the number, locations, and spacing of the smoke and heat detectors are appropriate to detect fires and that the detectors are protected from mechanical and radiation damage. The licensee shall verify that the design of the fire extinguishing system provides the necessary discharge patterns, densities, and flow characteristics for complete coverage of the radiation room and that the system is protected from mechanical and radiation damage.

(9) Source return. For panoramic irradiators, the licensee shall verify that the source rack will automatically return to the fully shielded position if power is lost for more than 10 seconds.

(10) Seismic. For panoramic irradiators to be built in seismic areas, the licensee shall design the reinforced concrete radiation shields to retain their integrity in the event of an earthquake by designing to the seismic requirements of an appropriate source such as American Concrete Institute Standard ACI 318-89, "Building Code Requirements for Reinforced Concrete," Chapter 21, "Special Provisions for Seismic Design," or local building codes, if current.

(11) Wiring. For panoramic irradiators, the licensee shall verify that electrical wiring and electrical equipment in the radiation room are selected to minimize failures due to prolonged exposure to radiation.

(q) Construction monitoring and acceptance testing requirements to be met prior loading sources for irradiators that have construction beginning after August 1, 1996.

(1) Shielding. For panoramic irradiators, the licensee shall monitor the construction of the shielding to verify that its construction meets design specifications and generally accepted building code requirements for reinforced concrete.

(2) Foundations. For panoramic irradiators, the licensee shall monitor the construction of the foundations to verify that the foundation construction meets design specifications.

(3) Pool integrity. For pool irradiators, the licensee shall verify that the pool meets design specifications and shall test the integrity of the pool. The licensee shall verify that outlets and pipes meet the requirements of subsection (m)(2) of this section.

(4) Water handling system. For pool irradiators, the licensee shall verify that the water purification system, the conductivity meter, and the water level indicators operate properly.

(5) Radiation monitors. For all irradiators, the licensee shall verify the proper operation of the monitor to detect sources carried on the product conveyor system and the related alarms and interlocks required by subsection (k)(1) of this section. For pool irradiators, the licensee shall verify the proper operation of the radiation monitors and the related alarm if used to meet subsection (v)(2) of this section. For underwater irradiators, the licensee shall verify the proper operation of the over-the-pool monitor, alarms, and interlocks required by subsection (k)(2) of this section.

(6) Source rack. For panoramic irradiators, the licensee shall test the movement of the source racks for proper operation prior to source loading; testing shall include source rack lowering due to simulated loss of power. For all irradiators with product conveyor systems, the licensee shall observe and test the operation

of the conveyor system to assure that the requirements in subsection (n) of this section are met for protection of the source rack and the mechanism that moves the rack; testing shall include tests of any limit switches and interlocks used to protect the source rack and mechanism that moves that rack from moving product carriers.

(7) Access control. For panoramic irradiators, the licensee shall test the completed access control system to assure that it functions as designed and that all alarms, controls, and interlocks work properly.

(8) Fire protection. For panoramic irradiators, the licensee shall test the ability of the heat and smoke detectors to detect a fire, to activate alarms, and to cause the source rack to automatically become fully shielded. The licensee shall test the operability of the fire extinguishing system.

(9) Source return. For panoramic irradiators, the licensee shall demonstrate that the source racks can be returned to their fully shielded positions without power.

(10) Computer systems. For panoramic irradiators that use a computer system to control the access control system, the licensee shall verify that the access control system will operate properly if power is lost and shall verify that the computer has security features that prevent an irradiator operator from commanding the computer to override the access control system when it is required to be operable.

(11) Wiring. For panoramic irradiators, the licensee shall verify that the electrical wiring and electrical equipment that were installed meet the design specifications.

(r) Training.

(1) Before an individual is permitted to operate an irradiator without a supervisor present, who has completed the requirements of this paragraph and paragraphs (2) and

(3) of this subsection, the individual shall be instructed in:

(A) the fundamentals of radiation protection applied to irradiators (including the differences between external radiation and radioactive contamination, units of radiation dose, dose limits, why large radiation doses shall be avoided, how shielding and access controls prevent large doses, how an irradiator is designed to prevent contamination, the proper use of survey meters and personnel dosimeters, other radiation safety features of an irradiator, and the basic function of the irradiator);

(B) the requirements of this section and §289.114 of this title that are relevant to the irradiator;

(C) the operation of the irradiator;

(D) those operating, safety, and emergency procedures listed in subsection (s) of this section that the individual is responsible for performing; and

(E) case histories of accidents or problems involving irradiators.

(2) Before an individual is permitted to operate an irradiator without a supervisor present, who has completed the requirements of this paragraph and paragraphs (1) and

(3) of this subsection, the individual shall pass a written test on the instruction received consisting primarily of questions based on the licensee's operating, safety, and emergency procedures that the individual is responsible for performing and other operations necessary to safely operate the irradiator without supervision.

(3) Before an individual is permitted to operate an irradiator without a supervisor present, who has completed the requirements of this paragraph and paragraphs (1) and

(2) of this subsection, the individual shall have received on-the-job training or simulator training in the use of the irradiator as described in the license application. The individual shall also demonstrate the ability to perform those portions of the operating, safety, and emergency procedures that he or she is to perform.

(4) The licensee shall conduct safety reviews for irradiator operators at least annually. The licensee shall give each operator a brief written test on the information. Each safety review shall include, to the extent appropriate, each of the following:

(A) changes in operating, safety, and emergency procedures since the last review, if any;

(B) changes in rules and license conditions since the last review, if any;

(C) reports on recent accidents, mistakes, or problems that have occurred at irradiators, if any;

(D) relevant results of inspections of operator safety performance;

(E) relevant results of the facility's inspection and maintenance checks; and

(F) a drill to practice an emergency or abnormal event procedure.

(5) The licensee shall evaluate the safety performance of each irradiator operator at least annually to ensure that regulations, license conditions, and operating, safety, and emergency procedures are followed. The licensee shall discuss the results of the evaluation with the operator and shall instruct the operator on how to correct any mistakes or deficiencies observed.

(6) Individuals who will be permitted unescorted access to the radiation room of the irradiator or the area around the pool of an underwater irradiator, but who have not received the training required for operators and the radiation safety officer, shall be instructed and tested in any precautions they should take to avoid radiation exposure, any procedures or parts of procedures listed in subsection (s) of this section that they are expected to perform or comply with, and their proper response to alarms required in this section. Tests may be oral.

(7) Individuals who shall be prepared to respond to alarms required by subsections (h)(2) and (9), (j), (k), and (v)(2) of this section shall be trained and tested on how to respond. Each individual shall be retested at least once a year. Tests may be oral.

(s) Operating, safety, and emergency procedures.

(1) The licensee shall have and follow written operating procedures for:

(A) operation of the irradiator, including entering and leaving the radiation room;

(B) use of personnel dosimeters;

(C) surveying the shielding of panoramic irradiators;

(D) monitoring pool water for contamination while the water is in the pool and before release of pool water to unrestricted areas;

(E) leak testing of sources;

(F) inspection and maintenance checks required by subsection (w) of this section;

(G) loading, unloading, and repositioning sources, if the operations will be performed by the licensee; and

(H) inspection of movable shielding required by subsection (h)(8) of this section, if applicable.

(2) The licensee shall have and follow emergency or abnormal event procedures, appropriate for the irradiator type, for:

(A) sources stuck in the unshielded position;

(B) personnel overexposures;

(C) a radiation alarm from the product exit portal monitor or pool monitor;

(D) detection of leaking source, pool contamination, or alarm caused by contamination of pool water;

(E) a low or high water level indicator, an abnormal water loss, or leakage from the source storage pool;

(F) a prolonged loss of electrical power;

(G) a fire alarm or explosion in the radiation room;

(H) an alarm indicating unauthorized entry into the radiation room, area around pool, or another alarmed area;

(I) natural phenomena, including an earthquake, a tornado, flooding, or other phenomena as appropriate for the geographical location of the facility; and

(J) the jamming of automatic conveyor systems.

(3) The licensee may revise operating, safety, and emergency procedures without agency approval only if all of the following conditions are met:

(A) the revisions do not reduce the safety of the facility; (B) the revisions are consistent with the outline or summary of procedures including procedures for changes to operating, safety, and emergency procedures submitted with the license application;

(C) the revisions have been reviewed and approved by the radiation safety officer;

(D) the users or operators are instructed and tested on the revised procedures before they are put into use; and

(E) changes to operating, safety, and emergency procedures shall be submitted to the agency after subparagraphs (A) through (D) of this paragraph are completed.

(t) Personnel monitoring.

(1) Irradiator operators shall wear either a film badge or a thermoluminescent dosimeter (TLD) while operating a panoramic irradiator or while in the area around the pool of an underwater irradiator. The film badge or TLD processor shall be accredited by the National Voluntary Laboratory Accreditation Program for

high energy photons in the normal and accident dose ranges (see §289.202(p)(3) of this title. Each film badge or TLD shall be assigned to and worn by only one individual. Film badges shall be replaced at an interval not to exceed monthly and TLDs shall be replaced at an interval not to exceed three months. After replacement, each film badge or TLD shall be returned to the supplier for processing within 14 calendar days of the exchange date specified by the personnel monitoring supplier or as soon as practicable. In circumstances that make it impossible to return each film badge or TLD within 14 calendar days, such circumstances shall be documented and available for review by the agency.

(2) Other individuals who enter the radiation room of a panoramic irradiator shall wear a dosimeter, which may be a pocket dosimeter. For groups of visitors, only two people who enter the radiation room are required to wear dosimeters. If pocket dosimeters are used to meet the requirements of the paragraph, a check of their response to radiation shall be done at least annually. Acceptable dosimeters shall read within

(u) Radiation surveys.

(1) A radiation survey of the area outside the shielding of the radiation room of a panoramic irradiator shall be conducted with the sources in the exposed position before the facility starts to operate. A radiation survey of the area above the pool of pool irradiators shall be conducted after the sources are loaded but before the facility starts to operate. Additional radiation surveys of the shielding shall be performed at intervals not to exceed three years and before resuming operation after addition of new sources or any modification to the radiation room shielding or structure that might increase dose rates.

(2) If the radiation levels specified in subsection (i) of this section are exceeded, the facility shall be modified to comply with the requirements in subsection (i) of this section.

(3) Portable radiation survey meters shall be calibrated at least annually to an accuracy of

(4) Water from the irradiator pool, other potentially contaminated liquids, and sediments from pool vacuuming shall be monitored for radioactive contamination before release to unrestricted areas. Radioactive concentrations shall not exceed those specified in Table 2, Column 2 or Table 3 of §289.202(ggg)(2) of this title.

(5) Before releasing resins for unrestricted use, they shall be monitored in an area with a background level less than 0.05 millirem (0.5 microsievert) per hour. The resins may be released only if the survey does not detect radiation levels above background radiation levels. The survey meter used shall be capable of detecting radiation levels of 0.05 millirem (0.5 microsievert) per hour.

(v) Detection of leaking sources.

(1) Each dry-source-storage sealed source shall be tested for leakage at intervals not to exceed six months using a leak test kit or method approved by the agency, the commission, an agreement state, or a licensing state. In the absence of a certificate from a transferor that a test has been made within the six months before the transfer, the sealed source may not be used until tested. The test shall be capable of detecting the presence of 0.005 microcurie (200 becquerels) of radioactive material and shall be performed by a person approved by the agency, the commission, an agreement state, or a licensing state to perform the test.

(2) For pool irradiators, sources may not be put into the pool unless the licensee tests the sources for leaks or has a certificate from a transferor that a leak test has been done within the six months before the transfer. Water from the pool shall be checked for contamination each day the irradiator operates. The check may be done either by using a radiation monitor on a pool water circulating system or by analysis of a sample of pool water. If a check for contamination is done by analysis of a sample of pool water, the results of the analysis shall be available within 24 hours. If the licensee uses a radiation monitor on a pool water circulating system, the detection of above normal radiation levels shall activate an alarm. The alarm set-point shall be set as low as practical, but high enough to avoid false alarms. The licensee may reset the alarm set-point to a higher level if necessary to operate the pool water purification system to clear up contamination in the pool if specifically provided for in written emergency procedures.

(3) If a leaking source is detected, the licensee shall arrange to remove the leaking source from service and have it decontaminated, repaired, or disposed of by an agency, commission, agreement state, or licensing state licensee who is authorized to perform these functions. The licensee shall promptly check its personnel, equipment, facilities, and irradiated product for radioactive contamination. No product may be shipped until the product has been checked and found free of contamination. If a product has been shipped that may have been inadvertently contaminated, the licensee shall arrange to locate and survey that product for contamination. If any personnel are found to be contaminated, decontamination shall be performed promptly. If contaminated equipment, facilities, or products are found, the licensee shall arrange to have them decontaminated or disposed of by an agency, commission, agreement state, or licensing state licensee who is authorized to perform these functions. If a pool is contaminated, the licensee shall arrange to clean the pool until the contamination levels do not exceed the appropriate concentration in Table 2, Column 2 of §289.202(ggg)(2) of this title. (See §289.202(xx) of this title for reporting requirements.)

(w) Inspection and maintenance.

(1) The licensee shall perform inspection and maintenance checks that include, as a minimum, each of the following at the frequency specified in the license or license application:

(A) operability of each aspect of the access control system required by subsection (h) of this section;

(B) functioning of the source position indicator required by subsection (l)(2) of this section;

(C) operability of the radiation monitor for radioactive contamination in pool water required by subsection (v)(2) of this section using a radiation check source, if applicable;

(D) operability of the over-pool radiation monitor at underwater irradiators as required by subsection (k)(2) of this section;

(E) operability of the product exit monitor required by subsection (k)(1) of this section;

(F) operability of the emergency source return control required by subsection (l)(3) of this section;

(G) leak-tightness of systems through which pool water circulates (visual inspection);

(H) operability of the heat and smoke detectors and extinguisher system required by subsection (j) of this section (but without turning extinguishers on);

(I) operability of the means of pool water replenishment required by subsection (m)(3) of this section;

(J) operability of the indicators of high and low pool water levels required by subsection (m)(4) of this section;

(K) operability of the intrusion alarm required by subsection (h)(8) of this section, if applicable;

(L) functioning and wear of the system, mechanisms, and cables used to raise and lower sources;

(M) condition of the barrier to prevent products from hitting the sources or source mechanism as required by subsection (n) of this section;

(N) amount of water added to the pool to determine if the pool is leaking;

(O) electrical wiring on required safety systems for radiation damage; and

(P) pool water conductivity measurements and analysis as required by subsection (x)(2) of this section.

(2) Malfunctions and defects found during inspection and maintenance checks shall be repaired without undue delay. If repairs are required, the irradiator shall not be operated unless alternative methods are utilized to provide an equivalent level of safety until repairs are completed.

(x) Pool water purity.

(1) Pool water purification system shall be run sufficiently to maintain the conductivity of the pool water below 20 microsiemens per centimeter under normal circumstances. If pool water conductivity rises above 20 microsiemens per centimeter, the licensee shall take prompt actions to lower the pool water conductivity and shall take corrective actions to prevent future recurrences.

(2) The licensee shall measure the pool water conductivity frequently enough, but no less than weekly, to assure that the conductivity remains below 20 microsiemens per centimeter. Conductivity meters shall be calibrated at least annually.

(y) Attendance during operation.

(1) Both an irradiator operator and at least one other individual, who is trained on how to respond and is prepared to promptly render or summon assistance if the access control alarm sounds, shall be present onsite whenever the:

(A) irradiator is operated using an automatic product conveyor system; and

(B) product is moved into or out of the radiation room when the irradiator is operated in a batch mode.

(2) At a panoramic irradiator at which static irradiations (no movement of the product) are occurring, a person who has received the training on how to respond to alarms described in subsection (r)(7) of this section shall be onsite.

(3) At an underwater irradiator, an irradiator operator shall be present at the facility whenever the product is moved into or out of the pool. Individuals who move the product into or out of the

pool of an underwater irradiator need not be qualified as irradiator operators; however, they shall have received the training described in subsection (r)(6) and (7) of this section. Static irradiations may be performed without a person present at the facility.

(z) Entering and leaving the radiation room.

(1) Upon first entering the radiation room of a panoramic irradiator after an irradiation, the irradiator operator shall use a survey meter to determine that the source has returned to its fully shielded position. The operator shall check the functioning of the survey meter with a radiation check source prior to entry.

(2) Before exiting from and locking the door to the radiation room of a panoramic irradiator prior to a planned irradiation, the irradiator operator shall:

(A) visually inspect the entire radiation room to verify that no one else is in it; and

(B) activate a control in the radiation room that permits the sources to be moved from the shielded position only if the door to the radiation room is locked within a preset time after setting the control.

(3) During a power failure, the area around the pool of an underwater irradiator may not be entered without using an operable and calibrated radiation survey meter unless the over-the-pool monitor required by subsection (k)(2) of this section is operating with backup power.

(aa) Irradiation of explosive or flammable materials.

(1) Irradiation of explosive material is prohibited unless the licensee has received prior written authorization from the agency. Authorization will not be granted unless the licensee can demonstrate that detonation of the explosive would not rupture the sealed sources, injure personnel, damage safety systems, or cause radiation overexposures of personnel.

(2) Irradiation of more than small quantities of flammable material (flash point below 140 degrees F) is prohibited in panoramic irradiators unless the licensee has received prior written authorization from the agency. Authorization will not be granted unless the licensee can demonstrate that a fire in the radiation room could be controlled without damage to sealed sources or safety systems and without radiation overexposures of personnel.

(bb) Records to be kept at the irradiator and retention periods.

(1) A copy of the license, license conditions, documents incorporated into a license by reference, and amendments thereto until superseded by new documents or until the agency terminates the license;

(2) records of each individual's training, tests, and safety reviews provided to meet the requirements of subsection (r)(1) - (4), (6) and (7) of this section until three years after the individual terminates work;

(3) records of the annual evaluations of the safety performance of irradiator operators required by subsection (r)(5) of this section for three years after the evaluation;

(4) a copy of the current operating, safety, and emergency procedures required by subsection (s) of this section until superseded or the agency terminates the license. Records of the radiation safety officers review and approval of changes in procedures as required by

subsection (s)(3)(C) of this section, retained for three years from the date of the change;

(5) film badge and TLD results required by subsection (t) of this section until the agency terminates the license;

(6) records of radiation surveys required by subsection (u) of this section for three years from the date of the survey;

(7) records of radiation survey meter calibrations required by subsection (u) of this section and pool water conductivity meter calibrations required by subsection (x)(2) of this section until three years from the date of calibration;

(8) records of the results of leak tests required by subsection (v)(1) of this section and the results of contamination checks required by subsection (v)(2) of this section for three years from the date of each test;

(9) records of inspection and maintenance checks required by subsection (w) of this section for three years;

(10) records of major malfunctions, significant defects, operating difficulties or irregularities, and major operating problems that involve required radiation safety equipment for three years after repairs are completed;

(11) records of the receipt, transfer and disposal, of all licensed sealed sources as required by §289.201(d) and §289.252(k) and (p) of this title;

(12) records on the design checks required by subsection (p) of this section and the construction control checks as required by subsection (q) of this section until the license is terminated. The records shall be signed and dated. The title or qualification of the person signing shall be included; and

(13) records related to decommissioning of the irradiator as required by §289.252(u)(7) of this title.

(cc) Reports.

(1) In addition to the reporting requirements in other sections of this title, the licensee shall report the following events if not reported under other sections of this title:

(A) source stuck in an unshielded position;

(B) any fire or explosion in a radiation room;

(C) damage to the source racks;

(D) failure of the cable or drive mechanism used to move the source racks;

(E) zinoperability of the access control system;

(F) detection of radiation source by the product exit monitor;

(G) detection of radioactive contamination attributable to licensed radioactive material;

(H) structural damage to the pool liner or walls;

(I) abnormal water loss or leakage from the source storage pool; and

(J) pool water conductivity exceeding 100 microsiemens per centimeter during normal operations.

(2) The report shall include a telephone report within 24 hours as described in §289.252(r)(3)(A) of this title, and a written report within 30 days as described in §289.252(r)(3)(B) of this title.

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

Issued in Austin, Texas, on July 3, 1996.

TRD-9609596

Susan K. Steeg

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Texas Department of Health

Effective date: August 1, 1996

Proposal publication date: February 16, 1996

For further information, please call: (512) 458-7236

TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 321. Control of Certain Activities By Rule

The Texas Natural Resource Conservation Commission (commission or agency) adopts new §§321.151-321.159, 321.211-321.220, 321.231-321.240, and 321.251-321.259, relating to discharges to surface waters from ready-mixed concrete plants and/or concrete products plants or associated facilities, discharges to surface waters from motor vehicles cleaning facilities, discharges to surface waters from petroleum bulk stations and terminals, and the handling of wastes from commercial facilities engaged in livestock trailer cleaning. Sections 321.151 - 321.157, 321.211 - 321.213, 321.215 - 321.217, 321.219, 321.231 - 321.232, 321.234 - 321.237, 321.239, and 321.252 - 321.257 are adopted with changes to the proposed text as published in the January 5, 1996, issue of the *Texas Register* (21 TexReg 228). New §§321.158 - 321.159, 321.214, 321.218, 321.220, 321.233, 321.238, 321.240, 321.51 and 321.258 - 321.259 are adopted without changes and will not be republished.

The purpose of the new sections is to streamline the current permitting process by controlling by rule certain activities, thereby eliminating the need for a commission permit for specific wastewater discharge and waste handling activities. The sections cover activities that are now subject to individual permits, but are categorized as posing a low risk of harm to human health and the environment, and represent a significant demand on agency resources if permitted individually.

A public hearing on these rules was conducted on February 1, 1996. No oral testimony was provided at the hearing, in part due to inclement weather that day. Due to the inclement weather on the day of the public hearing, the original deadline for the submission of written comments was extended until March 1, 1996. The extension of the deadline was published in the February 16, 1996, issue of the *Texas Register* (21 TexReg 1311). Written comments were provided by representatives of the following groups: Barton Springs/Edwards Aquifer Conservation District (the District); Texas Aggregates and Concrete Associa-

tion (TACA); Exxon Company, U.S.A. (Exxon); Texas Automobile Dealers Association (TADA); Water Alliance, Inc. (Alliance); Texas Utilities Services, Inc. (TU); Citgo Petroleum Corporation (Citgo); Harris County Pollution Control Department (HPCPD); Diamond Shamrock Corporation (Diamond Shamrock); Texas Mid Continent Oil & Gas Association (TMOGA); and Chevron U.S.A. Products Company (Chevron).

All comments received by the public in writing on the proposed rules have been considered, and have been incorporated into the rules where appropriate.

The District commented on proposed §§321.153, 321.213, 321.234, and 321.254 (all relating to Certificate of Registration and Public Notice) requesting that public notification procedures be expanded to include notice to ground water districts, river authorities, or other water districts. The commission responds that it developed the proposed process as a way to give widespread notice in a fashion that is easy for the applicants. The agency will not be providing notice to the public on these matters; the applicant will. It believes it would be difficult for applicants to determine all the jurisdictions that could be affected by the proposed discharge, and the commission concludes that publication in a newspaper serves the purpose of notification to the districts and authorities. Additionally, a district or authority could develop coordination methods with county judges or mayors of cities if it desires to know of opportunities for public comment within those jurisdictions.

TACA asked for clarification that notices required by §321.153 do not need to be published in a bilingual periodical. The commission responds that such publication is not required by this rule. TACA also posed a question relating to the same section of the rules, inquiring whether a person who did not submit public comments could file and be granted a motion for reconsideration. The commission responds that a person who files a motion for reconsideration need not be a commenter during the thirty day comment period set aside under the process. In response to this comment, however, §§321.153(b)(4) and (e), 321.213(b)(4) and (e), 321.234(b)(4) and (c), and 321.254(b)(4) and (g) have been revised. This clarifies that the applicant and any commenters on the application will receive notice of the agency's decision on the applications. It is not likely that other parties would directly become aware of the action of the executive director and thus not be likely to file a motion for reconsideration. TACA also asked how long the agency would take in reviewing applications under this rule. The commission responds that the timing of approvals will depend on two main factors: 1) staff resources available, and 2) the number of applications received at a particular time. The agency goal is not to exceed 45 days, but the approvals could be granted in as short a time frame as one day.

TACA and the District commented on proposed §321.154 requesting how a facility needs to treat wastewater and contact storm water to meet effluent discharge limitations. Additionally, TACA asked if the agency is encouraging acid treatment. The commission responds that the agency is flexible and will not prescribe a particular technology for treatment of these wastes. No requirements for agency review of treatment proposed at a facility is proposed. Some facilities may choose recycling practices to reduce the volume of discharges or implement practices to segregate uncontaminated storm water run-on and

run-off to avoid the need to manage contact storm water. Oil and grease limitations can be met by implementing measures to keep excessive oil out of wastewater at the source. Further, to meet pH limitations, elementary neutralization of waste may be necessary, including the use of acidic solutions to meet the pH maximum limitation set in the rule. Total suspended solids (TSS) may be reduced through sedimentation either with or without the use of coagulants.

TACA is concerned with the ability of existing facilities, not presently authorized by permits, to meet effluent limitations within the 90-day time frame. The commission agrees, and as mentioned above, the agency anticipates that the industry will need more time to determine treatment needs, if any, and then implement treatment at the facilities. The commission has revised §§321.152(b)(3) and 321.153(d) to allow up to 365 days for existing discharges to become registered and compliant with the rule.

TACA commented on §321.154(d) of this same section inquiring whether reuse of concrete in road making or the return of concrete to a facility from a construction site constituted disposal and might be considered as a prohibited activity, since the proposed rule references the requirements of the Texas Health and Safety Code (THSC), Chapter 361. In response, the commission states that its general policy is to encourage the recycling of solid wastes. The THSC §361.003(34)(A)(ii) excludes from the definition of "solid waste" soil, dirt, rock, sand, or other natural or man-made materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements. Clearly, construction of a road base constitutes filling. In addition, the commission regulations specify where certain recycling activities are exempt from the industrial solid waste regulations. The intent of subsection (d) is to ensure that improper disposal of solid waste does not occur when legitimate recycling is not the case. Should waste concrete become contaminated in a way that its placement into or on the ground could cause a threat to water in the state, disposal of that waste may be subject to the laws of this state and the existing rules of the commission.

The District commented on §321.154(f), as well as §§321.215(f), 321.235(f), and 321.256(c) (all relating to General Requirements), that noncompliance notification should be provided to parties other than the commission including potentially affected parties such as municipalities, groundwater districts, and river authorities. The commission responds that one primary intent of this regulation is to simplify the regulatory framework for particular classes of discharges where the nature of the operation poses a lesser degree of potential impact compared to other industrial discharges permitted individually. As such, the agency is opposed to making noncompliance notification more stringent than what is currently required of permittees in Texas. The commission notes that a district may review information submitted to the agency regional offices or to the Water Section of the Enforcement Division if it desires to monitor facilities which are within its area of jurisdiction. Since the commission is responsible for the enforcement of water quality standards, the agency has specific policies that lead to an enforcement response when noncompliances are significant. The commission would welcome a district or other local government to take advantage of the authority it may be

granted under §26.175 of the Texas Water Code, wherein the entity could provide enforcement and inspection functions on behalf of the commission.

TACA states that §321.154(j) could result in serious potential problems if a ready mix truck were prohibited from wash down of equipment, such as chutes, at a construction site. TACA mentions several drawbacks if ready mix trucks could not wash down equipment at a site not registered under these rules. It states that its industry policies are to avoid discharges which would be irresponsible, since this would be bad business or poor customer service. The commission agrees with TACA that the proposed rule was overly protective and that the agency has the ability to take enforcement action should it become aware of discharges at construction sites that cause unacceptable water pollution. Therefore, subsection (j) has been deleted.

HCPCD commented that proposed §§321.155, 321.216, and 321.236 (all relating to Specific Requirements for Discharge) be modified to state that all discharges from the facilities authorized by the various rules shall comply with §319.22 of this title (relating to Quality Levels-Inland Waters) and shall comply with §319.23 of this title (relating to Quality Levels-Tidal Waters). These sections specify concentration limitations for certain hazardous metals. The commission notes that §§319.22 and 319.23 apply to any permitted discharges in the state and that discharges from the type of facility being regulated under these rules are already subject to §§319.22 and 319.23, whether or not specifically stated in this rule. Therefore, the agency agrees with the comment, believes that this addition clarifies the regulations to which the discharger is subject. The commission has modified the three sections of the rules as the commenter requested. However, the addition to the rules should not be interpreted to mean that the agency believes these pollutants to be present in the discharges from these sources, and this addition does require a facility authorized under this rule to either monitor or report measurements to show compliance with either §319.22 or §319.23.

The District also commented on §§321.155, 321.216, 321.236 and on Subchapter N in general. The District believes the agency should apply performance standards to the treatment facilities, since sampling verification is extremely limited. The District also asserts that sampling only for pH and making a visual inspection of the discharge is an inadequate set of controls. The commission disagrees with the comments and notes that parameters for periodic sampling and monitoring were contained in the figures published on pages 214 through 216 in the *Texas Register* on January 5, 1996. The agency responds that these parameters are adequate performance standards for discharges of this nature. In addition, there are no effluent limitations or treatment requirements specified for wastes from livestock trailer cleaning, as these wastes are not allowed to be discharged into waters in the state. Such wastes must be disposed of by land irrigation or storage pond evaporation, similar to agency requirements for waste from feedlots.

TACA objected to the effluent limitations for pH and for TSS as specified in §321.155. TACA requests that the pH maximum be increased from 9.0 to 9.5, noting that the drinking water of Austin is 9.5. TACA suggests the TSS maximum limit of 65 mg/l be raised to 100 mg/l citing that this level is acceptable under

the National Pollutant Discharge Elimination System (NPDES) storm water program and that if 100 mg/l is achieved under that program for four years, TSS monitoring is no longer required.

The agency responds that both state and federal wastewater permits are consistently issued with a maximum pH of 9.0 across the state. A permit with higher pH maximum can be issued under both programs if an applicant can justify that it would not interfere with water quality. This limitation of 9.0 is technologically feasible. The City of Austin in its wastewater discharge permits has pH limitations of 9.0, even though its drinking water may be alkaline. Federal effluent limitations found in 40 CFR §411.32, relating to cement manufacturing and runoff from cement storage piles includes a pH maximum of 9.0, which has been determined by the United States Environmental Protection Agency (EPA) as achievable. The agency further points out that there may be situations where an operation may wish to deviate from the requirements of the rule. In such cases, the operation can request a site-specific permit for its discharge.

The commission disagrees that TSS limitations for contact storm water and facility wastewater should be raised to 100 mg/l. TACA cites the NPDES storm water program as a rationale for relaxing the proposed limit. The agency is not attempting to authorize storm water discharges, except contact storm water, from these facilities which are adequately controlled under the NPDES program. The agency has determined that it is not appropriate to compare storm water effluent limitations to those set for facility wastewater. Technology Control to TSS from storm water runoff is different from what can be controlled from a particular process at a particular point source. Cement storage pile run-off more closely represents the type of wastewater being authorized under these rules (ready-mix concrete and concrete products). In 40 CFR §411.32, EPA has promulgated an effluent limitation for TSS as "not to exceed 50 mg/l" for cement storage pile run-off. This limitation was based upon a finding that this is the best practicable control technology currently available for this type of contact storm water.

TACA objected to §321.156(b) of this title (relating to Sampling, Reporting, and Recordkeeping) and the sampling and monitoring frequency of once per month, favoring instead once per year. The commission has studied this issue. To provide some sampling relief from sampling costs to a facility, the proposal did not include sampling and monitoring for chemical oxygen demand and total organic carbon. Annual testing does not lend statistical confidence to demonstrate compliance with the effluent limitations, monthly testing will remain in the rule. The agency clarifies that facilities with intermittent discharges need not sample in months when there is no discharge.

It is also noted that the agency is not mandating all ready-mixed concrete, concrete products, and associated facilities to register under these rules. A facility may choose other alternatives to waste management which do not result in a discharge to waters in the state, thereby avoiding a need to meet these rules. Options include wastewater recycling, discharge to a publicly owned treatment works (POTW), segregating storm water from contact with pollutants, and source reduction with periodic shipment of waste to an authorized disposal facility. As mentioned above in this response to comments, the commission is offering additional time to allow for compliance with the rule.

TACA inquired whether actual samples needed to be retained, or if results of sampling would suffice under the recordkeeping requirements of proposed §321.156. The agency responds that the actual sample need not be retained. There should be adequate records which describe how subsections (a) through (c) were met. Additional information that is pertinent to sampling and analysis is described in §319.11 of this title (relating to Sampling and Laboratory Testing Methods), as referenced in subsection (a).

The Alliance provided general comments on Subchapter L, §§321.1211-321.220, which focused on their belief that runoff from vehicle cleaning operations need to be regulated. The commenter suggests that high levels of contaminants have been found in vehicle cleaning runoff, including detergents, floatable debris, turbidity, solids, various toxic metals and organics, visible oils and grease, and emulsified oils and grease. The commenter asserts that there are cases of severe surface water and groundwater contamination where a small source of vehicle cleaning waste accumulated over time to cause a problem. The commenter provided soil sample results from a typical equipment pressure cleaning facility to illustrate that many pollutants are present in this type of waste which are not controlled by specific effluent limits in the proposed rule. The commenter believes that separation technologies are an inadequate treatment for this type of wastewater and that such treatment does not meet best available technology (BAT) standards of EPA. Finally, as a general comment, the Alliance suggests that the agency needs to regulate non-point source discharges from heavy equipment and fleet businesses which have cleaning operations under this rule.

The commission responds that the proposed rule is attempting to authorize discharge of facility wastewater from point sources. While acknowledging the national concern over non-point sources of pollution, control of such pollution is outside the scope of this rulemaking. In setting effluent limitations, the agency is specifying indicator parameters in the rule which, if met, will assure that high concentrations of specific pollutants will not be present in the discharge. It is difficult to interpret the applicability of soil sample results presented by the commenter to wastewater being discharged into a stream. Nor can the agency determine what type of equipment was being pressure washed which resulted in soil samples showing elevated levels of several pollutants. In the proposed rule, the commission narrowed the applicability of the rule to exclude certain vehicle categories, as specified in §321.212(a)(4) and (5). The primary reason was to regulate pollutants from those excluded sources with controls or limitations set in a specific permit application. The agency recognizes the need to have assurances that discharges will not adversely affect water quality. The commission proposes the addition of a requirement for monitoring and reporting of chemical oxygen demand (COD) which also specifies these discharges are subject to certain hazardous metal limitations. In addition, the agency intends to consider approaches to authorize vehicle cleaning operations while narrowing the rule's applicability in the interim period.

In response to the other general comments, the agency agrees that BAT is required for non-domestic point source discharges, such as those from vehicle cleaning operations. The commission is not aware of an EPA regulation or guideline that pre-

scribes a particular technology or set of effluent limitations for vehicle cleaning operations. In developing this rule, the commission has developed effluent limitations which represent the agency's best professional judgement of limits that are both achievable and protective of water quality.

TU provided a general comment on Subchapter L indicating that it was the understanding of the company that authorization under this rule was optional when a facility already had a discharge permit which in part allows discharge from vehicle cleaning operations. The commission concurs that registration under the above described conditions is optional. Where a facility has a permit that controls the discharge of a variety of wastestreams, such as at a steam electric station, it may be easier to maintain one permit to control these discharges rather than authorizing some discharges by permit and other discharges by registration under this rule.

TADA is concerned that proposed §321.211 could require registration of entities not principally engaged in the business of motor vehicle cleaning. TADA further suggests that since franchised dealerships do not make cleaning facilities available to the public, the rule does not apply to such activities. TADA is making a differentiation between Standard Industry Classification (SIC) Code 7542 (car washes) identified in the rule and SIC Code 5511 (new and used car dealerships). TADA further suggests that dealerships are excluded from the rule since §321.211(a)(2) includes various fleet cleaning facilities while TADA believes dealerships have "inventory" not "fleets".

The commission responds that this rule is to streamline authorizations for discharges of wastewater from point sources. If the agency were to follow this narrow interpretation, auto dealerships would need to immediately apply for individual permits to discharge wastewater from vehicle cleaning operations. Exclusion from this rule would necessitate a more complicated permitting process which the agency believes is undesirable to dealerships. As a result, §321.212(a)(2) has been modified to delete the word "fleet" and replace it with the words "motor vehicle".

TADA also requested clarification that Subchapter L would not apply to TADA members if the flow of wastewater from vehicle cleaning operations is conveyed to a sump, septic system, or POTW. The agency has clarified that these dealerships are not subject to permit or registration requirements if vehicle washing operations discharge to a POTW, where the monthly average discharge flow is less than 5000 gallons per day when the dealership is outside of a POTW service area, or if only non-point source discharges occur such as where cleaning occurs in a parking lot and not in a cleaning facility. The commission cannot determine if discharge to a sump would exempt a TADA member from permitting or registration requirements. It would depend on the fate of the wastewater after storage in the sump. Discharge of wastewater to a septic system is not covered under this rule. Therefore, existing permit requirements for non-domestic wastewater would apply without any change as a result of this rule. The commission may consider an authorization by rule for such systems as an addition to future rulemaking relating to these type of discharges.

The District and the Alliance commented on §321.212 which would allow car washes discharging less than 5,000 gallons

per day to be exempt from registration. The District suggested that a 1995 report entitled *Water Quality and Quantity Impacts of Highway Construction and Operation: Summary and Conclusions* could provide the agency with adequate justification for requiring a minimal amount of treatment of wastewater from the small volume car washes. The Alliance believes the 5,000 gallon applicability limit was a random decision by the agency and that low volume also means higher concentrations of pollutants since many car washes recycle wastewater. The Alliance believes that many discharges will avoid regulation under the rule, since most vehicle cleaning operations, with commercial cleaning equipment, cannot produce more than 3,000 gallons per day on a heavy use basis.

The commission responds that it will retain the proposed limitation of 5,000 gallons per day. However, the agency is concerned that the exclusion could cause many operations currently recycling wastewater or discharging wastewater to a POTW to instead choose to discharge to surface waters. The rules are not intended to encourage new point sources of discharge. Therefore, §321.212 has been modified to exclude any motor vehicle cleaning facility located within the service area of a POTW. Such an operation will need to either obtain an individual permit from the agency, ensure facility wastewater is discharged to a POTW, or completely recycle the wastewater it generates.

The Alliance commented on proposed §321.213(d) that 90 days for submittal of a notification to register an existing discharge is too short since it would be difficult to convey the message of a new rule throughout the state. Additionally, the Alliance is concerned with the lack of public notice that would occur under the circumstance of an existing facility registering within the first 90 days. In response, the commission is modifying this subsection as well as §321.213(a) to allow up to 365 days for existing discharges to become registered. The agency believes it needs to encourage compliance with the rule and agrees with the commenter that compliance will not be achieved if adequate time is not afforded to those we regulate to receive knowledge of the rulemaking. The commission disagrees that public notice of existing discharges needs to occur. As discussed above, existing discharges within the service area of a POTW will not be allowed to register under the rule. Establishing controls on these discharges by rule will have the effect of implementing new and stricter requirements on discharges which are presently unauthorized. Public concern over existing unauthorized discharges would likely have already been received by the agency. It is fair to assume that if public concerns over certain unauthorized discharges have not been raised, there would not be concern by the public over establishing clearer and more strict requirements. Additionally, by making the authorizations easier, the commission believes it will receive a more complete response from persons required to register under the rule. Any new facility which came into existence after January 5, 1996, will need to comply with the public notice requirements.

The Alliance commented on §321.216, urging the agency to regulate all parameters of pollutants such as those specified in the Alliance's general comments. The agency responds that it does not believe there would be a significant water quality gain in adding a substantial number of parameters to

the rule. However, the commission has added COD to the list of constituents that will be monitored and reported by registrants under §321.216 of this title (relating to Specific Requirements for Discharge). This data is needed to characterize and control the discharge of detergents, various soaps, engine cleaners, degreasers, tire cleaners, and wax utilized at the facilities. In choosing to add the effluent testing, the commission notes that the cost of this test is low, while providing the agency information on the degree of oxygen demanding waste that will be discharged into surface waters.

The commission also believes many of the concerns of the commenter are satisfied by the adoption of this rule with a prohibition on discharges in POTW service areas. In making the decision not to increase monitoring parameters, the agency notes that it would be a substantial cost burden for small businesses to monitor all known pollutants possibly present in the discharges. This type of financial burden is not typically placed on vehicle cleaning facilities which have obtained individual permits from the agency.

However, the commission remains concerned with that portion of the vehicle cleaning facilities which are self-service or coin-operated and agrees with the commenters that it may be difficult for these type of operations to sufficiently monitor waste discharges. Other wastes not associated with vehicle washing or wastewater for vehicle washing often get discharged at car washes. For instance, pollutant sources such as transmission fluids, oil, and radiator fluids may be dumped when there is little chance of being caught at an unmanned vehicle cleaning facility. As such, the commission has revised this rule to exclude self-service or coin-operated facilities from obtaining a registration to discharge waste under this subchapter. The agency has determined that it should also consider additional rulemaking related to these type discharges; however, more information is needed before determining how best to regulate self-service or coin-operated facilities, mobile vehicle cleaning operations, cleaning of vehicles which may occur in parking lots, and further consideration of the 5000 gallons per day exemption. To clarify that these discharges are not subject to any requirements under this rule, the commission has revised §321.212(a)(1) and added subsection (e) to exclude mobile vehicle cleaning operations and vehicle cleaning which may occur in parking lots. A rulemaking team which includes interested parties who operate vehicle cleaning businesses, municipalities over 100,000 population and subject to NPDES storm water permits, and others concerned with the nature of pollutants found in these types of discharges will be formed to address these discharges. The agency believes it is progressive step to move forward now to adopt a modified Subchapter L as a way to streamline the authorization process that will likely benefit most entities immediately.

The Alliance commented on §321.219 of this title (relating to Enforcement and Revocation) suggesting that the agency needs to be able to require operations smaller than 5000 gallons per day to be subject to registration and compliance with the standards under the rule. The commission responds that §§321.212(a) and 321.219 have been modified to allow the executive director to make a finding that either a registration or permit is required under certain circumstances.

The Alliance also commented that it is not clear where a registrant would collect a sample under the subchapter. The commenter believes a registrant will misinterpret where waters in the state begin and where the point source discharge commences. The commission responds that the rule does not apply to non-point sources of runoff. The rule applies to wastewater generated at motor vehicle cleaning facilities and would not include discharges from the cleaning of a motor vehicle that did not occur at a defined washing facility, for instance a vehicle washed in a parking lot at an automobile dealership. This would include a discharge at the point following treatment where an effluent is discharged from the wastewater treatment plant. This discharge point would be prior to discharge into waters in the state. The agency believes proposed §321.211 adequately specifies the definitions of facility wastewater, motor vehicle cleaning facilities, and point source discharge.

Citgo submitted a general comment on Subchapter M, §321.231-321.240, stating it supports the rule as proposed, believing it is a cost-effective approach to permitting that will reduce government and industry costs.

TMOGA; Exxon; Diamond Shamrock; and Chevron each submitted general comments suggesting that §281.21 of this title (relating to Draft Permit, Technical Summary, Fact Sheet, and Compliance Summary) has not been met by the commission since they were not aware of the agency preparing a fact sheet which would describe the basis for our rulemaking and effluent limitations. The commission disagrees that this regulation applies because the agency is not issuing a TPDES permit nor a permit at all. The commission is proposing regulations through established agency and state procedures. Nonetheless, the agency does not object to describing the rationale used to develop effluent limitations in Subchapter M, as presented in the following paragraphs.

The commission has proposed Subchapter M to regulate by rule the surface discharge of facility wastewater and contact storm water from petroleum bulk stations and terminals. It is possible to regulate these discharges by rule because pollutants in these wastewaters are well-characterized. The agency already regulates discharges of certain petroleum-fuel contaminated wastewaters under Chapter 321, Subchapter H, and the effluent limitations and monitoring frequencies for Subchapter M parallel those of Subchapter H to a great extent.

Monitoring requirements for benzene, toluene, ethyl benzene and xylene (BTEX) are included in the rule. These parameters are regulated because they are common constituents of gasoline, other petroleum-based fuels, and refined petroleum products. They are more soluble in water than other constituents, and are expected to be present in water which has come in contact with refined petroleum products.

The effluent limitation for BTEX, 0.5 mg/l, is established to assure effective treatment of petroleum contaminated wastewaters. One of the more common technologies used for treatment of these wastewaters is air stripping. Benzene, toluene, ethylbenzene and xylene are relatively less volatile and thus less easily removed by air stripping than other constituents. The limitation is based on the assumption of 95-99% removal of BTEX at typical influent levels. When BTEX is discharged at or

below the level specified in the rule, it is highly probable that more volatile constituents are also effectively treated.

A separate limitation, 0.05 mg/l, is established for benzene. This is based on several factors. Certain constituents of petroleum products are relatively insoluble in water, but are soluble in benzene. If benzene is removed to the specified level, it is probable that benzene-soluble constituents are also removed. Although discharges from point sources permitted by the agency are exempt from the definition of a hazardous waste, the limitation which is being adopted also prevents the discharge of wastewater of a quality that would otherwise be equivalent in quality to a characteristically hazardous waste. Of the four constituents, benzene, toluene, ethylbenzene, and xylene; only benzene has criteria established in Chapter 307 of this title (relating to Texas Surface Water Quality Standards (TSWQS)). The limitation for benzene is consistent with the implementation of the TSWQS and protective of water quality under typical discharge conditions.

Additional limitations are established for total petroleum hydrocarbons (TPH), lead, and pH. Analysis for TPH provides an assessment of low-end hydrocarbon extractables and volatile compounds which are expected to be present in petroleum contaminated waters. The limitation, 15 mg/l, is readily achievable with existing technology and is a typical permit requirement for this type of facility. TPH analysis is preferred to oil and grease analysis, as the low-end hydrocarbon extractable and volatile compounds are expelled during oil and grease analysis and are not quantified due to the nature of the laboratory procedure. Effluent monitoring and limitations are required for lead only if petroleum products containing lead are stored on-site. Lead is regulated in the TSWQS and the limit in this rule, 0.25 mg/l, is protective for acute aquatic toxicity. pH is regulated at levels typical for water quality permits, 6-9 standard units. Monitoring frequencies for all parameters are typical of requirements within water quality permits for similar facilities.

Persons interested in the further information contained in this rationale are referred to the several sources. The commission promulgated regulations entitled 30 TAC Chapter 321, Subchapter H (relating to Discharge to Surface Waters from Treatment of Petroleum Substance Contaminated Water) and also promulgated 30 TAC Chapter 307 (relating to Texas Surface Water Quality Standards). The agency has published Implementation of Texas Natural Resource Conservation Commission Standards Via Permitting, August 23, 1995 (referred to as agency Publication No. RG-194). The EPA published "Model NPDES Permit for Discharges Resulting from the Cleanup of Gasoline Released from Underground Storage Tanks" in June, 1985.

TMOGA, Diamond Shamrock, and Exxon also commented that the proposed rule requires major capital investments and time was needed for budgeting, designing, and installing wastewater treatment systems. TMOGA, Diamond Shamrock, and Exxon stated that the petroleum bulk stations and terminals (PBSTs) operate 24 hours per day but are manned by only a few people. The facilities discharge intermittently and of a small volume, and that, unlike several types of industry, the PBSTs do not have constant discharge processes.

The agency responds that PBSTs under current requirements must be authorized to discharge by both the EPA and the commission. Such requirements result from the Clean Water Act and Chapter 26 of the Texas Water Code, regardless of whether discharges are small or intermittent. The rule being proposed would allow an alternative to state authorization by an individual permit. New facilities would be expected to design and budget to meet effluent limitations just as must be done for a permit. The commission rules allow compliance with a water quality standard over a period of time, up to three years in length, as specified in §307.2(f) of this title (relating to Description of Standards). However, this allowance is only granted during the processing of a permit renewal or amendment of a permit when new or more stringent water quality standards must be met by a permittee. The commission does not support promulgating a statewide rule that would allow discharges of waste that do not meet the quality commensurate with achievable technology and that could pose adverse impacts on water quality over a three-year period of time. The agency acknowledges that today there may be unregulated discharges of wastewater occurring from PBSTs in Texas, in part due to the industry's anticipation of this rule; however, it would be unfair to facilities which already have permits to grant a three-year variance from effluent limitations to those entities which would seek authorization under this rule. These existing unregulated facilities have many options for avoiding noncompliance with this rule. Where discharges are intermittent or small, a management option could be to avoid discharges completely. Some PBSTs could discharge to POTWs thus being exempt from the rule. Neighboring PBST facilities could pool costs and organize one treatment system for multiple stations or terminals. The agency is also aware that most of the PBST facilities have intermittent discharges which may be manageable by mobile treatment units that can be used by several facilities operated by the same company. PBST facilities could reduce treatment needs or possibly eliminate the need for treatment of wastewater through effective source controls, including spill prevention practices, establishment of best management practices to segregate storm water flows or runoff from areas of a PBST facility where wastewater is handled. Where a PBST facility shows good faith in efforts to comply with this rule, but fails to meet the requirements of the rule immediately, the agency has enforcement discretion to consider the particular facts relative to the compliance problems.

A primary option is treatment of waste. The treatment technology on which the rule is based is practical, available, and provides a cost-effective option at achieving compliance. The commission disagrees that PBSTs would need three years to implement such systems, and believes such systems could be installed now in a matter of months culminating in registration after the effective date of this rule. However, the commission is receptive to the arguments of the commenters that capital expenditures, engineering, construction, and start-up of wastewater treatment that would meet the limitations of this rule cannot practically occur in a short period of time such as 90 days. TMOGA has indicated that many PBSTs have not budgeted the necessary capital needed to comply with the proposed rule. The agency acknowledges that requiring existing facilities to register within 90 days of the effective date of the rule may be too tight

of a time frame to place on the PBSTs. The commission has modified §321.234(d) and (e) to allow up to 365 days for existing facilities to register under this rule. At time of issuance of a certificate of registration, the agency will expect compliance with the effluent limitations in the rule.

In general comments, TMOGA and Diamond Shamrock described the effluent limitations in the rule as very stringent. Compliance costs are described as requiring additional manpower with significant sampling costs. Exxon characterized sampling and monitoring requirements as unnecessary with significant operating costs. As these comments are repeated in specific comments on the rule, the commission's response will follow later in this preamble.

TMOGA and Diamond Shamrock indicated the rules exceed federal requirements and requested that the rule be modified to reflect federal requirements for discharge from bulk fuel terminals. It is the agency's understanding that EPA Region 6 established a general permit for PBSTs effective July 12, 1984. Although the rule expired after five years, the authorization was administratively continued, and still applies today. However, this rule is out-of-date relative to present day technology and management practices. The general permit authorizes discharges of process wastewater (including equipment cleaning and vehicle maintenance sources) and storm water. Alternatively, PBSTs with vehicle maintenance or equipment cleaning activities must meet EPA storm water permitting requirements. The commission believes the lack of a more stringent federal general permit has little to do with state stringency and more to do with resource constraints and similar factors that have prevented EPA Region 6 attention to updating its general permit.

TMOGA, Exxon, and Diamond Shamrock commented on proposed §321.231 and suggested that the definition of "contact stormwater" be modified to include stormwater which comes into contact with petroleum fuels. The commission agrees and has modified the definition. The same commenters suggested that the definition of "facility wastewater" be modified to be more inclusive of all wastewater at PBSTs. The agency agrees and has deleted the word "condensed" and made other minor changes to the definition that are in agreement with the comments. The same commenters suggested the definition of "treated facility wastewater" be modified to show that treatment must meet the effluent limitations of this chapter rather than compliance with Chapter 307 of this title (relating to Texas Surface Water Quality Standards). The commission agrees and has modified the definition in a manner similar to what was requested. In modifying the definition, the agency notes that it may still deny a registration due to special consideration of water quality, as described in proposed §321.235(h).

TMOGA, Exxon, and Diamond Shamrock suggested that the applicability of the rule be changed to clarify in proposed §321.232(a) that facility wastewater is allowed to be discharged without treatment so long as it achieves the effluent limitations of the rule. The agency agrees and has modified §321.232(a) to reflect this change.

TMOGA, Diamond Shamrock, and Exxon have suggested that an advance copy of the registration form be submitted for industry review. The agency responds that the content of the registration form is not considered a part of this rule; however,

the agency has no objection to sharing this form with industry representatives, and has provided copies for review and will incorporate the comments we have received.

TMOGA, Diamond Shamrock, Chevron, and Exxon suggested that proposed §321.234 be revised to include a three-year period of compliance to allow time for budgeting, designing, and installation of wastewater treatment systems. The commenters specified that typical expenditures could be on the order of \$200,00 to \$500,000 per site. The commenters state they believe air permits would also be necessary, presumably for wastewater treatment equipment that may have emissions.

The commission addressed this comment in the response to general comments. Additionally, the agency responds that Standard Exemption No. 61 or standard permits would apply in many situations addressing air permitting requirements for air stripping. If a site-specific air permit were required, the normal agency turn around time is less than 180 days to get an air permit. The proposed 365-day existing facility registration deadline should be sufficient time to allow for this contingency.

TMOGA, Diamond Shamrock, and Exxon suggested that the notice procedures in proposed §321.234 are not preferred over the notice procedures proposed by the commission in the Texas Register on August 19, 1994, in an earlier version of the rule which was withdrawn from consideration. The commenters suggest the earlier process would be less expensive since it relied upon agency publication of notice in the Texas Register instead of the proposed procedure where the applicant is responsible for local newspaper notice. The commenters also contend that public notice of these rules is sufficient notice and that notice of each site's registration is not necessary. Chevron commented in a similar manner, although there was no suggestion that the agency revert to the commission's August 19, 1994 proposal relating to notice.

The agency responds that discussions on this issue, with representatives of TMOGA, Diamond Shamrock, and Exxon in a meeting in 1995, which resulted in modifications to the draft rule that eliminated any notice for those entities that were in existence on January 5, 1996, as specified in proposed §321.234(d). In response to these comments and other comments on the proposed Subchapter L rules, the commission stated earlier in this response to comments that the period for existing facility registration has been revised from 90 days after the effective date of the rule to 365 days after the effective date of the rule. Therefore, no notice costs to the existing facilities will result if registration occurs within 365 days after the effective date of the rule.

The commission also responds that it concurs with the commenters that the agency is not required under the Texas Water Code, §26.040 to provide public notice of the new facilities registering under this rule. The agency acknowledges these requirements are more strict than federal requirements for authorizations under general permits. Nonetheless, the commission has elected to provide for public participation in a manner that is as simple as possible. The commission finds that this notice process will be cost-effective compared to notice of individual permits which entails two mailed notices, one newspaper notice provided at the applicant's cost, and the opportunity for contested case hearings with associated costs.

TMOGA, Diamond Shamrock, and Exxon suggested a change to state in proposed §321.235(a) that facility wastewater may be discharged as well as treated facility wastewater. As a result, the commission has modified the subsection in a manner which corresponds to the suggestion.

TMOGA, Diamond Shamrock, and Exxon suggested a change to proposed §321.235(b) that treatment is not required unless necessary to meet the effluent limitations of this rule. The commission agrees with the suggestion and has modified the rule at §321.235 and also at §321.154(a).

TMOGA, Diamond Shamrock, Chevron, and Exxon suggested that the agency delete the requirement for total petroleum hydrocarbon (TPH) monitoring because the test is only good for screening but not for characterization of wastewater. The commenters suggest BTEX and benzene monitoring is sufficient characterization. TMOGA, Diamond Shamrock, and Exxon also suggested that the agency not require testing for lead since this element is not present in most petroleum fuels. Additionally, Chevron suggested that as an alternative to TPH, the PBSTs monitor Oil and Grease as a parameter.

The rationale for utilization of TPH and not Oil and Grease is described in the commission response to general comments. Also, the agency would expect TPH to quantify semi-volatile hydrocarbons present in wastewater, which would not be quantified in a BTEX or benzene test which is a measure of key volatile organic compounds. At this time, the agency specifies TPH monitoring in individual permits issued by the agency using this same rationale. The commission believes this practice is important to ensure that negative water quality impacts from these hydrocarbon compounds do not occur as a result of this rule. In response to the comments relating to lead, the agency points out that proposed §321.236(c) suspends the necessity of lead monitoring when it is not contained in products handled at particular PBSTs. The commission modifications to §321.235(b), as described earlier in this response to comments also clarifies the agency position.

TMOGA and Exxon asked for clarification on the meaning of proposed §321.235(e). The commission responds that all discharges to surface water are required by law to meet water quality standards, including the requirement that discharges must not be acutely toxic to aquatic life. A statewide rule need not impose whole effluent toxicity (WET) testing on PBSTs when the agency can identify particular chemical parameters which when controlled with effluent limitations will largely eliminate the need for WET testing. The executive director may impose additional requirements on a specific PBST discharge per §321.235(h) should the agency find that the requirements for monitoring in accordance with §321.236 are inadequate.

TMOGA, Diamond Shamrock, Chevron, and Exxon suggested that proposed §321.235(f) be modified to allow notification in 48 hours instead of the proposed 24 hours when a PBST has discharged pollutants that may endanger human health, safety, or the environment. The commission disagrees, as causing endangerment is a serious noncompliance needing more immediate response from a responsible party. This protocol is consistent with commission requirements in permits and consistent with the Texas Water Code, §26.039(b). TMOGA and Diamond Shamrock ask for clarification on what the agency would char-

acterize as endangerment. The commission responds that it has not defined the term in its regulations, but can offer examples that may qualify as endangerment. For instance, endangerment could include a disaster; a discharge which threatens a water supply source, or causes potential or actual damage to a natural resource such as a fish kill; or a noncompliance which in the judgement of the discharger would alarm the general public. The agency believes these notifications are sometimes value judgements made by dischargers after review of the requirement in the rule and then implemented by company procedures aimed at guiding company employees. The commission believes many PBSTs can easily implement this rule, since the endangerment language in the referenced statute has been implemented for years as part of agency spill contingency guidance.

The same commenters suggested that noncompliances which do not endanger human health, safety, or the environment be allowed to be submitted in writing within ten days, instead of the proposed five days. The commission disagrees since the requirement would be inconsistent with other response times specified in permits regulating waste discharges. The agency also disagrees with the comment that this would better enable unmanned facilities to meet the rule requirements and notes that proposed §321.235(f) specifies such information must be reported only after becoming aware of the noncompliance. If a noncompliance was not initially discovered due to personnel not being present, the registrant is not subject to this requirement until the point in time the noncompliance was actually discovered. The commission believes the requirement of five days to be reasonable.

The same commenters suggested that noncompliance notification for effluent violations be established when the discharge exceeds 80% of the limitation, instead of the proposed 40% exceedance. The commenters suggest this is excessive paperwork for PBST dischargers to submit and for the agency to review. The commenters also specify that this requirement is not present in other authorizations by rule, so why in this rule? The commission disagrees with the commenters. The Enforcement Division of the agency is responsible for evaluating significant noncompliances and when such violations are discovered, the Texas Water Code, §5.117 mandates a formal enforcement response. It is the long-established policy of the agency to judge significant noncompliances as those exceeding 40%. Therefore, the commission has determined it should not set up a deviation for PBST discharge violations inconsistent with its enforcement program. The agency believes the way to reduce this paperwork burden is not by eliminating the reporting requirement, but to instead achieve compliance with the rule's effluent limitations. The commission also responds that the noncompliance notification requirements proposed are the same as those in the other three subchapters which are part of this rule. Further, the requirement is consistent with that specified in all waste discharge permits issued pursuant to Chapter 26 of the Texas Water Code. The specific requirement is not found in other authorizations by rule issued by this agency in the past. The commission believes this inconsistency should be remedied not by eliminating the requirement from §321.236, but by updating the older rules. Consistency results in lessening the burden on all regulated persons as well as greatly assisting

the agency enforcement personnel and field investigators who must interpret state regulations across the state.

TMOGA, Diamond Shamrock, and Exxon suggested a change in proposed §321.236 that treatment not be required unless necessary to meet the effluent limitations of this rule. The commission agrees with the suggestion and has modified the rule.

TMOGA, Diamond Shamrock, Chevron, and Exxon suggested a change in proposed §321.236 to reduce the frequency of monitoring from once per week to once per three months. The commenters indicated the relief is warranted since the discharges would be small in volume and stated in the comments that it would not be unusual for PBSTs to go months without discharging at all. The commenters stated the cost could be \$10,000 annually for any one discharge point when procuring company employees for the sampling effort. In general comments and in several other comments, it has been indicated that it would be burdensome to monitor PBST discharges since personnel need training or that the facilities are unmanned at times.

In response, the commission points out that the proposed rule clearly specifies that no sampling is necessary when no discharge is occurring. Therefore, based on the comments, it would be unusual for a PBST to sample more often than during those few instances in a given year when a discharge occurs. In response to similar comments received on the withdrawn rule in 1994, the agency did remove significant monitoring requirements, associated with non-contact storm water and for lead when it is not present at a PBST. The commission sees no way to avoid the need for compliance monitoring of discharges by parties responsible for ensuring that discharge standards under the rule are met. The agency agrees with the commenters that some level of personnel need to be trained or hired to monitor treatment or discharge quality. However, the commission believes it has a responsibility to ensure discharges of wastewater are controlled in the state systems.

The commission remains confident that the sampling and monitoring frequency will not prove burdensome on the industry, considering the intermittent nature of PBST discharges. Nonetheless, the agency believes it could reduce monitoring frequency for those PBSTs that establish a record of compliance with the rule over a period of time after registration. The commission has revised §321.236 to add a footnote (3) to Figure 1: 30 TAC §321.236 which will allow a PBST to request a reduction in monitoring frequency from once per week to once per two weeks, after two years of demonstrated compliance with the standards. Two years was chosen because many of the PBSTs are expected to have significant variability in wastestreams needing treatment. Two years will require the establishment of a sound compliance record that would culminate in the monitoring frequency reduction that could reduce monitoring costs by one-half.

TMOGA, Diamond Shamrock, and Exxon suggested that the requirement to estimate flow on a daily basis be deleted from the rule and replaced with a requirement that during a given monitoring period, no discharge be documented. The commission responds that documenting a no discharge condition as suggested is, in fact, monitoring flow. On those apparently rare instances when discharges occur, the operator would esti-

mate the volume of the discharge. For those discharges which occur regularly, a PBST should give thought to establishing a discharge weir for instantaneous measurement or using one of many common mechanisms for estimating discharge flow. On monitoring forms submitted quarterly, the agency will ask for a summary of the data, namely the number of discharge days in each month, the average flow which discharged on those days, and the maximum flow which occurred in a given month.

TMOGA, Diamond Shamrock, and Exxon suggested that the requirement to monitor the quality of discharge exclude discharges on holidays and discharges outside of normal business hours. The commission disagrees as the purpose of monitoring is to establish the quality of waste that is disposed of in surface waters, regardless of the time of day.

TMOGA, Diamond Shamrock, and Exxon suggested that the effluent limitations be made significantly less stringent for benzene and BTEX. The commenters suggest raising the benzene limitation from 0.05 milligrams per liter to 0.5 and that the BTEX limitation be raised from 0.5 milligrams per liter to 2.2. These limits are characterized as the ones most commonly seen in discharge permits. The commission responds that it has included the rationale for the effluent limitations earlier in its response to general comments.

TMOGA, Exxon, and Diamond Shamrock commented on proposed §321.237(b) with a request for changes corresponding to the proposed changes to §321.236. The commission disagrees as specified in earlier comments.

TMOGA, Diamond Shamrock, Chevron, and Exxon suggested that the requirement for retention of records related to solids disposal for five years be changed to three years, to be consistent with state industrial solid waste requirements. The commission agrees with the request and has made this change in proposed §321.156(c), §321.217(c), §321.237(c), and §321.256(f). These changes will make the requirements of record keeping consistent in all four subchapters of these rules.

TMOGA, Diamond Shamrock, Chevron, and Exxon suggested that proposed §321.240 be modified to make annual fees on inactive facilities zero instead of the proposed \$250. The commenters view the fees as excessive with little associated costs to the agency. The commission responds that the agency has already addressed the fee issue in the proposal preamble. The commission points out that the proposed fee structure will not pay for all permitting, enforcement, and field surveillance activities needed by the agency to implement this rule. The program would be even less self-supported if inactive fees are zero. In addition, a facility may cancel its registration as an option to paying the annual assessment.

HCPCD commented on proposed §321.255 and suggested a provision be added to ensure that ponds are protected from inundation from a 10-year, 24-hour flood. The commission agrees that this type of protection is a suitable and important design consideration and has modified §321.255 to add a new subsection (f).

The commission has made several changes to the four subchapters to add consistency and clarity. These changes include adding a definition for a common acronym "mg/l"; clarifying definitions of registrant in Subchapters J, L, and M; up-

dating the names of the organizational units of the agency; making §321.157 consistent with the restrictions sections of the other subchapters; and clarifying the noncompliance notification requirements relating to samples significantly above the effluent limitations. For consistency with the other subchapters, §321.211 and §321.212 were switched in order. A definition of "new facility" has been added to §321.231 to be consistent with the other subchapters. Section 321.257(c) was moved to §321.253(g). To streamline the rules under the commission's regulatory reform process sections relating to motion for reconsideration were deleted and replaced with a cross reference to Chapter 50, subchapter C of this title in §§321.152(a), 321.212(a), 321.232(a), and 321.253(a).

The commission has clarified §321.239 to allow the executive director to make a finding that a registration is required under certain circumstances where an unregistered small PBST is non-compliant. The commission has opted under enforcement actions to require operations at small PBSTs to be subject to registration and comply with the standards under the rule, rather than automatically requiring these entities to obtain an individual permit if found to be non-compliant.

The commission has modified §321.253(a)(1) in Subchapter N: Handling of Wastes from Commercial Facilities Engaged in Livestock Trailer Cleaning to eliminate a conflict with §321.253(e). This change clarifies that a livestock trailer cleaning facility that is a component of a feedlot or concentrated animal feeding operation regulated under other parts of this chapter or under Chapter 305 of this title (related to Consolidated Permits) is not considered to be a commercial facility subject to Subchapter N. The commission has modified §321.254(f) to allow 180 days for existing facilities to become registered. This increase from 90 days should allow adequate time for public notice that registrations is required.

The commission has prepared a Takings Impact Assessment for this rule pursuant to Texas Government Code, §2007.043. The specific purpose of the proposed rule is to streamline the current permitting process by controlling certain activities by rule, thereby eliminating the need for a commission permit for specific wastewater discharge and waste handling activities. Promulgation and enforcement of these rules will not create a burden on private real property that is the subject of the regulation.

Subchapter J. Discharges to Surface Waters From Ready-Mixed Concrete Plants and/or Concrete Plants or Associated Facilities

§§321.151-321.159

The new sections are adopted under the Texas Water Code (Vernon 1992), §5.102, which provides the commission with general powers to carry out duties under the Texas Water Code and §5.103, which provides the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state. Additionally, these sections are adopted pursuant to the Texas Water Code (Vernon 1992), §26.040, which provides the commission with the authority to regulate certain waste discharges by rule and set the requirements and conditions of the discharges of waste.

§321.151. *Definitions.*

The following words and terms used in this subchapter shall have the following meanings unless the context clearly indicates otherwise.

Associated Facilities - Facilities associated with ready-mixed concrete plants or concrete products plants and establishments where maintenance and washing of ready-mix vehicles (both interior and exterior) or equipment occurs.

Concrete Products Plants - Facilities primarily engaged in manufacturing concrete products as classified per Standard Industrial Classification (SIC) code 3272, and facilities primarily engaged in manufacturing concrete building blocks and bricks from a combination of cement and aggregate as per SIC code 3271.

Contact Storm water - Storm water which comes in contact with any raw material, product, by-product, co-product, intermediate, or waste material.

Domestic Sewage - Waterborne human (animal) waste and waste from domestic activities, such as washing, bathing, and food preparation.

Existing Facilities - Ready-mixed concrete plants, concrete products plants and associated facilities in active operation, including the discharge of facility wastewater, prior to January 5, 1996.

Facility Wastewater - Any wastewater which is generated at ready-mixed concrete plants, concrete products plants, or associated facilities authorized by this rule, but not including domestic sewage.

Grab Sample - An individual sample collected in less than 15 minutes.

MGD - Million gallons per day.

Mg/l - Milligrams per liter.

New Facilities - Ready-mixed concrete plants, concrete products plants and associated facilities not defined in this section as existing facilities.

Point Source Discharge - A discharge from any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit or discrete fissure.

Publicly Owned Treatment Works or "POTW" - A treatment works owned by a state or municipality, which includes any device or system used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. This definition includes sewers, pipes or other conveyances only if they convey wastewater to a POTW providing treatment. This term also means the municipality which has jurisdiction over indirect discharges to and discharges from such a treatment works.

Registrant - An individual or entity authorized by the executive director to discharge facility wastewater and contact storm water from ready-mixed concrete plants, concrete products plants, or associated facilities under the terms and requirements of this subchapter.

Ready-Mixed Concrete Plants - Facilities, including temporary concrete batch plants, primarily engaged in mixing and delivering ready-mixed concrete as classified per Standard Industrial Classification code (SIC) 3273.

Storm water - Storm water runoff, snow melt runoff, surface runoff, and drainage.

Temporary Concrete Batch Plants - Ready-mixed concrete plants temporarily located to be in proximity to a particular customer or construction site.

§321.152. *Purpose and Applicability.*

(a) The purpose of this subchapter is to regulate by rule discharges of facility wastewater and contact storm water to surface water in the state from ready-mixed concrete or concrete products plants and their associated facilities under the terms and requirements of this subchapter. Certificates of registration issued under this subchapter are subject to Chapter 50, Subchapter C of this title (relating to Action by Executive Director).

(b) Discharges are allowable under this subchapter only by registrants of those facilities which have a certificate of registration issued by the executive director under §321.153 of this title (relating to Certificate of Registration), §321.154 of this title (relating to General Requirements for Discharge) and §321.155 of this title (relating to Specific Requirements for Discharge).

(1) For new facilities, a certificate of registration issued by the executive director under §321.153 of this title, §321.154 of this title, and §321.155 of this title shall be obtained prior to discharge of wastewater from the subject facility.

(2) Existing facilities currently operating under a valid agency wastewater discharge permit may apply for registration of these operations prior to the expiration date of the permit. Upon issuance of the final registration, the executive director shall void the permit.

(3) An existing facility that does not hold a valid agency wastewater discharge permit must submit an application for registration or an application for a permit within 365 days after the date this rule takes effect.

(c) If the executive director denies a registration application under this subchapter, the facility must obtain a permit pursuant to the Texas Water Code, Chapter 26.

(d) Facilities which do not meet the requirements of §321.154 and §321.155, of this title and do not discharge or transport facility wastewater to a publicly owned treatment works (POTW) which has a wastewater discharge permit issued by the executive director must apply for an emergency order, temporary order, or permit as provided by Chapter 305, Subchapter B, of this title (relating to Consolidated Permits) for the discharge of wastewater into or adjacent to water in the state.

§321.153. *Certificate of Registration and Public Notice.*

(a) An applicant must apply for registration on a form approved by the agency. A completed application shall be submitted to the agency's Wastewater Permits Section (MC 148). Before issuing a certificate of registration, the executive director will review the application to determine whether the facility operations meet the requirements of §321.154 of this title (relating to General Requirements for Discharge) and §321.155 of this title (relating to Specific Requirements for Discharge).

(b) The executive director may take action on an application to issue a certificate of registration, provided:

(1) At least 30 days prior to approving an application and issuing the certificate of registration, notice of the application has been provided by the applicant, at the applicant's cost:

(A) in a newspaper regularly published and generally circulated within the county and area wherein the proposed facility and discharge is to be located;

(B) in writing by certified mail (return receipt requested) to the county judge of the county in which the facility is to be located and also when the facility is to be located within the jurisdictional boundaries of a city or town, to the mayor of that city or town; and

(C) the notices of application are provided in a format approved by the commission and shall fairly set forth the substance of the application and proposed action, including but not limited to, the general location of any point of discharge, the method of obtaining additional information about the application, and the method for submitting comment, on the application.

(2) With any application for a registration, submitted pursuant to this subchapter, the applicant shall also provide proof to the executive director that public notice was provided in accordance with paragraph (1) of this subsection. The proof shall be provided within 14 days of obtaining the following information, which shall consist of:

(A) a signed affidavit from the publisher acknowledging that the notice was published, indicating the date of publication, and providing a copy of the newspaper clipping; and

(B) a sworn statement from the applicant that written notice was mailed to the appropriate entities, identified in this subsection, along with a copy(s) of the return receipt acknowledgment from the U.S. Postal Service.

(3) The application, including the material required by paragraph (2) of this subsection, shall be mailed to the agency's Wastewater Permits Section (MC 148). The application shall undergo review by the executive director following the determination that notice requirements of this section are met.

(4) Any pertinent comments received by the executive director prior to the end of the 30-day period, after all the notices have been provided, will be considered as a part of any decision of approval, denial, or modification of a request for registration from an applicant. The executive director shall mail notice of the final decision to the applicant and to any other person who submitted comments on the application.

(c) The public notice provisions of this section do not apply to a facility which is operating under an agency wastewater discharge permit if the facility applies for registration prior to the expiration date of the permit.

(d) Public notice provisions of this section do not apply to an existing facility which is not operating under an agency wastewater discharge permit if an application for registration is received by the executive director within 365 days after the date this rule takes effect.

§321.154. General Requirements for Discharge.

(a) Only contact storm water, facility wastewater, and treated facility wastewater which meet the requirements of this subchapter can be discharged into water in the state.

(b) Facility wastewater and contact storm water shall be treated as required to conform to effluent discharge requirements, including a reduction of total suspended solids, oil and grease, and other possible pollutants and, if necessary, adjustment of pH.

(c) This rule does not authorize the discharge of domestic sewage into water in the state. All domestic sewage shall be either routed to an authorized and adequately designed septic tank/drain field system, POTW, transported to an approved off-site disposal facility, or disposed of in accordance with an approved agency order or permit.

(d) Sludge and solid waste, including tank and truck cleaning and contaminated solids for disposal, shall be disposed of in accordance with Chapter 361 of the Texas Health and Safety Code.

(e) The discharge shall not cause any nuisance conditions.

(f) The facility shall take all steps necessary to prevent any adverse effects upon human health or safety, or to the environment. Any facility authorized under this subchapter shall comply with the following:

(1) The registrant shall report any noncompliance (including any unauthorized discharges or overflows) with the requirements of this subchapter which may endanger human health or safety or the environment. Report of such information shall be provided orally to the agency's regional office within 24 hours of becoming aware of the noncompliance. A written submission of such information shall also be provided to the agency's regional office and to the agency's Water Section, Enforcement Division (MC 149), within five working days of becoming aware of the noncompliance. The written submission shall contain a description of the noncompliance and its cause; the potential danger to human health or safety, or the environment; the period of noncompliance, including exact dates and times; if the noncompliance has not been corrected, the anticipated time it is expected to continue; and, steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.

(2) Any noncompliance which is greater than 40% of the authorized effluent limitations as expressed in §321.155(a) of this title (relating to Specific Requirements for Discharge) shall be reported in writing to the agency's regional office and to the agency's Water Section, Enforcement Division (MC 149) within five working days of becoming aware of the condition.

(g) The registrant must notify the executive director, in writing, of any change in control or ownership of facilities, or any expansion of facilities authorized under this subchapter. The applicant must send the notification to the agency's Wastewater Permits Section (MC 148).

(h) The executive director may deny an application for registration on the following grounds: the potential or actual adverse impact or close proximity to a public park, school, recreational area, spring, water supply well, surface water supply intake, water treatment plant intake, potable water storage facility or sewage treatment plant. In making such determination, the executive director may also consider other factors, as necessary to carry out its powers and duties under the Texas Water Code and other laws of the state.

(i) The discharge shall not be acutely toxic to aquatic life, as described in Chapter 307 of this title (relating to Texas Surface Water Quality Standards).

§321.155. Specific Requirements for Discharge.

(a) Facilities regulated under this rule are authorized to discharge treated facility wastewater and contact storm water in

accordance with the following maximum limitations and monitoring requirements:

Figure: 30 TAC §321.155(a)

(b) The pH of the discharge shall not be less than 6.0 nor greater than 9.0 standard units and shall be monitored once per month by grab sample.

(c) There shall be no discharge of floating solids or visible foam in other than trace amounts, and no discharge of visible oil.

(d) All discharges from ready-mixed concrete plants and/or concrete products plants or associated facilities shall comply with §319.22 of this title (relating to Quality Levels-Inland Waters) or shall comply with §319.23 of this title (relating to Quality Levels-Tidal Waters).

§321.156. *Sampling, Reporting, and Recordkeeping.*

(a) Unless otherwise specified in this rule, sampling and laboratory test methods shall comply with procedures specified in §319.11 of this title (relating to Sampling and Laboratory Testing Methods).

(b) Results of monitoring of each constituent specified in §321.155 of this title (relating to Specific Requirements for Discharge) shall be reported by the registrant to the executive director on the Ready-Mixed Concrete Plants and Concrete Products Report form approved by the executive director. Monitoring results shall be reported to the executive director in accordance with the following schedule.

Figure: 30 TAC §321.156(b)

(c) The registrant shall maintain results of monitoring of each constituent specified in §321.155 of this title (relating to Specific Requirements for Discharge) or the equivalent information shall be maintained for a minimum of three years and shall make these results readily available for review upon request. The registrant authorized under the terms of this subchapter shall maintain records of the process control, maintenance activities, and solids disposal to include at a minimum: volume and dates on which solids were removed, identity of any transporter, location and identity of any solids disposal site, and method of final disposal. This information shall be maintained for a minimum of three years and shall be readily available for review upon request.

§321.157. *Restrictions.*

(a) This rule does not convey property rights or grant any exclusive privilege.

(b) Separate authorizations may be required by the executive director, municipalities, or other agencies for discharges to publicly owned treatment works, domestic sewage plants, storm water sewers, or for air emissions.

(c) Any discharge of wastewater at a site other than the registered site or the POTW site is prohibited. Nothing in this rule shall be construed to authorize any injury to persons or property, or an invasion of other property rights, or any infringement of state or local law or regulations.

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

Issued in Austin, Texas, on June 26, 1996.

TRD-9609547

Kevin McCalla

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Texas Natural Resource Conservation Commission

Effective date: July 26, 1996

Proposal publication date: January 5, 1996

For further information, please call: (512) 239-4640

Subchapter L. Discharge to Surface Waters From Motor Vehicles Cleaning Facilities

30 TAC §§321.211-321.220

The new sections are adopted under the authority of the Texas Water Code, §§5.103, 5.105 and 5.120, which provide the commission with the authority to promulgate rules as necessary to carry out its powers and duties under the Texas Water Code and other laws of the state and to establish and approve all general policies of the commission.

§321.211 *Definitions.*

The following words and terms used in this subchapter shall have the following meanings unless the context clearly indicates otherwise:

Domestic Sewage - Waterborne human (animal) waste and waste from domestic activities, such as washing, bathing, and food preparation.

Existing Facilities - Motor vehicles cleaning facilities in active operation, including the discharge of facility wastewater, prior to January 5, 1996.

Facility Wastewater - Wastewater generated at motor vehicle cleaning facilities as a result of washing the exterior of motor vehicles and specifically excluding domestic sewage.

Grab Sample - An individual sample collected in less than 15 minutes.

MGD- Million gallons per day.

Mg/l - Milligrams per liter.

Motor Vehicles Cleaning Facilities - Facilities engaged in washing, waxing, and polishing motor vehicles, or in furnishing facilities for the self-service washing of motor vehicles.

New Facilities - Motor vehicles cleaning facilities not defined in this section as existing facilities.

Point Source Discharge - A discharge from any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit or discrete fissure.

Publicly Owned Treatment Works or "POTW"- A treatment works owned by a state or municipality, which includes any device or system used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. This definition includes sewers, pipes or other conveyances only if they convey wastewater to a POTW providing treatment. This term also means the municipality which has jurisdiction over indirect discharges to and discharges from such a treatment works.

Registrant - An individual or entity authorized by the executive director to discharge facility wastewater from facilities associated with motor vehicle cleaning under the terms and requirements of this subchapter.

§321.212. *Purpose and Applicability.*

(a) The purpose of this subchapter is to regulate by rule the surface discharge to water in the state of facility wastewater from motor vehicle cleaning facilities in accordance with the effluent limitations, monitoring requirements, and other conditions set forth herein. Certificates of registration issued under this subchapter are subject to Chapter 50, Subchapter C of this title (relating to Action by Executive Director. Except as provided by §321.219 of this title (relating to Enforcement and Revocation) and except as provided by subsection (e) of this section, this rule regulates the following type of facilities which in a given month discharge, on average, more than 5,000 gallons per day of operation:

(1) Establishments primarily engaged in washing, waxing, and polishing motor vehicles. These type of facilities are classified as Standard Industrial Classification code 7542.

(2) Companies, governmental entities, taxi companies, parcel delivery companies, or similar entities that have their own motor vehicle cleaning facilities.

(3) This subchapter only applies to the discharge of wastewater generated from washing the exterior of vehicles.

(4) This subchapter does not apply to establishments, companies, or entities engaged in motor vehicle washing when the vehicles being washed are used for any of the following:

(A) transportation of municipal or industrial solid waste, including hazardous waste;

(B) transportation of hazardous materials or vehicles subject to placarding or labeling because of such transportation;

(C) exploration, production, or development of oil, natural gas, or geothermal resources.

(5) This subchapter does not apply to establishments, companies, or entities engaged in motor vehicle washing when the vehicles being washed consist of the following types:

(A) semi-tractor trailer vehicles or similar carriers involved in transportation activities described in paragraph (4)(A) and (B) of this subsection.

(B) vehicles, trucks, or other equipment involved in transportation which, in the judgement of the executive director, has the potential to release toxic substances when the equipment's exterior is washed.

(b) Discharges are allowable under this subchapter only by those registrants of facilities which have a certificate of registration issued by the executive director under §321.213 of this title (relating to Certificate of Registration), §321.215 of this title (relating to General Requirements for Discharge) and §321.216 of this title (relating to Specific Requirements for Discharge). For new facilities, a certificate of registration issued by the executive director under §§321.213, 321.215, and 321.216 of this title shall be obtained prior to discharge of wastewater from the subject facility.

(c) Facilities which do not meet the requirements of §321.215 and §321.216, of this title and do not discharge or transport facility wastewater to a POTW which has a wastewater discharge permit issued by the agency must apply for an emergency order, temporary order, or permit as provided by Chapter 305, Subchapter B, of this title (relating to Consolidated Permits) for the discharge of wastewater into or adjacent to water in the state.

(d) If the executive director denies a registration application under this subchapter, the facility must obtain a permit pursuant to the Texas Water Code, Chapter 26.

(e) No motor vehicle cleaning facility may obtain registration under this subchapter, if it is located within the service area of a POTW or within a similar service area which provides for the collection and disposal of wastewater. No self-service or coin-operated motor vehicle cleaning facility may obtain registration under this chapter. Such facilities must either discharge facility wastewater into the POTW, obtain authorization by individual permit issued pursuant to Chapter 305 of this title (relating to Consolidated Permits), or otherwise dispose of wastewater in a manner which complies with commission regulations.

§321.213. Certificate of Registration and Public Notice.

(a) An applicant must apply for registration on a form approved by the executive director. A completed application shall be submitted to the agency's Wastewater Permits Section (MC 148). An existing facility that does not hold a valid agency wastewater discharge permit must submit an application for registration or an application for a permit within 365 days after the date this rule takes effect. Before issuing a certificate of registration, the executive director will review the application to determine whether the facility operations meet the requirements of §321.215 of this title (relating to General Requirements for Discharge) and §321.216 of this title (relating to Specific Requirements for Discharge).

(b) The executive director may take action on an application to issue a certificate of registration, provided:

(1) At least 30 days prior to approving an application and issuing the certificate of registration, notice of the application has been provided by the applicant, at the applicant's cost:

(A) in a newspaper regularly published and generally circulated within the county and area wherein the proposed facility and discharge is to be located;

(B) in writing by certified mail (return receipt requested) to the county judge of the county in which the facility is to be located and also when the facility is to be located within the jurisdictional boundaries of a city or town, to the mayor of that city or town; and

(C) the notices of application are provided in a format approved by the commission and shall fairly set forth the substance of the application and proposed action, including but not limited to, the general location of any point of discharge, the method of obtaining additional information about the application, and the method for submitting comment on the application.

(2) With any application for a registration, submitted pursuant to this subchapter, the applicant shall also provide proof to the executive director that public notice was provided in accordance with paragraph (1) of this subsection. The proof shall be provided within 14 days of obtaining the following information, which shall consist of:

(A) a signed affidavit from the publisher acknowledging that the notice was published, indicating the date of publication, and providing a copy of the newspaper clipping; and

(B) a sworn statement from the applicant that written notice was mailed to the appropriate entities, identified in this

subsection, along with a copy(s) of the return receipt acknowledgment from the U.S. Postal Service.

(3) The application, including the material required by paragraph (2) of this subsection, shall be mailed to the agency's Wastewater Permits Section (MC 148). The application shall undergo review by the executive director following the determination that notice requirements of this section are met.

(4) Any pertinent comments received by the executive director prior to the end of the 30-day period, after all the notices have been provided, will be considered as a part of any decision of approval, denial, or modification of a request for registration from an applicant. The executive director shall mail notice of the final decision to the applicant and to any other person who submitted comments on the application.

(c) The public notice provisions of this section do not apply to an existing facility which is operating under an existing agency wastewater discharge permit if the facility applies for registration prior to the expiration date of the permit.

(d) An existing facility which does not hold a valid agency wastewater discharge permit must submit an application for registration or an application for a permit within 365 days after the date this rule takes effect. Public notice provisions of this section do not apply to an existing facility if an application for registration is received by the executive director within 365 days after the date this rule takes effect.

§321.215. General Requirements for Discharge.

(a) Only facility wastewater which meets the requirements of this subchapter can be discharged into water in the state.

(b) Facility wastewater shall be treated to conform to effluent discharge requirements, including a reduction of total suspended solids, oil and grease and other possible pollutants and, if necessary, adjustment of pH.

(c) There shall be no discharge of domestic sewage into or adjacent to water in the state. All domestic sewage shall be either routed to an authorized and adequately designed septic tank/drain field system, POTW, or transported to an approved off-site disposal facility, or disposed of in accordance with an approved agency order or permit.

(d) Disposal of solid wastes shall be in accordance with Chapter 361 of the Texas Health and Safety Code.

(e) The discharge shall not cause any nuisance conditions.

(f) The facility shall take all steps necessary to prevent any adverse effects upon human health or safety, or to the environment. Any facility authorized under this subchapter shall comply with the following:

(1) The registrant shall report any noncompliance (to include any unauthorized discharges or overflows) with the requirements of this subchapter which may endanger human health or safety or the environment. Report of such information shall be provided orally to the agency's Regional Office within 24 hours of becoming aware of the noncompliance. A written submission of such information shall also be provided to the agency's Regional Office and to the agency's Water Section, Enforcement Division (MC 149), within five working days of becoming aware of the noncompliance. The written submission shall contain a description of the noncompliance

and its cause; the potential danger to human health or safety, or the environment; the period of noncompliance, including exact dates and times; if the noncompliance has not been corrected, the anticipated time it is expected to continue; and, steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.

(2) Any noncompliance which is greater than 40% of the authorized effluent limitations as expressed in §321.216(a) of this title shall be reported in writing to the agency's Regional Office and to the agency's Water Section, Enforcement Division (MC 149), within five working days of becoming aware of the condition.

(g) The registrant must notify the executive director, in writing, of any change in control or ownership of facilities, or any expansion of facilities authorized under this subchapter. The applicant must send the notification to the agency's Wastewater Permits Section (MC 148).

(h) The executive director may deny an application for registration on the following grounds: the potential or actual adverse impact on, or close proximity to, a public park, school, recreational area, spring, water supply well, surface water supply intake, water treatment plant intake, potable water storage facility or sewage treatment plant. In making such determination, the executive director may also consider other factors necessary to carry out its powers and duties under the Texas Water Code and other laws of the state.

(i) The discharge shall not be acutely toxic to aquatic life, as described in §§307.1-307.10 of this title (relating to Texas Surface Water Quality Standards).

§321.216. Specific Requirements for Discharge.

(a) All facilities regulated under this rule are authorized to discharge facility wastewater from motor vehicles cleaning facilities in accordance with the following limitations and monitoring requirements:

Figure: 30 TAC §321.216(a)

(b) The pH of the discharge shall not be less than 6.0 nor greater than 9.0 standard units and shall be monitored once per month (1/month) by grab sample.

(c) There shall be no discharge of floating solids or visible foam in other than trace amounts, and no discharge of visible oil.

(d) All discharges from motor vehicle cleaning facilities shall comply with §319.22 of this title (relating to Quality Levels-Inland Waters) or shall comply with §319.23 of this title (relating to Quality Levels-Tidal Waters).

§321.217. Sampling, Reporting, and Recordkeeping.

(a) Unless otherwise specified in this rule, sampling and laboratory test methods shall comply with procedures specified in §319.11 of this title (relating to Sampling and Laboratory Testing Methods).

(b) All analytical results shall be reported by the registrant to the executive director on the Motor Vehicles Cleaning Facilities Report form approved by the executive director. Monitoring results shall be reported to the executive director in accordance with the following schedule.

Figure: 30 TAC §321.217(b)

(c) The registrant shall maintain results of monitoring of each constituent specified in §321.216 of this title or the equivalent

information shall be maintained for a minimum of three years and shall make these results readily available for review upon request. The registrant authorized under the terms of this subchapter shall maintain records of the process control, maintenance activities, and solids disposal to include at a minimum: volume and dates on which solids were removed, identity of any transporter, location and identity of any solids disposal site, and method of final disposal. This information shall be maintained for a minimum of three years and shall be readily available for review upon request.

§321.219. Enforcement and Revocation.

If any registrant or facility regulated by this subchapter fails to comply with the terms of this subchapter, the executive director may take enforcement action as provided by the Texas Water Code and in accordance with Chapter 337 of this title (relating to Enforcement). The executive director may revoke any registration granted to a registrant or facility due to noncompliance with the requirements of this subchapter, after notice to the registrant and opportunity for hearing, and such registrant shall cease any discharge until such time as the facility is issued a wastewater discharge permit, an emergency order, or temporary order as provided by Chapter 305, Subchapter B, of this title (relating to Consolidated Permits) for the discharge of wastewater into or adjacent to water in the state. The executive director may require a motor vehicle cleaning facility defined as exempt from registration under §321.212 of this title (relating to Purpose and Applicability) to obtain a registration when an exempt facility is causing water pollution that could be avoided through compliance with the requirements of this subchapter.

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

Issued in Austin, Texas, on June 26, 1996.

TRD-9609546

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Director, Legal Division

Texas Natural Resource Conservation Commission

Effective date: July 26, 1996

Proposal publication date: January 5, 1996

For further information, please call: (512) 239-4640



Subchapter M. Discharges to Surface Waters from Petroleum Bulk Stations and Terminals

30 TAC §§321.231-321.240

The new sections are proposed under the authority of the Texas Water Code, §§5.103, 5.105 and 5.120, which provides the commission with the authority to promulgate rules as necessary to carry out its powers and duties under the Texas Water Code and other laws of the state and to establish and approve all general policies of the commission.

§§321.231. Definitions.

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

Contact Storm water-Storm water which comes into contact with any raw material, product, by-product, co-product, intermediate, petroleum fuel, or waste material.

Domestic Sewage-Waterborne human (animal) waste and waste from domestic activities, such as washing, bathing, and food preparation.

Existing Facilities-Petroleum Bulk Stations and Terminals in active operation prior to January 5, 1996.

Facility Wastewater-Any liquids which are accidentally released from storage, transfer or loading facilities; liquids from equipment cleaning or vehicle maintenance; any water and hydrocarbon mixtures drawn from storage, transfer, or loading facilities; or other similar wastewater associated with petroleum fuel handling. Facility wastewater shall not include domestic sewage.

Grab Sample-An individual sample collected in less than 15 minutes.

MGD-Million gallons per day.

Mg/l-Milligrams per liter

New Facilities-Petroleum Bulk Stations and Terminals not defined in this section as existing facilities.

Petroleum Bulk Stations and Terminals (PBST)-Establishments primarily engaged in the cooperative or wholesale distribution of refined petroleum products or petroleum fuels from bulk liquid storage facilities.

Petroleum Fuel-Gasoline, diesel fuel, fuel oil, fuel additives, kerosene and jet fuel, or any other petroleum-based material having physical and chemical properties similar to the listed materials and receiving approval by the executive director for designation as a petroleum fuel.

Point Source Discharge -A discharge from any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit or discrete fissure.

Publicly Owned Treatment Works or "POTW"-A treatment works owned by a state or municipality, which includes any device or system used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. This definition includes sewers, pipes or other conveyances only if they convey wastewater to a POTW providing treatment. This term also means the municipality which has jurisdiction over indirect discharges to and discharges from such a treatment works.

Registrant-An individual or entity authorized by the executive director to discharge facility wastewater and contact storm water from petroleum bulk stations and terminals under the terms and requirements of this subchapter.

Small Petroleum Bulk Stations and Terminal (Small PBST)-An establishment primarily engaged in the cooperative or wholesale distribution of refined petroleum products or petroleum fuels from a bulk liquid storage facility which consists of no greater than 100,000 gallons storage capacity total.

Storm water-Storm water runoff, snow melt runoff, surface runoff, and drainage.

Treated Facility Wastewater-Facility wastewater which has been biologically, chemically, or mechanically treated, or which has been treated using other advanced treatment methods and achieves a level of treatment which complies with this subchapter.

§§321.232. Purpose and Applicability.

(a) The purpose of this subchapter is to regulate by rule the surface discharge of treated facility wastewater, facility wastewater which otherwise meets the effluent limitations of this chapter, and

contact storm water from petroleum bulk stations and terminals to surface water in the state. Certificates of registration issued under this subsection are subject to Chapter 50, Subchapter C of this title (relating to Action by Executive Director).

(b) Discharges are allowable under this subchapter only by registrants of those facilities which have a certificate of registration issued by the executive director under §321.234 of this title (relating to Certificate of Registration and Public Notice), and which meet the requirements of §321.235 of this title (relating to General Requirements for Discharge) and §321.236 of this title (relating to Specific Requirements for Discharge).

(c) This rule does not apply to facilities which are part of a petroleum refinery or facilities which store or transfer non-petroleum products such as organic, inorganic, or toxic chemicals.

(d) An application for an emergency order, temporary order, or permit as provided by Chapter 305, Subchapter B, of this title (relating to Consolidated Permits) must be submitted for the discharge of any other wastewater not authorized by this rule to the water in the state.

(e) Commission authorization by an emergency order, temporary order, or a separate permit is not required if treated or untreated facility wastewater, or other wastewater is either discharged or transported to a POTW which has a wastewater discharge permit issued by the agency.

(f) This rule does not authorize the discharge of any domestic sewage into or adjacent to water in the state. All domestic sewage shall be either routed to an authorized and adequately designed septic tank/drain field system, POTW, or disposed of in accordance with commission regulations.

(g) An agency emergency order, temporary order, or permit for discharge of any wastewater from a petroleum bulk station or terminal may supersede the provisions of this rule.

(h) Small PBSTs, may be exempt from registration if there is no discharge of facility wastewater and if storm water pollution prevention measures are implemented to control storm water runoff, contact storm water run-on, and potential leaks or spills from the tanks and ancillary facilities. Storm water pollution prevention measures shall include, at a minimum, a diked or curbed perimeter surrounding the tank area and ancillary facilities to contain contact storm water runoff and any potential leaks or spills.

(i) If the executive director denies a registration application under this subchapter, the facility must obtain a permit pursuant to the Texas Water Code, Chapter 26. §321.233. Active Permits. PBSTs that are currently operating under a valid agency wastewater discharge permit may apply for registration of these operations prior to the expiration date of the permit. Upon issuance of the final registration, the executive director shall void the permit. This subchapter does not prevent the executive director from denying a registration or registration application and requiring the facility to have a permit.

§§321.234. *Certificate of Registration and Public Notice.*

(a) An applicant must apply for registration on a form approved by the executive director. A completed application shall be submitted to the agency's Wastewater Permits Section (MC 148). Before issuing a certificate of registration, the executive director will review the application to determine whether the facility operations meet the requirements of §321.235 of this title (relating to General

Requirements for Discharge) and §321.236 of this title (relating to Specific Requirements for Discharge).

(b) The executive director may take action on an application to issue a certificate of registration, provided:

(1) At least 30 days prior to approving an application and issuing the certificate of registration, notice of the application has been provided by the applicant, at the applicant's cost:

(A) in a newspaper regularly published and generally circulated within the county and area wherein the proposed facility and discharge is to be located;

(B) in writing by certified mail (return receipt requested) to the county judge of the county in which the facility is to be located and also when the facility is to be located within the jurisdictional boundaries of a city or town, to the mayor of that city or town; and

(C) the notices of application are provided in a format approved by the commission and shall fairly set forth the substance of the application and proposed action, including but not limited to, the general location of any point of discharge, the method of obtaining additional information about the application, and the method for submitting comment on the application.

(2) With any application for a registration, submitted pursuant to this subchapter, the applicant shall also provide proof to the executive director that public notice was provided in accordance with paragraph (1) of this subsection. The proof shall be provided within 14 days of obtaining the following information, which shall consist of:

(A) a signed affidavit from the publisher acknowledging that the notice was published, indicating the date of publication, and providing a copy of the newspaper clipping; and

(B) a sworn statement from the applicant that written notice was mailed to the appropriate entities, identified in this subsection, along with a copy(s) of the return receipt acknowledgment from the U.S. Postal Service.

(3) The application, including the material required by paragraph (2) of this subsection, shall be mailed to the agency's Wastewater Permits Section (MC 148). The application shall undergo review by the executive director following the determination that notice requirements of this section are met.

(4) Any pertinent comments received by the executive director prior to the end of the 30-day period, after all the notices have been provided, will be considered as a part of any decision of approval, denial, or modification of a request for registration from an applicant. The executive director shall mail notice of the final decision to the applicant and to any other person who submitted comments on the application.

(c) The public notice provisions of this section do not apply to a facility which is operating under an agency wastewater discharge permit if the facility applies for registration prior to the expiration date of the permit.

(d) Public notice provisions of this section do not apply to an existing facility which is not operating under an agency wastewater discharge permit if an application for registration is received by the executive director within 365 days after the date this rule takes effect.

(e) For existing facilities that do not hold a valid agency wastewater discharge permit and are not authorized to discharge by an emergency order or temporary order, an application for registration or an application for an agency wastewater discharge permit must be submitted within 365 days after the date this rule takes effect.

§§321.235. *General Requirements for Discharge.*

(a) Only contact storm water, facility wastewater, and treated facility wastewater which meet the requirements of this subchapter, including the effluent limitations specified in §321.236 of this title (relating to Specific Requirements for Discharge) may be discharged into water in the state.

(b) Facility wastewater and contact storm water shall be treated when necessary to conform to effluent discharge limitations, including reductions of total petroleum hydrocarbons, benzene, BTEX, lead, and other possible pollutants and, if necessary, adjustment of pH.

(c) Disposal of solid waste shall be in accordance with Chapter 361 of the Texas Health and Safety Code.

(d) The discharge shall not cause any nuisance conditions.

(e) The discharge shall not be acutely toxic to aquatic life, as described in Chapter 307 of this title (relating to Texas Surface Water Quality Standards).

(f) The facility shall take all steps necessary to prevent any adverse effects upon human health or safety, or to the environment. Any facility authorized under this subchapter shall comply with the following:

(1) The registrant shall report any noncompliance (to include any unauthorized discharges or overflows) with the requirements of this subchapter which may endanger human health or safety or the environment. Report of such information shall be provided orally to the agency's Regional Office within 24 hours of becoming aware of the noncompliance. A written submission of such information shall also be provided to the agency's Regional Office and to the agency's Water Section, Enforcement Division (MC 149), within five working days of becoming aware of the noncompliance. The written submission shall contain a description of the noncompliance and its cause; the potential danger to human health or safety, or the environment; the period of noncompliance, including exact dates and times; if the noncompliance has not been corrected, the anticipated time it is expected to continue; and, steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.

(2) Any noncompliance which is greater than 40% of the authorized effluent limitations as expressed in §321.236(a) of this title (relating to Specific Requirements for Discharge) shall be reported in writing to the agency's Regional Office and to the agency's Water Section, Enforcement Division (MC 149), within five working days of becoming aware of the condition.

(g) The registrant must notify the executive director, in writing, of any change in control or ownership of facilities, or any expansion of facilities authorized under this subchapter. The applicant must send the notification to the agency's Wastewater Permits Section (MC 148).

(h) The executive director may deny an application for registration on the following grounds: the potential or actual adverse impact on or close proximity to, a public park, school, recreational

area, spring, water supply well, surface water supply intake, water treatment plant intake, potable water storage facility or sewage treatment plant. In making such determination, the executive director may also consider other factors necessary to carry out its powers and duties under the Texas Water Code and other laws of the state.

§§321.236. *Specific Requirements for Discharge.*

(a) Facilities regulated under this rule are authorized to discharge facility wastewater, treated facility wastewater, and contact storm water from point sources in accordance with the following maximum limitations and monitoring requirements.

Figure 1: 30 TAC §321.236(a)

(b) The pH of the discharge shall not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitored once per week (*1) by grab sample.

(c) There shall be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.

(d) Monitoring and reporting requirements for lead are suspended if none of the substances stored at the facility include refined petroleum products or petroleum fuels containing lead or lead additives. If at a later date refined petroleum products or petroleum fuels containing lead or lead additives are stored, then monitoring and reporting requirements for lead are resumed.

(e) All discharges from petroleum bulk stations and terminals shall comply with §319.22 of this title (relating to Quality Levels-Inland Waters) or shall comply with §319.23 of this title (relating to Quality Levels-Tidal Waters).

§§321.237. *Sampling, Reporting, and Recordkeeping.*

(a) Unless otherwise specified in this subchapter, sampling and laboratory test methods shall comply with procedures specified in §319.11 of this title (relating to Sampling and Laboratory Testing Methods).

(b) Results of monitoring of each constituent specified in §321.236 of this title (relating to Specific Requirements for Discharge) shall be reported by the registrant to the executive director on the Petroleum Bulk Stations and Terminals Report form approved by the executive director. Monitoring results shall be reported to the executive director in accordance with the following schedule.

Figure 1: 30 TAC §321.237(b)

(c) The registrant shall maintain results of monitoring of each constituent specified in §321.236 of this title (relating to Specific Requirements For Discharge) or the equivalent information shall be maintained for a minimum of three (3) years and shall make these results readily available for review upon request. The registrant authorized under the terms of this subchapter shall maintain records of the process control, maintenance activities, and solids disposal to include at a minimum: volume and dates on which solids were removed, identity of any transporter, location and identity of any solids disposal site, and method of final disposal. This information shall be maintained for a minimum of three years and shall be readily available for review upon request.

§§321.238. *Restrictions.*

(a) This rule does not convey property rights or grant any exclusive privilege.

(b) Nothing in this rule shall be construed to authorize any injury to persons or property, or an invasion of other property rights, or any infringement of state or local law or regulations.

(c) Separate authorizations may be required by the executive director, municipalities, or other agencies for discharges to publicly owned treatment works, domestic sewage plants, storm water sewers, or for air emissions.

§§321.239. *Enforcement and Revocation.*

If any registrant or facility regulated by this subchapter fails to comply with the terms of this subchapter, the executive director may take enforcement action as provided by the Texas Water Code and in accordance with Chapter 337 of this title (relating to Enforcement). The executive director may revoke any registration granted to a registrant or facility due to noncompliance with the requirements of this subchapter, after notice to the registrant and opportunity for hearing, and such registrant shall cease any discharge until such time as the facility is issued a wastewater discharge permit, an emergency order, or temporary order as provided by Chapter 305, Subchapter B, of this title (relating to Consolidated Permits) for the discharge of wastewater into or adjacent to water in the state. The executive director may require a small PBST defined as exempt from registration under §321.232(h) of this title (relating to Purpose and Applicability) to register under the terms of this subchapter if an exempt facility is causing water pollution that could be avoided through compliance with the requirements of this subchapter.

§§321.240. *Annual Waste Treatment Fee.*

(a) In accordance with §§305.501-305.507 of this title (relating to Waste Treatment Inspection Fee Program), registrants authorized to discharge to surface waters from petroleum bulk stations and terminals under the requirements of this subchapter shall remit to the commission an annual waste treatment fee.

(b) The fee assessed annually shall be in accordance with the following fee rate schedule:

(1) for any active facility, the fee shall be \$500, as determined by either the information specified on the application for registration or on the Petroleum Bulk Stations and Terminals Report form submitted during the calendar year.

(2) for any inactive facility, the fee shall be \$250.

(3) any increased assessment above the amounts in paragraphs (1) or (2) of this subsection shall be in accordance with regulations adopted by the commission.

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

Issued in Austin, Texas, on June 26, 1996.

TRD-9609545

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Effective date: July 26, 1996

Proposal publication date: January 5, 1996

For further information, please call: (512) 239-4640

Subchapter N. Handling of Wastes From Commercial Facilities Engaged in Livestock Trailer Cleaning

30 TAC §§321.251-321.259

The new sections are adopted under the authority of the Texas Water Code, §§5.103, 5.105 and 5.120, which provides the commission with the authority to promulgate rules as necessary to carry out its powers and duties under the Texas Water Code and other laws of the state and to establish and approve all general policies of the commission.

§321.252. *Definitions.*

The following words and terms used in this subchapter shall have the following meanings unless the context clearly indicates otherwise.

Agronomic Rate-The wastewater application rate designed:

(A) to provide the amount of nitrogen needed by the crop or vegetation grown on the land; and

(B) to minimize the amount of nitrogen in the wastewater that passes below the root zone of the crop or vegetation grown on the land to the ground water.

Edwards Aquifer-That portion of an arcuate belt of porous, water-bearing limestones composed of the Comanche Peak, Edwards, and Georgetown formations trending from west to east to northeast through Kinney, Uvalde, Medina, Bexar, Comal, Hays, Travis, and Williamson Counties. (See Chapter 313 of this title relating to Edwards Aquifer.)

Existing Facilities-Commercial livestock trailer cleaning facilities in active operation prior to January 5, 1996.

Facility Wastewater-Any livestock trailer cleaning wastewater collected for treatment and disposal at a commercial facility, in accordance with the requirements of this subchapter.

Grab Sample -An individual sample collected in less than 15 minutes.

Livestock Trailer Cleaning Facilities -Facilities which provide means to remove, contain, treat and dispose of wastes from livestock trailers.

New Facilities-Commercial livestock trailer cleaning facilities not defined in this section as existing facilities.

Publicly Owned Treatment Works or "POTW"-A treatment works owned by a state or municipality, which includes any device or system used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. This definition includes sewers, pipes or other conveyances only if they convey wastewater to a POTW providing treatment. This term also means the municipality which has jurisdiction over indirect discharges to and discharges from such a treatment works.

Recharge Zone-Generally, that area where the Edwards and associated limestones crop out in Kinney, Uvalde, Medina, Bexar, Comal, Hays, and Williamson Counties and the outcrops of other formations in proximity to the Edwards limestone, where faulting and fracturing may allow recharge of the surface waters to the Edwards Aquifer, and the area in Uvalde County within 500 feet of the Nueces, Dry Frio, Frio, and Sabinal Rivers downstream from the northern Uvalde County line to the recharge zone as otherwise delineated on official maps located in the offices of the commission and the Edwards Underground Water District. (See Chapter 313 of this title relating to Edwards Aquifer.)

Registrant-An individual or entity authorized by the executive director to dispose of wastewater from commercial facilities associated with the handling of waste from livestock trailer cleaning under the terms and requirements of this subchapter.

Storm water-Storm water runoff, snow melt runoff, surface runoff, and drainage

§321.253. *Purpose and Applicability.*

(a) The purpose of this subchapter is to regulate by rule the removal, containment, treatment and disposal of wastes occurring at commercial livestock trailer cleaning facilities. Certificates of registration issued under this chapter are subject to Chapter 50, Subchapter C of this title (relating to Action by Executive Director). The requirements of this subchapter apply to only those livestock trailer cleaning facilities that are described in both paragraphs (1) and (2) of this subsection:

(1) The facility is commercial. A facility is "commercial" if the owner or operator provides trailer cleaning services to other persons for profit, or provides such service in conjunction with other services.

(2) The facility utilizes evaporation ponds, storage pond(s) or other pond(s) with land application as a means of treatment and disposal.

(b) The requirements of this subchapter do not apply to other livestock trailer cleaning facilities.

(c) A livestock trailer cleaning facility that is subject to the requirements of this subchapter must also comply with other commission rules, if applicable.

(d) Executive director authorization by a registration issued pursuant to this subchapter is not required if untreated facility wastewater is either discharged or transported to a POTW which has a wastewater permit issued by the agency.

(e) Notwithstanding subsection (a) of this section, a livestock trailer cleaning facility that is otherwise subject to the requirements of this subchapter, but which is a component of a feedlot or concentrated animal feeding operation regulated under the requirements of this Chapter or regulated by permit as provided by Chapter 305 of this title (relating to Consolidated Permits), is not subject to the requirements of this subchapter.

(f) If the executive director denies a registration application under this subchapter, the facility must obtain a permit pursuant to the Texas Water Code, Chapter 26.

(g) New livestock trailer cleaning operations are prohibited from being registered under this rule when located on the Edwards Aquifer Recharge Zone. New livestock trailer cleaning operations located on the Edwards Aquifer Recharge Zone are required to submit an application for permit to the agency's Wastewater Permits Section (MC 148).

§321.254. *Certificate of Registration and Public Notice.*

(a) An applicant must apply for registration on a form approved by the executive director. A completed application shall be submitted to the agency's Wastewater Permits Section (MC 148). Before issuing a certificate of registration, the executive director will review the application to determine whether the facility operations meet the requirements of §321.255 of this title (relating to General Requirements for Containment of Wastes and Pond(s)) and §321.256 of this title (relating to General Requirements for Land Application).

(b) The executive director may take action on an application to issue a certificate of registration, provided:

(1) At least 30 days prior to approving an application and issuing the certificate of registration, notice of the application has been provided by the applicant, at the applicant's cost:

(A) in a newspaper regularly published and generally circulated within the county and area wherein the proposed facility and discharge is to be located;

(B) in writing by certified mail (return receipt requested) to the county judge of the county in which the facility is to be located and also when the facility is to be located within the jurisdictional boundaries of a city or town, to the mayor of that city or town; and

(C) the notices of application are provided in a format approved by the commission and shall fairly set forth the substance of the application and proposed action, including but not limited to, the general location of any point of discharge, the method of obtaining additional information about the application, and the method for submitting comment on the application.

(2) With any application for a registration, submitted pursuant to this subchapter, the applicant shall also provide proof to the executive director that public notice was provided in accordance with paragraph (1) of this subsection. The proof shall be provided within 14 days of obtaining the following information, which shall consist of:

(A) a signed affidavit from the publisher acknowledging that the notice was published, indicating the date of publication, and providing a copy of the newspaper clipping; and

(B) a sworn statement from the applicant that written notice was mailed to the appropriate entities, identified in this subsection, along with a copy(s) of the return receipt acknowledgment from the U.S. Postal Service.

(3) The application, including the material required by paragraph (2) of this subsection, shall be mailed to the agency's Wastewater Permits Section (MC 148). The application shall undergo review by the executive director following the determination that notice requirements of this section are met.

(4) Any pertinent comments received by the executive director prior to the end of the 30-day period, after all the notices have been provided, will be considered as a part of any decision of approval, denial, or modification of a request for registration from an applicant. The executive director shall mail notice of the final decision to the applicant and to any other person who submitted comments on the application.

(c) The public notice provisions of this section do not apply to a facility which is operating under an agency wastewater discharge permit if the facility applies for registration prior to the expiration date of the permit.

(d) Public notice provisions of this section do not apply to an existing facility which is not operating under an agency wastewater discharge permit if an application for registration is received by the executive director within 180 days after the date this rule takes effect.

(e) Livestock trailer cleaning facilities that are currently operating under a valid agency wastewater discharge permit may apply for registration of these operations prior to the expiration date of the permit. Upon issuance of the final registration, the executive director shall void the permit. This subchapter does not prevent

the executive director from denying a registration application and requiring the facility to have a permit.

(f) An existing facility that does not hold a valid agency wastewater discharge permit must submit an application for registration or an application for a permit within 180 days after the date this rule takes effect.

§321.255. *Requirements for Containment of Wastes and Pond(s).*

(a) All livestock trailers shall be washed out on a concrete area which is adequately curbed and sloped to allow for containment of all solids and liquids removed from the trailers. Manure may be separated and allowed to dry in this contained concrete area. Wastewater containing solids shall be conveyed directly from the contained concrete area to the treatment or storage pond(s). The pond(s) may be designed to treat wastewater using evaporation, with or without the recycling of wastewaters, as the sole means of disposal or in conjunction with land application.

(b) All pond(s) used for the retention of treated or untreated wastewater shall be adequately lined to control seepage. The following methods of pond lining are acceptable.

(1) In-situ clay soils or placed and compacted clay soils meeting the following requirements:

- (A) More than 30% passing a No. 200 mesh sieve;
- (B) Liquid limit greater than 30%;
- (C) Plasticity index greater than 15;
- (D) A minimum thickness of two feet;
- (E) Permeability equal to or less than 1×10^{-7} cm/sec (the requirements described in this subparagraph apply only to new ponds constructed or modified after the effective date of these regulations); and

(F) Soil compaction will be 95% standard proctor density at optimum moisture content (the requirements described in this subparagraph apply only to new ponds constructed or modified after the effective date of these regulations).

(2) Membrane lining with a minimum thickness of 30 mils, and an underdrain leak detection system.

(3) An alternate method of pond lining may be utilized with prior approval from the executive director.

(c) The registrant shall furnish certification by a Texas Registered Professional Engineer that the completed pond lining meets the appropriate criteria described in this section prior to utilization of the facilities. The certification shall be sent to the agency's Wastewater Permits Section (MC 148) and a copy to the appropriate agency Regional Office.

(d) All wastewater retention ponds shall be operated in such a manner as to maintain a minimum freeboard of two feet and shall be monitored in each pond by use of an in-place gage. Gage measurements of freeboard shall be taken from each pond on each day that trailer cleaning services are provided, and the measurements shall be recorded. These records shall be maintained for a minimum of three years and shall be readily available for inspection by commission staff.

(e) All waste containment structures or ponds must be constructed to comply with minimum distance requirements specified

in §290.41 of this title (relating to Water Sources) and with the minimum distance requirements specified in §338.43 of this title (relating to Location of Dewatering, Monitoring, Domestic, Industrial, Injection and Irrigation Wells).

(f) All waste containment structures or ponds must be protected from inundation by a 10-year, 24-hour rainfall event.

§321.256. *General Requirements.*

(a) If land application is utilized for disposal of waste or wastewater, the following requirements shall apply:

(1) Utilization and disposal methods.

(A) Liquid and solid waste shall be distributed on agricultural lands so that neither the waste nor rainfall runoff discharge into water in the state.

(B) When irrigation disposal of wastewater is used, tailwater facilities shall be provided as necessary to prevent the release of applied wastewater to water in the state.

(C) Disposal of waste and wastewater shall be conducted in such a manner as to prevent nuisance conditions such as odors and flies.

(D) Wastewater shall not be irrigated when the ground is frozen or saturated or during rainfall events.

(2) Application rates. Liquid and solid waste or wastewater shall be applied in such concentrations and application to the soil shall be made at an agronomic rate suitable to the crop being grown, so as to not inhibit the growth of crops or forage or result in wastewater runoff.

(3) Management of wastes. Collection, storage, and disposal of liquid and solid waste or wastewater shall be carried out in accordance with recognized practices of good agricultural management.

(b) All solid waste materials stockpiled or retained on-site shall be isolated from all run-on storm water by dikes, terraces, berms, ditches, or other similar structures and shall be maintained so as to retain all rainfall which comes into contact with the stockpiled solid waste material.

(c) The facility shall take all steps necessary to prevent any adverse effects upon human health or safety, or to the environment. Any facility authorized under this subchapter shall report any noncompliance (including any unauthorized discharges or overflows) pursuant to the requirements of this subchapter which may endanger human health or safety or the environment. Report of such information shall be provided orally to the agency's Regional Office within 24 hours of becoming aware of the noncompliance. A written submission of such information shall also be provided to the agency's Regional Office and to the agency's Water Section, Enforcement Division (MC 149), within five working days of becoming aware of the noncompliance. The written submission shall contain a description of the noncompliance and its cause; the potential danger to human health or safety, or the environment; the period of noncompliance, including exact dates and times; if the noncompliance has not been corrected, the anticipated time it is expected to continue; and, steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.

(d) The executive director must be notified, in writing, of any change in control or ownership of facilities, or any expansion of facilities authorized under this subchapter. The applicant must send the notification to the agency's Wastewater Permits Section (MC 148).

(e) The executive director may require a facility which seeks authorization under this subchapter to apply for and obtain an agency permit. The executive director may declare that an application for permit must be submitted pursuant to the Texas Water Code, Chapter 26. In making such a determination, the executive director may consider such factors as necessary to carry out its powers and duties under the Texas Water Code and other laws of the State.

(f) The registrant authorized under the terms of this subchapter shall maintain records of the process control, maintenance activities, and solids disposal to include at a minimum: volume and dates on which solids were removed from the facility, identity of any transporter, location and identity of any solids disposal site, and method of final disposal. This information shall be maintained for a minimum of three years and shall be readily available for review upon request.

(g) The executive director may deny an application for registration on the following grounds: the potential or actual adverse impact on, or close proximity to, a public park, school, recreational area, spring, water supply well, surface water supply intake, water treatment plant intake, potable water storage facility or sewage treatment plant. In making such determination, the executive director may also consider other factors, as necessary to carry out its powers and duties under the Texas Water Code and other laws of the state.

§321.257. *Restrictions.*

(a) This rule does not convey property rights or grant any exclusive privilege.

(b) Separate authorizations may be required by the executive director, municipalities, or other agencies for discharges to domestic sewage plants, storm water sewers, or for air emissions.

(c) Nothing in this rule shall be construed to authorize any injury to persons or property, or an invasion of other property rights, or any infringement of state or local law or regulation.

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

Issued in Austin, Texas, on June 26, 1996.

TRD-9609544

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Effective date: July 26, 1996

Proposal publication date: January 5, 1996

For further information, please call: (512) 239-4640



TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

FIGURE 1: 4 TAC §9.9.(a)

Common Name	Scientific Name	Limitation per Pound
balloonvine	<i>Cardiospermum</i> <i>halicacabum (L.)</i>	prohibited
castor	<i>Ricinus communis</i>	prohibited
cocklebur	<i>Xanthium spp.</i>	prohibited
field bindweed	<i>Convolvulus arvensis</i>	prohibited
hedge bindweed	<i>Calystegia sepium</i>	prohibited
itchgrass	<i>Rottboellia</i> <i>cochinchinensis</i>	prohibited
nutsedge	<i>Cyperus rotundus and</i> <i>Cyperus esculentus</i>	prohibited
nutsedge tubers	<i>Cyperus spp.</i>	prohibited
serrated tussock	<i>Nassella</i> <i>trichotoma</i>	prohibited
tropical soda apple	<i>Solanum viarum</i> (Dunal)	prohibited

FIGURE 2: 4 TAC §9.9.(b)

Common Name	Scientific Name	Limitation per Pound
annual bluegrass	<i>Poa annua</i>	<u>1</u> /name & number
bermudagrass	<i>Cynodon dactylon</i>	name & number
blessed milk thistle	<i>Silybum marianum (L.)</i>	20
blessed thistle	<i>Cnicus benedictus</i>	100
blueweed	<i>Helianthus ciliaris</i>	100
bracted plantain and buckhorn plantain	<i>Plantago aristata</i> <i>Plantago lanceolata</i>	300
Canada thistle	<i>Cirsium arvense</i>	100
cheat or chess	<i>Bromus secalinus</i> and <i>Bromus commutatus</i>	300
common giant mustard	<i>Rapistrum rugosum</i>	300
corncockle	<i>Agrostemma githago</i>	300
darnel and/or Persian ryegrass	<i>Lolium temulentum</i> <i>Lolium persicum</i>	300
dock and sorrel	<i>Rumex spp.</i>	300
dodder	<i>Cuscuta spp.</i>	100
giant foxtail	<i>Setaria faberi</i>	100
goatgrass	<i>Aegilops spp.</i>	20
horsenettle and purple nightshade	<i>Solanum carolinense</i> <i>Solanum elaeagnifolium</i>	300
Johnsongrass	<i>Sorghum halepense</i>	name and number
morningglory	<i>Ipomoea spp.</i>	name and number
passion flower or maypop	<i>Passiflora incarnata</i>	name and number
puncturevine	<i>Tribulus terrestris</i>	300
quackgrass	<i>Elytrigia repens</i>	100
red rice	<i>Oryza sativa var</i>	1
Russian knapweed	<i>Centaurea repens</i>	100

wild carrot	<i>Daucus carota</i>	300
wild mustards and wild turnips	<i>Brassica</i> and <i>Sinapis spp.</i>	300
wild oat and/or feral oat	<i>Avena fatua (L.)</i> <i>Avena spp. (feral oat)</i>	300
wild onion and/or wild garlic	<i>Allium spp.</i>	100
wild radish	<i>Raphanus raphanistrum</i>	100

1/Seeds are considered noxious weed seed only when present in lawn and turf seed such as perennial ryegrass, turf type tall fescue, chewings fescue, rough bluegrass, turf type annual ryegrass and/or a mixture containing these grasses.

Figure 1: 4 TAC <*>21.21(1) (A)

Minimum Total Solids Percent	Solids to Acid Minimum Ratio
9.0	7.2 to 1
10.0	7.0 to 1
11.0	6.8 to 1
11.50	6.5 to 1

Figure 2: 4 TAC §21.21(1)(B)

GRAPEFRUIT SIZES AND JUICE REQUIREMENTS IN CUBIC CENTIMETERS

Seedless:						
Size	Diam.	1 Frt.	2 Frt.	3 Frt.	4 Frt.	5 Frt.
126	3 1/2	150	300	450	600	750
96	3 3/4	180	360	540	720	900
80	4	195	390	585	780	975
70	4 1/8	200	400	600	800	1000
64	4 1/4	205	410	615	820	1025
54	4 1/2	220	440	660	880	1100
46	4 3/4	235	470	705	940	1175
36	5	250	500	750	1000	1250
28	5 1/4	265	530	795	1060	1325
Seeded:						
126	3 1/2	140	280	420	560	700
96	3 3/4	165	330	495	660	825
80	4	175	350	525	700	875
70	4 1/8	180	360	540	720	900
64	4 1/4	200	400	600	800	1000
54	4 1/2	220	440	660	880	1100
46	4 3/4	235	470	705	940	1175
36	5	250	500	750	1000	1250
28	5 1/4	265	530	795	1060	1325

Figure 3: 4 TAC <*>21.21(2) (A)

Minimum Total Solids Percent	Solids to Acid Minimum Ratio
8.5	10.00 to 1
9.0	9.00 to 1
All Higher Solids	9.00 to 1

Figure 4: 4 TAC §21.21(2)(B)

ORANGE SIZES AND JUICE REQUIREMENTS IN CUBIC CENTIMETERS

	Diam. min.	Diam. max.	1 Frt.	2 Frt.	3 Frt.	4 Frt.	5 Frt.
324	2 4/16	2 8/16	52.6	105.2	157.8	210.4	263.0
288	2 6/16	2 10/16	59.1	118.2	177.3	236.4	295.5
250	2 8/16	2 12/16	68.1	136.2	204.3	272.4	340.5
216	2 10/16	2 14/16	78.9	157.8	236.7	315.6	394.5
200	2 12/16	3	85.2	170.4	255.6	340.8	426.0
176	2 14/16	3 2/16	96.8	193.6	290.4	387.2	484.0
150	3	3 4/16	113.6	227.2	340.8	454.4	568.0
126	3 3/16	3 8/16	135.2	270.4	405.6	540.8	676.0
96	3 6/16	3 11/16	177.4	354.8	532.2	709.6	887.0

Figure 1: ~~4~~ TAC §23.4(c)(5)

Grades	H.T. Climbers, Grandiflora and Floribunda	Polyantha, Shrub, Landscape, and Low Growing Floribunda Roses
Jumbo No. 1 Grade	4 canes 5/16 in. cal. or larger	6 canes 2/16 in. cal. or larger
No. 1 Grade	3 canes 5/16 in. cal. or larger	5 canes 2/16 in. cal. or larger
No. 1 1/2 Grade	2 canes 5/16 in. cal. or larger	4 canes 1/16 in. cal. or larger
No. 2 Grade	2 canes 1/4 in. cal. or larger	3 canes 2/16 in. cal. or larger
No. 3 Grade	1 cane 1/4 in. cal. or larger with one viable cane 6" in length and a well developed root system	3 canes 2/16 in. cal. or larger

Figure 2: ~~4~~ TAC §23.4(c)(6)

ROSE GRADE	CONTAINER	VERTICAL MINIMUM	TOP INSIDE	BOTTOM MINIMUM
No. 1	No. 2	7.50"	7.50"	6.50"
No. 1 1/2	No. 1	6.00"	6.00"	5.00"
No. 2	No. 1	6.00"	6.00"	5.00"

OUT-OF-HOSPITAL DNR INSTRUCTIONS

PURPOSE:

This form was designed to comply with the requirements as set forth in §674 of the Health and Safety Code (H&SC) relating to the issuance of Out-of-Hospital Do-Not-Resuscitate orders for the purpose of instructing Emergency Medical Personnel and other health care professionals to forgo resuscitation attempts. Measures not to be initiated or continued include Cardiopulmonary Resuscitation, Cardiac Resuscitation Medications, Transcutaneous Cardiac Pacing, Defibrillation, Advanced Airway Management, Artificial Ventilation, and Endotracheal Intubation. This order does NOT affect the provision of other emergency care including comfort care.

DEFINITIONS:

Attending Physician: *The physician who has primary responsibility for a person's treatment and care and is licensed by the Texas State Board of Medical Examiners or who is properly credentialed and holds a commission in the uniformed services of the United States and who is serving on active duty in this state.* (H&SC 674.001 (1) & (16))

Proxy: *Person designated in a Directive to Physician to make a treatment decision for the declarant.* (H&SC 674.001 (17))

Qualified Relatives: *Qualified relatives means those persons authorized to execute or issue an out-of-hospital DNR order on behalf of a person who is comatose, incompetent, or otherwise mentally or physically incapable of communication under Section 674.008 (H&SC 674.001 (18)). Section 674.008 refers to 872.009b: "Two persons, if available, of the following categories, in the following priority...: (1) The patient's spouse; (2) a majority of the patient's reasonably available adult children; (3) the patient's parents; or (4) the patient's nearest living relative."*

Health Care Professional: *means physicians, nurses, and emergency medical services personnel and, unless the context requires otherwise, includes hospital emergency personnel.* (H&SC 674.001 (11))

Witnesses: *"A witness is a person who is NOT:*

- (1) related to the declarant by blood or marriage;*
- (2) entitled to any part of the declarant's estate after the declarant's death under a will or codicil executed by the declarant or by operation of law;*
- (3) the attending physician;*
- (4) an employee of the attending physician;*
- (5) an employee of a health care facility in which the declarant is a patient if the employee is providing direct patient care to the declarant or is directly involved in the financial affairs of the facility;*
- (6) a patient in a health care facility in which the declarant is a patient; OR*
- (7) a person who, at the time the directive is executed, has a claim against any part of the declarant's estate after the declarant's death." (§ 672.003 (c))*

APPLICABILITY:

This form applies to EMS and other health care professionals operating in any out-of-hospital setting.

IMPLEMENTATION:

Any patient diagnosed with a terminal condition may enact the Out-of-Hospital Do-Not-Resuscitate Order. The patient's attending physician will document the presence of the terminal condition in the patient's permanent medical record.

If the patient is capable of providing informed consent for the order, he/she will sign and date the front of this sheet. In the event that the patient is incapable of providing informed consent, his/her Legal Guardian / Proxy / DPAHC or Qualified Relatives may initiate the order by signing and dating the form and supplying sufficient proof to indicate they are authorized to perform such measures. The order may also be initiated by the attending physician based upon nonwritten communication or previously executed directive to physicians. If the patient is a minor, the minor's parents, legal guardian or managing conservator may execute the Out-of-Hospital Do-Not-Resuscitate order.

In all cases, the form must be signed and dated by two witnesses.

The original Texas Out-of-Hospital DNR form containing the colored DNR logo should remain with the patient. Duplicates may be made by the patient, health care provider organization or attending physician as necessary for placement in permanent patient record or for ordering of identification devices. Copies of this document lacking the colored DNR logo will not be honored by responding health care professionals.

The presence of a Texas DNR identification device on a person is sufficient evidence that the individual has a valid Out-of-Hospital Do-Not-Resuscitate Order. Therefore, either the form with the colored Texas logo or the device is sufficient evidence of the existence of the order.

In the absence of the original Texas form containing the colored DNR logo OR an approved identification device with the colored Texas DNR logo, all responding health care professionals will initiate FULL resuscitative efforts.

REVOCACTION:

The Out-of-Hospital Do-Not-Resuscitate Order may be revoked at ANY time by the patient, Legal Guardian / Proxy/ DPAHC or Qualified Relatives. The revocation will involve communication of wishes to responding health care professionals, destruction of the form, and removal of all or any Do-Not-Resuscitate identification devices the patient may possess.

PREGNANT PERSONS: A person may not withhold CPR from a person known to be pregnant.

Please report any problems with this form to the Texas Department of Health at 512/834-6740.

Revised May 23, 1996
Texas Department of Health

Texas Driver's License # _____
 OR
 Department of Public Safety ID # _____
 OR
 Social Security # _____

**TEXAS DEPARTMENT OF HEALTH
OUT-OF-HOSPITAL
DO-NOT-RESUSCITATE
ORDER**

This document becomes effective immediately on the date of execution. It remains in effect until the death of the patient or the document is revoked.

① I, _____ (patient's full legal name -- printed or typed) Date of Birth: _____ Male / Female (Circle One)

DO NOT WISH TO BE RESUSCITATED AND REFUSE ALL OF THE FOLLOWING:

Cardiopulmonary Resuscitation	Endotracheal Intubation or Other Advanced Airway Management
Defibrillation	Artificial Ventilation
Cardiac Resuscitation Medications	Transcutaneous Cardiac Pacing

② COMPLETE ONE OF THE FOLLOWING THREE BOXES: A, B, OR C.

A. PATIENT'S STATEMENT: I, the undersigned, am capable of making an informed decision regarding the withholding or withdrawing of the above treatments and direct that the resuscitation measures listed above not be initiated or continued. I understand that I may revoke this order at any time.

Signature _____ Date _____ Printed or Typed Name _____

B. ONLY COMPLETE THIS BOX IF THE ORDER IS BEING COMPLETED BY A PERSON ACTING AS AN AGENT ON BEHALF OF A PATIENT:

I am the: legal guardian; proxy (Ch. 672, Health & Safety Code); Durable Power of Attorney for Health Care;
 attending physician of the above person; AND:

I attest to the issuance of an out-of-hospital DNR order by the person by nonwritten means of communication in my presence and the below listed two witnesses; OR,
 I am acting on behalf of a previously executed or previously issued directive to physicians; OR,
 The patient is incompetent.

I direct that the listed life-sustaining procedures not be initiated or continued on behalf of the person.

Signature _____ Date _____ Printed or Typed Name _____

C. COMPLETE THIS BOX IF PATIENT IS INCOMPETENT AND DOCUMENT IS EXECUTED BY TWO QUALIFIED RELATIVES.

The above patient does not have a legal guardian, proxy, or agent having a durable power of attorney for health care and is comatose, incompetent, or otherwise mentally or physically incapable of communication; AND,
 We are qualified to make a treatment decision to withhold cardiopulmonary resuscitation and certain other designated life-sustaining procedures under Section 672.009 of the Health and Safety Code; AND,
 Based on the known desires of the person or a determination of the best interest of the person, we direct that the listed life-sustaining procedures not be initiated or continued on behalf of the person.

Signature _____ Date _____ Printed or Typed Name _____ Relation _____
 Signature _____ Date _____ Printed or Typed Name _____ Relation _____

③ WITNESSES: We are qualified witnesses as defined in the Texas Health and Safety Code Section 672.0031c) and have witnessed all the above signatures.

Witness Signature _____ Date _____ Witness Printed Name _____
 Witness Signature _____ Date _____ Witness Printed Name _____

④ PHYSICIAN'S STATEMENT: I, the undersigned, am the attending physician of the patient named above. I have diagnosed and certified in patient records that he/she is in a terminal condition and direct out-of-hospital health care professionals to comply with this order as presented.

Physician's signature _____ License number _____
 Printed name _____ Date _____

ALL PERSONS WHO SIGNED MUST SIGN HERE: This document has been properly completed:

Signature of Patient or Agent or Relative (A,B, or C) _____ Signature of Relative (C) _____
 Signature of Witness _____ Signature of Witness _____
 Signature of Physician _____ Date _____

SHOULD TRANSPORT OCCUR, THIS DOCUMENT MUST ACCOMPANY THE PATIENT.

Figure 1: 30 TAC §285.33 (a)(1)(A)

A = absorptive area

Q = average daily sewage flow in gallons per day

Ra = soil application rate in gallons per square foot per-day

Figure 2: 30 TAC §285.33 (a)(1)(A)(i)
Absorptive Area $= (L \times W) + 2(L+W)$

Where: L = Drainfield Length
 W = Drainfield Width

Figure 3: 30 TAC §285.33 (a)(1)(A)(ii)

$$L = (A-2W)/(W+2)$$

Figure 4: 30 TAC §285.33 (a)(1)(A)(iii)

$$L = A/(W+2)$$

Figure 5: 30 TAC §285.33 (a)(1)(E)

Minimum values

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

Figure 6: 30 TAC §285.33 (a)(2)(B)

$$A = 1.6 Q/Ret$$

- Where: A = is the total top surface area of the excavation.
Q = estimated daily water usage in gallons/day in §285.91(3) of this title (relating to Tables).
Ret = net local evaporation rate in §285.91(7) of this title.

The proper selection of the estimated daily water usage, Q, is of vital importance for proper operation of an ET drainfield because the size of the drainfield is determined by this factor. The owner of the system shall be advised by the person putting together the planning materials of the limits placed on the system by the Q selected. The calculated flow rate, Q, shall be included on or attached to the system's permit and on the property deed advising the owner, and future owners, of the system's wastewater disposal limits.

Figure 7: 30 TAC §285.33 (b)(2)(A)

$$L = 0.12A$$

Where: A = minimum absorptive area

Figure 8: 30 TAC §285.33 (c)(2)(A)

BOD & TSS:...	30 day average.....	20 mg/l
	7 day average.....	30 mg/l
	Daily Maximum.....	45 mg/l
	Single Grab.....	65 mg/l
PH.....		6.0 - 9.0

Figure 9: 30 TAC §285.33 (c)(2)(D)

$$\text{Reqd Surface area (sq. ft.)} = Q / Ri$$

where: Ri = the effluent loading rate in gal/sq ft/day

Figure 1: 30 TAC §285.90 (1)

Figure 1
Maximum Application Rates for
Surface Irrigation of Treated Effluent in Texas
(Gal/Sq Ft/Day)

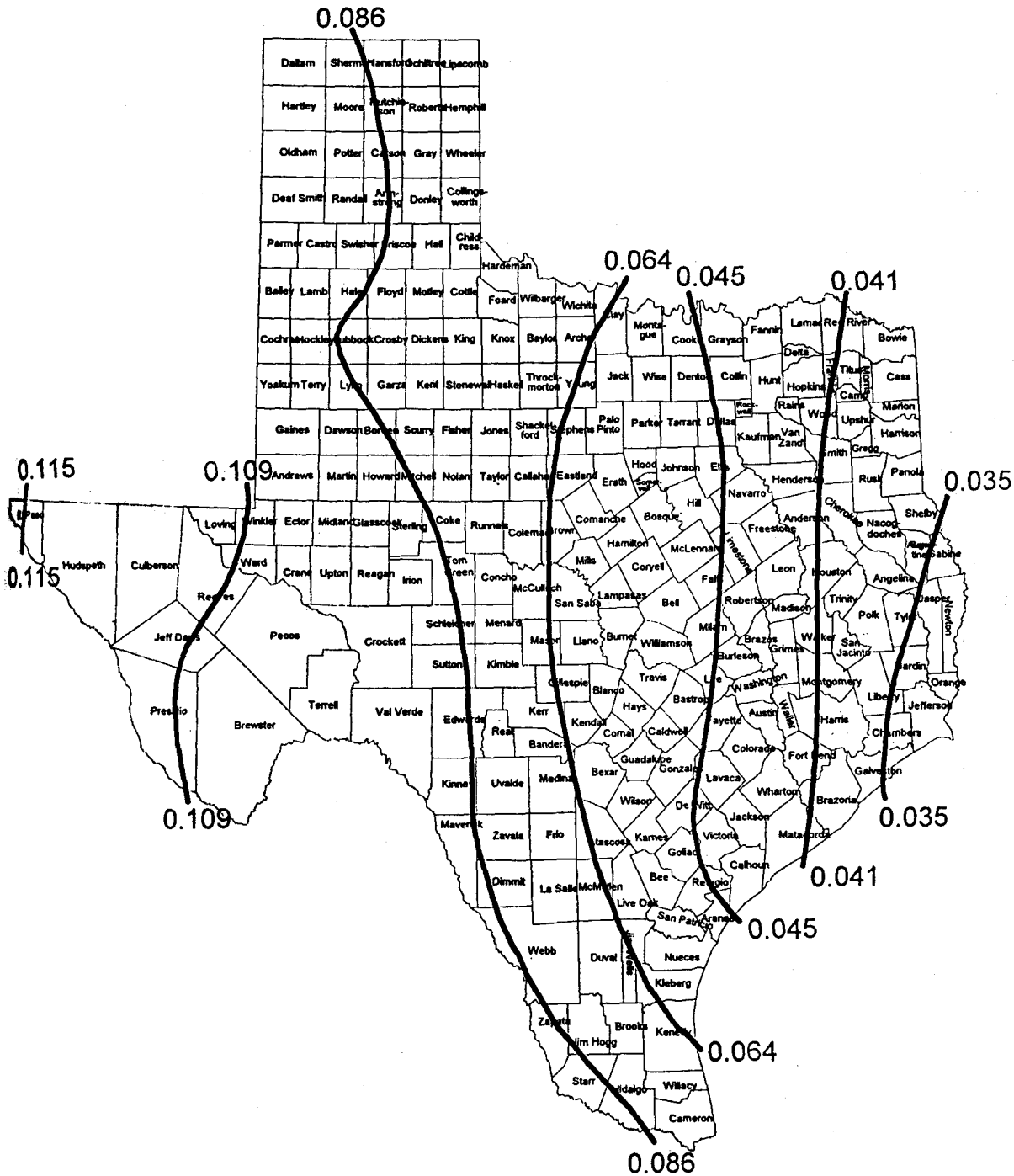


Figure 2: 30 TAC §285.90 (2)

FIGURE 2

AFFIDAVIT TO THE PUBLIC

THE COUNTY OF _____ *
STATE OF TEXAS _____ *

Before me, the undersigned authority, on this day personally appeared (names of homeowner(s)) who, after being by me duly sworn, upon oath states that he/she is the owner of record of that certain tract or parcel of land lying and being situated in _____ County, Texas, and being more particularly described as follows:

(Here insert legal description of property.)

The undersigned further states that he/she will, upon any sale or transfer of the above-described property, request a transfer of the permit to operate such surface application system to the buyer or transferee. Any buyer or transferee is hereby notified that a maintenance contract with an approved maintenance company will be required for use of the system.

WITNESS MY/OUR HAND(S) ON THIS ____ DAY OF _____, _____.

Notary Public, State of Texas
Notary's Printed Name:
My Commission Expires:

Figure 3: 30 TAC §285.90 (3)

FIGURE 3

SAMPLE TESTING AND REPORTING RECORD

This testing and reporting record shall be completed, signed and dated after each inspection. One copy shall be retained by the maintenance company. The second copy is sent to the local permitting authority and the third copy is sent to the system owner along with an invoice for services by the maintenance company.

1. Required frequency of visits - (daily, weekly, monthly, quarterly).
Actual date of visit _____

2. System inspection

<u>Inspected Item</u>	<u>Operational</u>	<u>Inoperative</u>
Aerators		
Filters		
Irrigation Pumps		
Recirculation Pumps		
Disinfection Device		
Chlorine Supply		
Electrical Circuits		
Distribution System		
Other as Noted		

3. Repairs to system (list all components replaced) _____

4. Tests required and results

<u>Test</u>	<u>Required</u>		<u>Results</u> <u>mg/l, mpn/100 ml, or trace</u>
	<u>Yes</u>	<u>No</u>	
BOD (Grab)			
TSS (Grab)			
Cl ₂ (Grab)			
Fecal Coliform			

5. General comments or recommendations _____

Figure 4: 30 TAC §285.90 (4)

Figure 4
Typical Drainfields - Sectional View

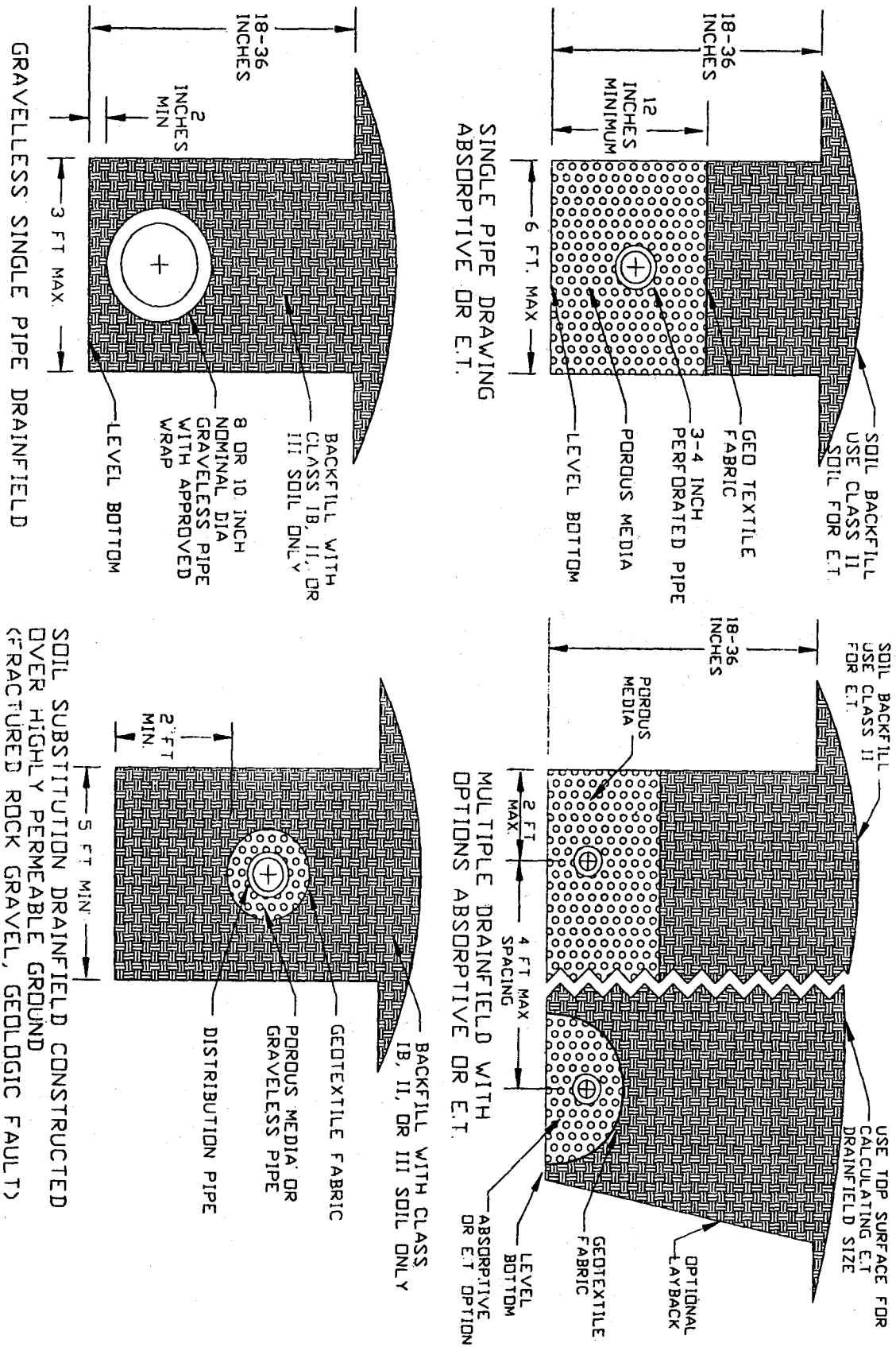


Figure 5: 30 TAC §285.90 (5)

Figure 5 Typical Drainfields - Plan View

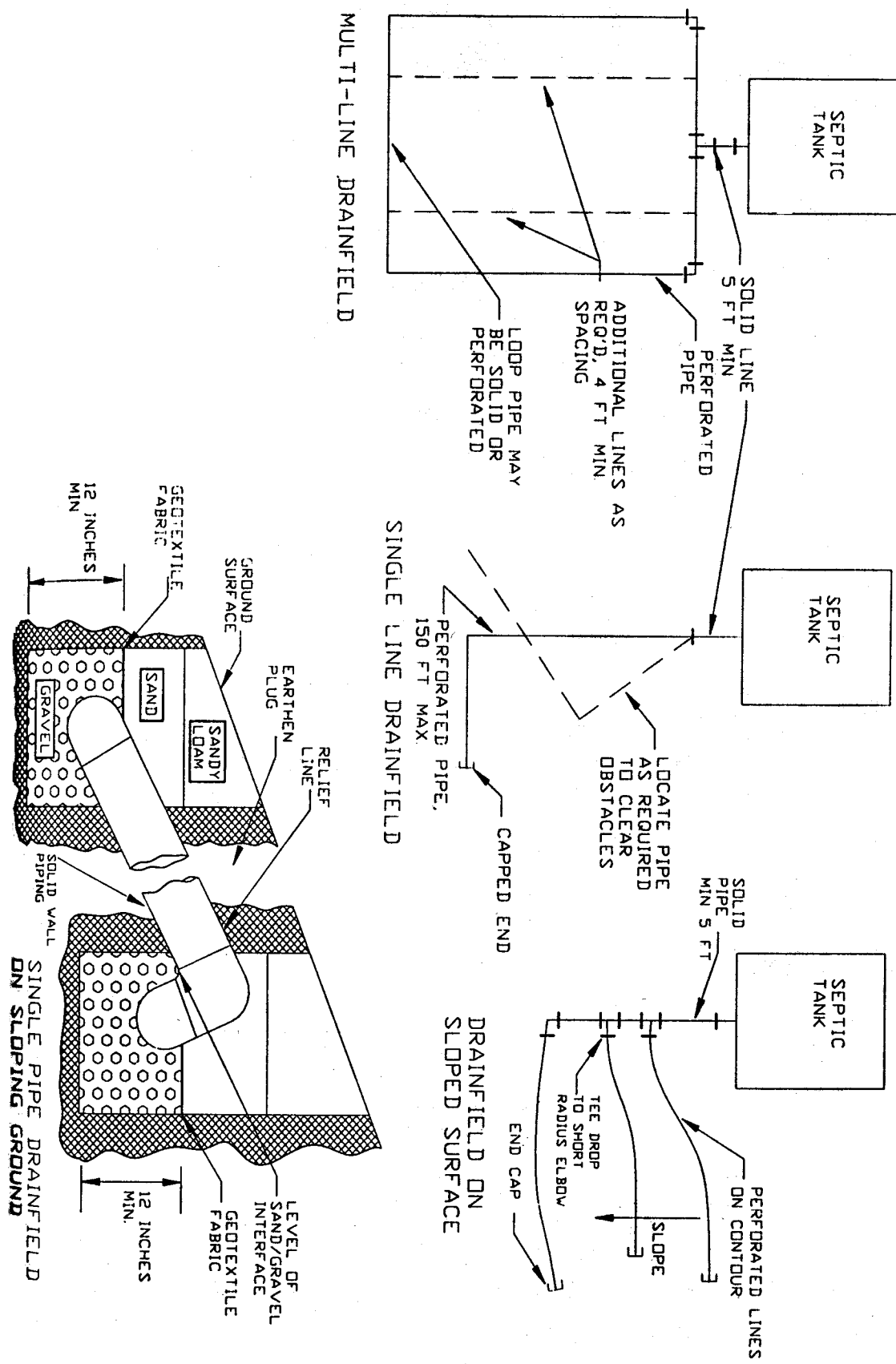
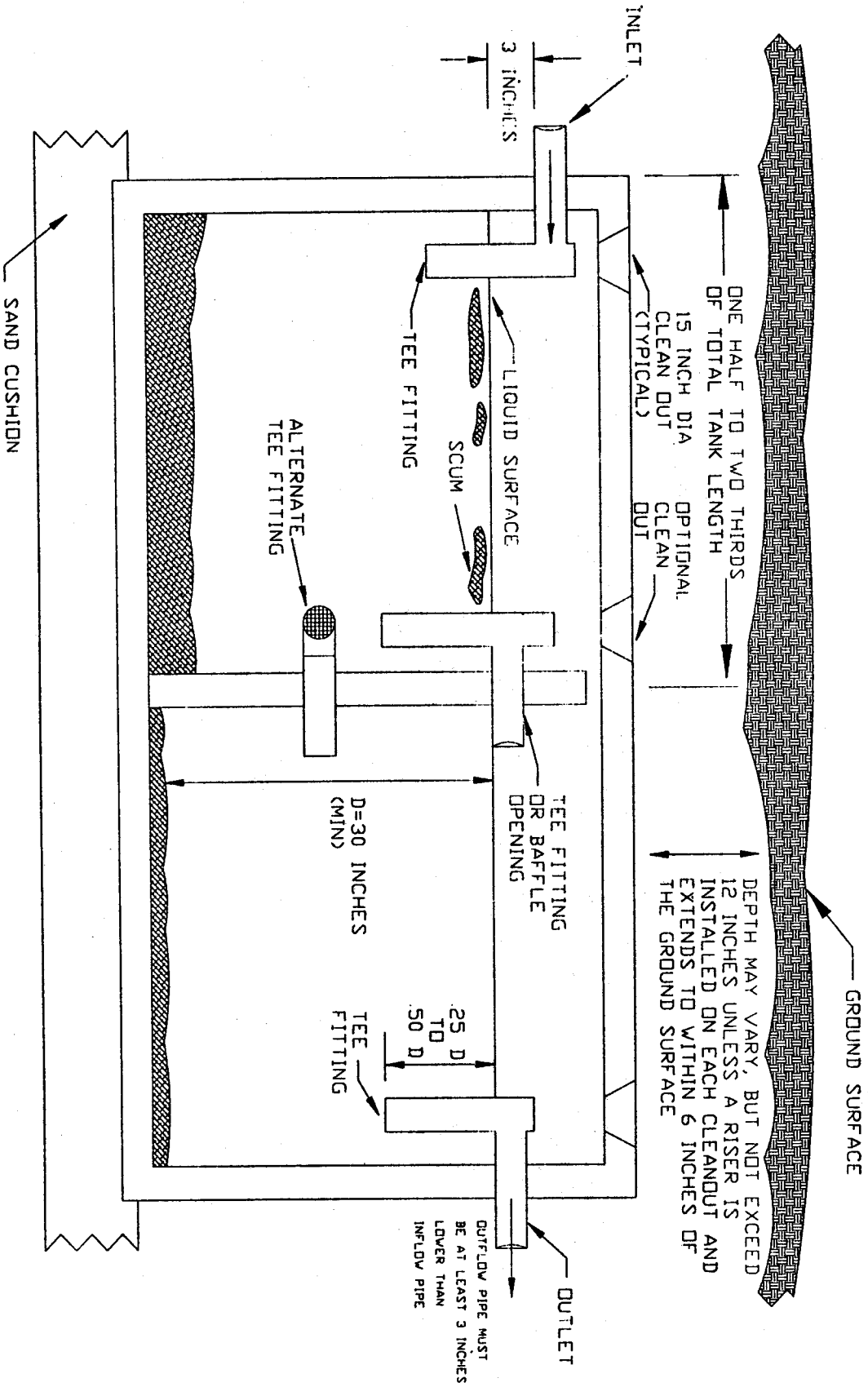


Figure 6: 30 TAC §285.90 (6)

Two Compartment Septic Tank



NOT INTENDED TO SERVE AS AN ENGINEERING DESIGN FOR CONSTRUCTION PURPOSES.

Figure 7: 30 TAC §285.90 (7)

Figure 7 Two Septic Tanks in Series

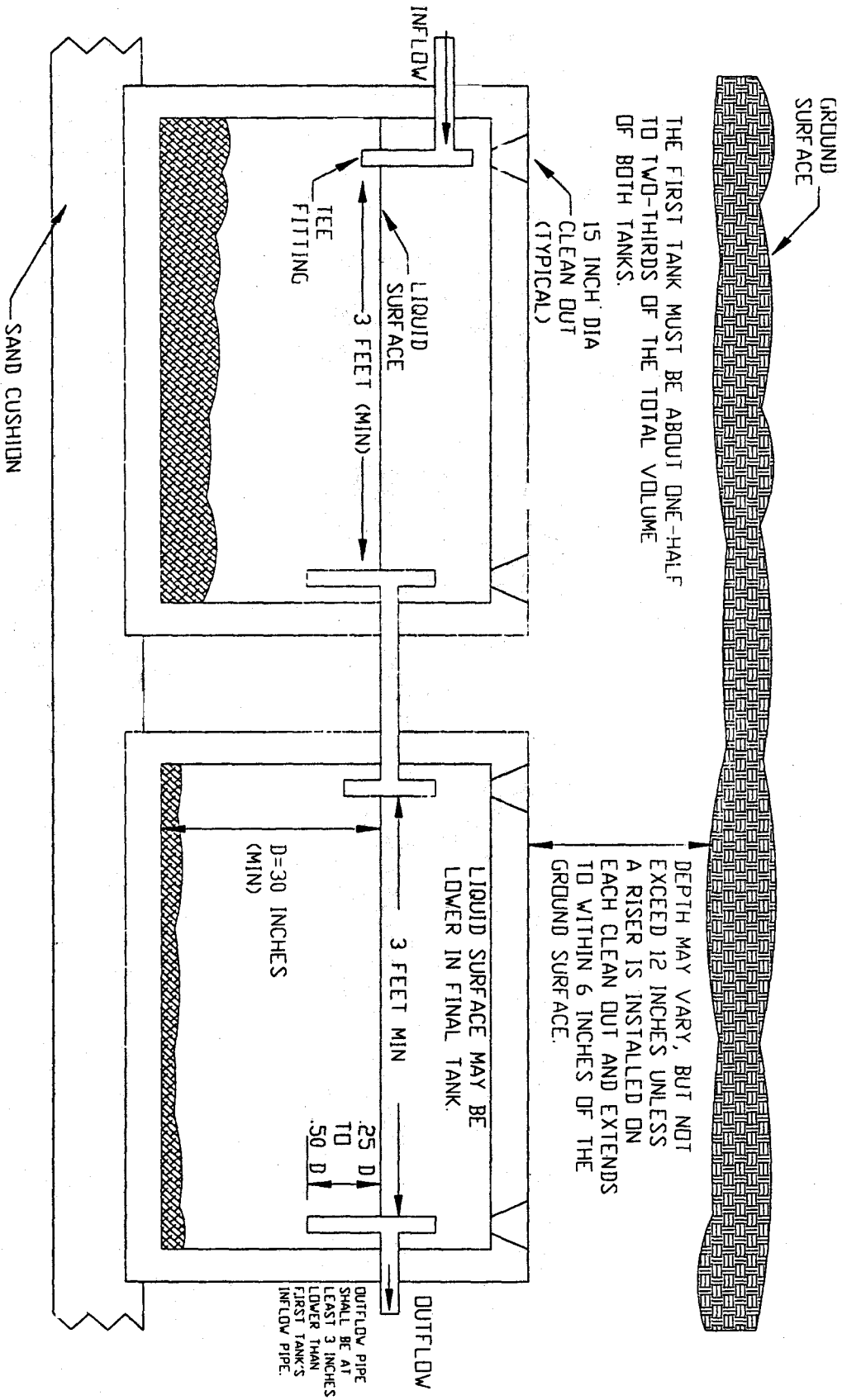
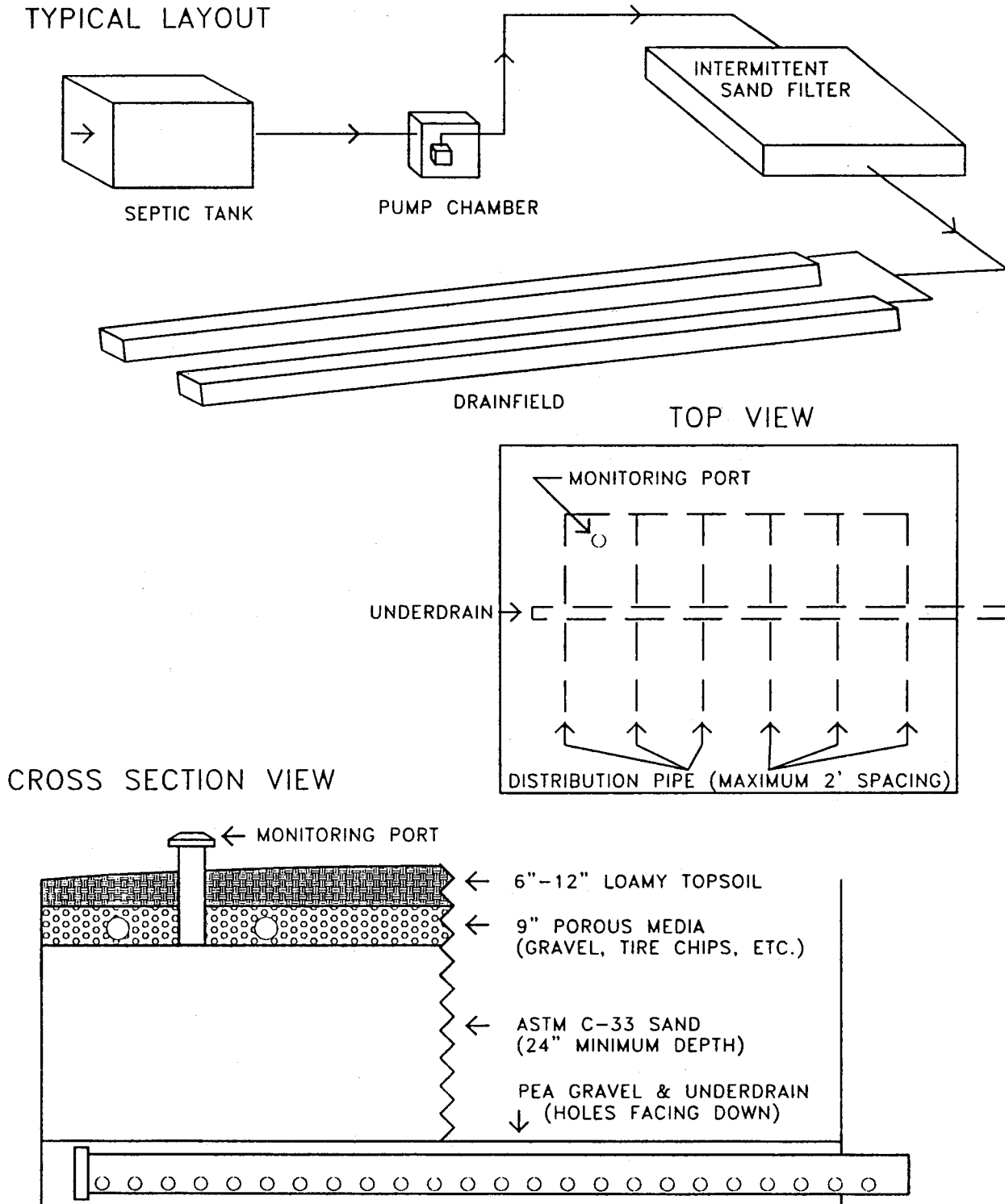


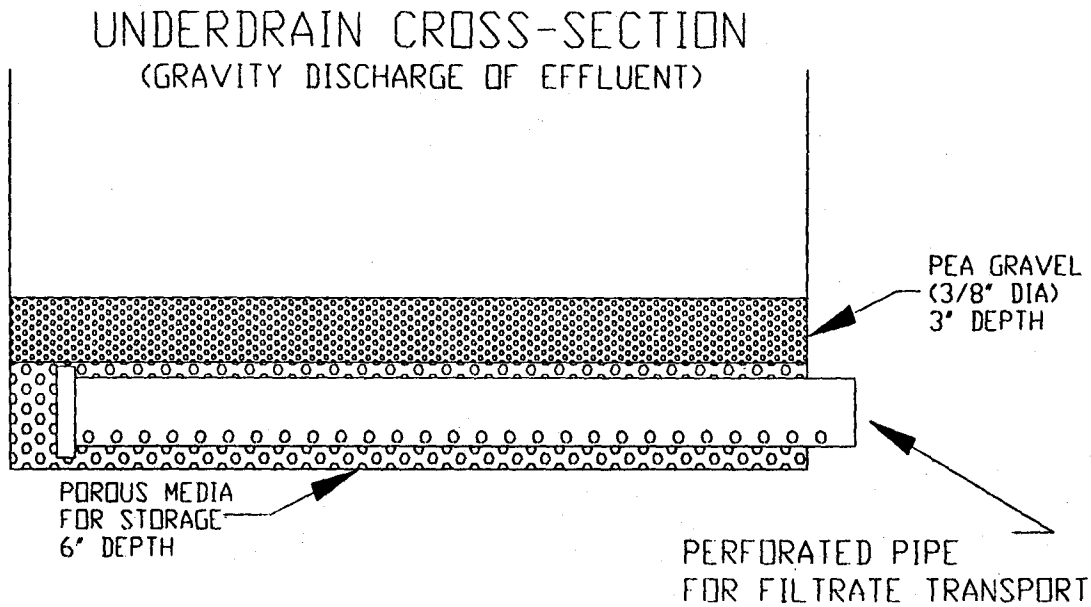
Figure 8: 30 TAC §285.90 (8)

Figure 8 Intermittent Sand Filters

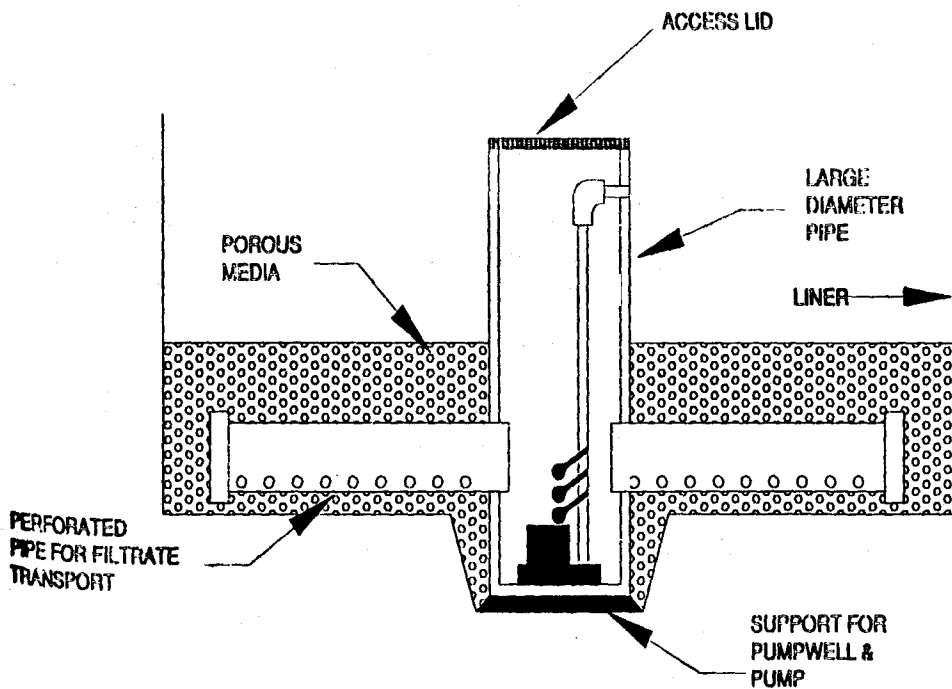


NOT INTENDED TO SERVE AS AN ENGINEERED DESIGN FOR CONSTRUCTION PURPOSES.

Figure 9
Intermittent Sand Filter Underdrain & Pumpwell



UNDERDRAIN & PUMPWELL
CROSS-SECTION



NOT INTENDED TO SERVE AS AN ENGINEERED DESIGN FOR CONSTRUCTION PURPOSES.

Figure 1: 30 TAC §285.91 (1)

TABLE I
EFFLUENT LOADING REQUIREMENTS BASED ON SOIL CLASSIFICATION

SOIL CLASS		LONG TERM APPLICATION (R_a) **GALLONS PER ABSORPTIVE AREA (SF) PER DAY
Ia	Coarse Sand With Gravel	*>0.50
Ib	Medium to Fine Sand	0.38
II	Coarse Loamy	0.25
III	Fine Loamy	0.20
IV	Clay	*0.1

* No standard absorptive subsurface disposal methods may be used in Soil Classes Ia and IV. Use only non-standard or proprietary subsurface designs or surface application methods.

** The absorptive area consists of the bottom area of the excavation PLUS one foot of sidewall area around the full perimeter of the excavation.

The required absorptive area shall be calculated by the following formula:

ABSORPTIVE AREA = Q/R_a , Where Q is the loading rate in gallons per day (see Table III, Relating to Wastewater Usage Rate).

Figure 2: 30 TAC §285.91 (2)

TABLE II

SEPTIC TANK MINIMUM LIQUID CAPACITY

- A. Determine the applicable wastewater usage rate (Q) in TABLE III of 30 TAC Chapter 285.
- B. Calculate the minimum septic tank volume (V) as follows:
1. For Q equal to or less than 250 gal/day:
 $V = 750$ gallons
 2. For Q greater than 250 gal/day but less than 351 gal/day:
 $V = 1000$ gallons
 3. For Q greater than 351 gal/day but less than 501 gal/day:
 $V = 1250$ gallons
 4. For Q greater than 501 gal/day but less than 1001 gal/day:
 $V = 2.5 Q$
 5. For Q greater than 1001 gal/day:
 $V = 1,750 + 0.75Q$

NOTES: The inside liquid depth of the tank shall not be less than 30 inches.

Tank sizing in B (1)(2)(3) correspond to two, three and four bedroom single family dwellings.

TABLE III

WASTEWATER USAGE RATE

This table shall be used for estimating the hydropic loading rates only(daily wastewater usage rate (Q) for sizing septic tank liquid capacity and drainfield area). For BOD₅ rate evaluation, refer to §317. Actual water usage data or other methods of calculating wastewater usage rates may be used by the system designer if it is accurate and acceptable to the Texas Natural Resource Conservation Commission or its authorized agents.

TYPE OF FACILITY	USAGE RATE GALLONS/DAY (Without Water Saving Devices)	USAGE RATE GALLONS /DAY (With Water Saving Devices)
Single family dwelling (one or two bedrooms) - less than 1,500 square feet.	250	200
Single family dwelling (three bedrooms) - less than 2,500 square feet.	325	260
Single family dwelling (four bedrooms) - less than 3,500 square feet.	400	320
Single family dwelling (five bedrooms) - less than 4,500 square feet.	475	380
Single family dwelling (six bedrooms) - less than 5,500 square feet.	550	440
Greater than 5,500 square feet, each additional 1,500 square feet or increment thereof.	75	60
Condominium or Townhouse (one or two bedrooms)	250	200
Condominium or Townhouse (each additional bedroom)	75	60
Mobile home (one or two bedrooms)	250	200
Mobile home (each additional bedroom)	75	60
Country Clubs (per member)	25	20
Apartment houses (per bedroom)	125	100
Boarding schools (per room capacity)	50	40
Day care centers (per child with kitchen)	25	20
Day care centers (per child without kitchen)	15	12
Factories (per person per shift)	15	12
Hospitals (per bed)	200	160
Hotels and motels (per bed)	75	60
Nursing homes (per bed)	100	80
Laundries (self service per machine)	250	200
Lounges (bar and tables per person)	10	8
Movie Theaters (per seat)	5	4
Office buildings (no food or showers per occupant)	5	4
Office buildings (with food service per occupant)	10	
Parks (with bathhouse per person)	15	12
Parks (without bathhouse per person)	10	
Restaurants (per seat)	35	28
Restaurants (fast food per seat)	15	
Schools (with food service & gym per student)	25	20
Schools (without food service)	15	
Service stations (per vehicle)	10	8
Stores (per washroom)	200	160
Swimming pool bathhouses (per person)	10	8
Travel trailer/RV parks (per space)	50	40
Vet clinics (per animal)	10	8
Construction sites (per worker)	50	40
Youth camps (per camper)	30	24

Figure 4: 30 TAC §285.91 (4)

TABLE IV

REQUIRED TESTING AND REPORTING

Type and Size of Treatment Unit	Frequency of Site Visits	Required Tests	Minimum Acceptable Test Results
Proprietary Treatment	3 Per Year	One BOD ₅ and TSS Grab Sample Per Year (commercial and institutional facilities only)	BOD ₅ and TSS Grab Samples Not To Exceed 65 mg/l
Non Standard	Permit Specific	Chlorine Residual or Fecal Coliform at Each Site Visit Permit Specific	1 mg/l Residual in Pump Tank or Fecal Coliform Not To Exceed 200 MPN/1000 ml Permit Specific

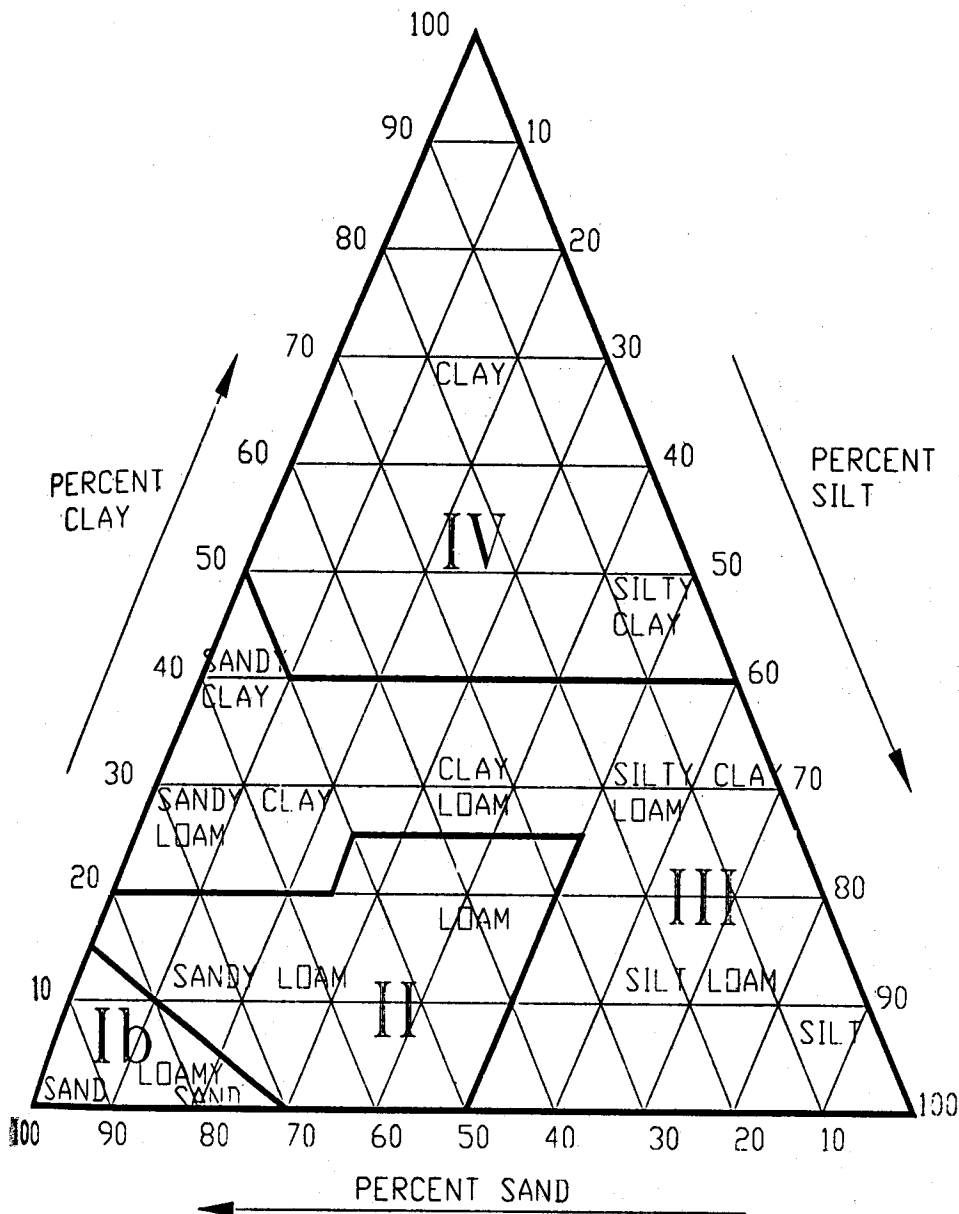
Figure 5: 30 TAC §285.91 (5)

TABLE V

CRITERIA FOR STANDARD SUBSURFACE DISPOSAL METHODS

FACTORS	SUITABLE (S)	PROVISIONALLY UNSUITABLE (PS)	UNSUITABLE (U)
Topography	Slopes 0-15%	Slopes 15-30%	Slopes greater than 30% Complex slopes.
Subsoil Texture	Soil Class Ib & II Sandy Soils Loamy Soils	Soil Class III Sandy Clay Loamy Clay	Soil Class Ia & IV Clayey soils (Except for pumped effluent systems in Class IV soils).
Subsoil Structure	Class Ib & II Structure not significant	Class III Angular or subangular blocky.	Platy structure. Fractured rock. Massive clayey soil.
Soil Depth	Suitable soils greater than 24 inches below bottom of excavation.	Provisionally suitable soils greater than 24 inches below bottom of excavation.	Suitable or provisionally suitable soil less than 24 inches below excavation bottom.
Restrictive Horizon	None within 42 inches of the ground surface.		Restrictive horizon within 42 inches of the ground surface.
Groundwater	No indication of groundwater within 24 inches of the bottom of the proposed excavation.		Drainage mottles within 36 inches of the ground surface.
Flood Hazard	No flooding potential.	Areas subject to a 100-year flood frequency and not located in floodway.	Areas located in 100-year floodway. Depressional areas without adequate drainage.
Other			Fill material. Potential health hazards or groundwater contamination.

TABLE VI
USDA SOIL TEXTURAL CLASSIFICATIONS



SOIL PARTICLE SIZE:

Clay - Smaller than 0.002 mm in diameter.

Silt - 0.05 to 0.002 mm in diameter.

Sand - 2.0 to 0.05 mm in diameter.

Gravel - Greater than 2.0 mm in diameter.

mm = millimeter

Note 1: Sand shall be free of organic matter and shall be composed of silica, quartz, mica, or any other stable mineral.

Note 2: Class Ia soils contain more than 30% gravel, therefore, they are not portrayed on the soil triangle.

Figure 7: 30 TAC §285.91 (7)

TABLE VII

YEARLY AVERAGE NET EVAPORATION
(EVAPORATION - RAINFALL)

REPORTING STATION	NET EVAPORATION, RET INCHES/DAY
Amarillo	0.21
Austin	0.14
Beaumont	0.04
Big Spring	0.24
Brownsville	0.15
Chilicothe	0.20
Canyon Lake	0.15
College Station	0.12
Corpus Christi	0.15
Daingerfield	0.08
Dallas	0.14
El Paso	0.26
Fort Stockton	0.25
Houston	0.07
Laredo	0.23
Lubbock	0.21
Nacogdoches	0.06
San Antonio	0.15
San Angelo	0.23
Temple	0.15
Throckmorton	0.19
Tyler	0.08

Figure 8: 30 TAC §285.91 (8)

TABLE VIII

OSSF EXCAVATION LENGTH (3 FEET IN WIDTH OR LESS)¹

Daily Sewage Flow (Q) ²	Soil Class Ib			Soil Class II			Soil Class III		
	For 1.0 Foot Excavation Width	For 2.0 Foot Excavation Width	For 3.0 Foot Excavation Width	For 1.0 Foot Excavation Width	For 2.0 Foot Excavation Width	For 3.0 Foot Excavation Width	For 1.0 Foot Excavation Width	For 2.0 Foot Excavation Width	For 3.0 Foot Excavation Width
100	88	66	53	133	100	80	167	125	100
125	110	82	66	167	125	100	208	156	125
150	132	99	79	200	150	120	250	188	150
175	154	115	92	233	175	140	292	219	175
200	175	132	105	267	200	160	333	250	200
225	197	148	118	300	225	180	375	281	225
250	219	165	132	333	250	200	417	313	250
275	241	181	145	367	275	220	458	344	275
300	263	197	158	400	300	240	500	375	300
325	285	214	171	433	325	260	542	406	325
350	307	230	184	467	350	280	583	438	350
375	329	247	197	500	375	300	625	469	375
400	351	263	211	533	400	320	667	500	400
425	373	280	224	567	425	340	708	531	425
450	395	296	237	600	450	360	750	563	450
475	417	313	250	633	475	380	792	594	475
500	439	329	263	667	500	400	833	625	500

1 To determine excavation lengths, greater than 3 feet in width or where the area and width are known, use the formula provided in §285.33(a)(1)(A)(ii).

2 To determine excavation lengths (3 feet or less in width) for daily sewage flows (Q) not provided in this table, use the formula provided in §285.33(a)(1)(iii).

Figure 9: 30 TAC §285.91 (9)

TABLE IX

OSSF SYSTEM DESIGNATION

SYSTEM DESCRIPTION	SYSTEM TYPE	PROFESSIONAL DESIGN REQUIRED?	INSTALLER REQUIREMENTS
Septic Tank & Absorptive Drainfield	Standard	No	Class I or II
Septic Tank & ET Drainfield(Unlined) (Lined)	Standard Standard	No No	Class I or II Class II
Septic Tank & Pumped Drainfield	Standard	No	Class I or II
Septic Tank & Leaching Chamber	Proprietary	No	Class I or II
Septic Tank & Gravelless Pipe	Proprietary	No	Class I or II
Septic Tank, Filter & Drip Emitter	Proprietary	Yes	Class II
Septic Tank & Low Pressure Dosing	Non-standard	Yes	Class II
Septic Tank & Absorptive Mounds	Non-standard	Yes	Class II
Septic Tank, Filter & Surface Irrigation	Non-standard	Yes	Class II
Aerobic Treatment & Absorptive Drainfields	Proprietary	Yes	Class II
Aerobic Treatment & ET Drainfield	Proprietary	Yes	Class II
Aerobic Treatment & Leaching Chamber	Proprietary	Yes	Class II
Aerobic Treatment & Gravelless Pipe	Proprietary	Yes	Class II
Aerobic Treatment, Filter & Drip Emitter	Proprietary	Yes	Class II
Aerobic Treatment & Low Pressure Dosing	Proprietary	Yes	Class II
Aerobic Treatment & Absorptive Mounds	Proprietary	Yes	Class II
Aerobic Treatment & Surface Irrigation	Proprietary	Yes	Class II
Any Other Treatment System	Non-standard	Yes	Class II
Any Other Subsurface Disposal System	Non-standard	Yes	Class II
Any Other Surface Disposal System	Non-standard	Yes	Class II
Non-Standard Treatment and Surface Irrigation	Non-Standard	Engineer Only	Class II
Holding Tank	---	No	Class I or II

Figure 10: §285.91 (10)
TABLE X

MINIMUM REQUIRED SEPARATION DISTANCES FOR ON-SITE SEWAGE FACILITIES¹

FROM	Sewage Treatment Tanks or Holding Tanks	Soil Absorption Systems, & Unlined ET Beds	Lined Evapotranspiration Beds	Sewer Pipe With Watertight Joints	Surface Irrigation	Deep Emitter
Public Water Walls ¹	50	150	150	50	150	150
Public Water Supply Lines ²	10	10	10	10	10	10
Private Water Well	50	100	50	20	100	100
Private Water Well (Pressure Cemented or Grouted to 100 ft. or Cemented or Grouted to Watertable if Watertable is Less Than 100 ft. deep)	50	50	50	20	100	25
Streams, Ponds, Lakes, Rivers (Measured From Normal Pool Elevation and Water Level); Salt Water Bodies (High Tide Only)	75	75, LPD (Secondary Treatment & Disinfection) - 50	75	20	50	25 when $R_1 < .1$ 75 when $R_1 \geq .1$ (With Secondary Treatment & Disinfection - 50)
Foundations, Buildings, Surface Improvements, Property Lines, Easements, Swimming Pools, and Other Structures	5	5	5	5	No Separation Distances Except: Property lines - 10 With Low Aerosol Heads, Swimming Pools - 25 With Low Aerosol Heads	No Separation Distances Except for Property Lines - 5
Sharp slopes, Bieaks	0	25	5	10	25	10 when $R_1 < .1$ 25 when $R_1 \geq .1$
Edwards Aquifer Recharge Features (See Rules & Regulations §313 of this Title Relating to Edwards Aquifer) ³	50	150	50	50	150	100 when $R_1 < .1$ 150 when $R_1 \geq .1$

1 All distances measured in feet, unless otherwise indicated.
2 For additional information or revisions to these separation distances, see Rules & Regulations in §290 of this Title relating to Water Hygiene.
3 No OSSF may be installed closer than 75 feet from the banks of the Nueces, Dry Frio, Frio, or Sabinal Rivers downstream from the northern Uvalde County line to the recharge zone.

Figure 11: §285.91 (11)

TABLE XI

INTERMITTENT SAND FILTER MEDIA SPECIFICATIONS
(ASTM C-33)

Particle Size Distribution		
Sieve	Particle Size	Percent Passing
3/8 inch	9.50 mm	100
No. 4	4.75 mm	95 to 100
No. 8	2.36 mm	80 to 100
No. 16	1.18 mm	50 to 85
No. 30	0.60 mm	25 to 60
No. 50	0.30 mm	10 to 30
No. 100	0.15 mm	2 to 10
No. 200	0.075 mm	≤ 3

1. The sand shall have not more than 45% passing any one sieve and retained on the next consecutive sieve listed in TABLE XI.
2. The limit for material that can pass the No. 200 sieve shall not be more than 3%.
3. The fineness modulus shall not be less than 2.3 nor more than 3.1, and is defined as a numeric quantity to control the distribution of filter media particle sizes within the specified range for intermittent sand filters. The fineness modulus is calculated by adding the cumulative percents of samples retained on the following screens, dividing the sum by 100.

U.S. Bureau of Standards

<u>Sieve</u>	<u>Particle Size</u>
3/8 inch	9.50 mm
No. 4	4.75 mm
No. 8	2.36 mm
No. 16	1.18 mm
No. 30	0.60 mm
No. 50	0.30 mm
No. 100	0.15 mm

Figure : 30 TAC §321.236(a)

<u>Parameter</u>	<u>Limitation</u>	<u>Sample Type</u>	<u>Monitoring Frequency(*1)</u>
Flow, MGD	Report	Estimate	1/day
Total Petroleum Hydrocarbons	15 mg/l	Grab	1/week (*3)
Benzene	0.05 mg/l	Grab	1/week (*3)
Total BTEX (*2)	0.5 mg/l	Grab	1/week (*3)
Total Lead	0.25 mg/l	Grab	1/week (*3)

(*1) If discharge occurs less frequently than the minimum monitoring frequency, then monitoring shall be conducted for each discharge event. For a discharge consisting of contact stormwater only, the sample shall be obtained within 60 minutes after discharge begins.

(*2) Benzene, toluene, ethyl benzene, xylene

(*3) The executive director may authorize a reduced monitoring frequency of one/two weeks upon the written request of a registrant where demonstrated compliance with the effluent limitations has been maintained for a period of two years. If the registrant fails to maintain compliance with the effluent limitations after the reduction in monitoring frequency, the executive director may direct the registrant to resume weekly monitoring.

Figure : 30 TAC §321.237(b)

<u>Monitoring Period</u>	<u>Report Due</u>
January, February, March	April 30th
April, May, June	July 31st
July, August, September	October 31st
October, November, December	January 31st

Figure : 30 TAC §321.155(a)

<u>Parameter</u>	<u>Limitation</u>	<u>Sample Type</u>	<u>Monitoring Frequency</u>
Flow (MGD)	(Report)	Estimate	1/month*
Oil and Grease	15 mg/l	Grab	1/month*
Total Suspended Solids	65 mg/l	Grab	1/month*

* When discharge occurs.

Figure : 30 TAC §321.156(b)

<u>Monitoring Period</u>	<u>Report Due</u>
January, February, March	April 30th
April, May, June	July 31st
July, August, September	October 31st
October, November, December	January 31st

Figure : 30 TAC §321.216(a)

<u>Parameter</u>	<u>Limitation</u>	<u>Sample Type</u>	<u>Monitoring Frequency</u>
Flow (MGD)	N/A	Estimate	1/month*
Oil and Grease	15 mg/l	Grab	1/quarter*
Total Suspended Solids	65 mg/l	Grab	1/quarter*
Chemical Oxygen Demand	Report	Grab	1/quarter*

* When discharge occurs.

Figure : 30 TAC §321.217(b)

<u>Monitoring Period</u>	<u>Report Due</u>
January, February, March	April 30th
April, May, June	July 31st
July, August, September	October 31st
October, November, December	January 31st

OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register*.

Emergency meetings and agendas. Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the main office of the Secretary of State in the lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the *Texas Register*.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have 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).

Advisory Board of Athletic Trainers

Wednesday, July 24, 1996, 8:30 a.m.

University of Texas, Arlington, Gilstrap Athletic Center, Conference Room 105, 1309 West Mitchell

Arlington, Texas

Administrative Services Committee

AGENDA

The committee will meet to discuss and possibly act on: applications and testing of candidates; applicant qualifications defined in V.T.C.S., Article 4512d §9 and 25 Texas Administrative Code §313.5; applications (Greg Hulseley #0297; and Keith Garnet (0344); and information packet to supervising trainers.

Contact: Debbie Bradford, 1100 West 49th Street, Austin, Texas 78756 (512) 834-6615. To request an accommodation under the ADA, please contact Charles Pankey, ADA Coordinator in the Office of Civil Rights at (512) 458-7627, TDD, at (512) 458-7708 at least two days prior to the meeting.

Filed: July, 1996, 2:57 p.m.

TRD-9609870

appearance before the board by Larry Gardner, Co-Chair SWATA/TPTA Task Force concerning rule petition; Attorney General Opinion No. DM-388 concerning V.T.C.S., Article 4512d; Settlement Agreement Docket No. D-335-1994-0003; standing committee reports (Administrative Services Committee (applications and testing of candidates; applicant qualifications defined in V.T.C.S., Article 4512d §9 and 25 Texas Administrative Code §313.5); applications (Greg Hulseley #0297; and Keith Garnet #0344); information packet to supervising trainers); Examination Committee; Continuing Education Committee); proposed amendments to 25 TAC §313; final adoption of proposed amendments to 25 TAC §§313.1, 313.2, 313.9, 313.13, 313.14, 313.15, 313.17; complaints (AT95-001; AT96-001; AT96-002; AT96-003; AT96-004; AT96-005; and AT96-006;) election of officers; consideration and appointment of committees; announcements and comments; and setting of next meeting.

Contact: Debbie Bradford, 1100 West 49th Street, Austin, Texas 78756 (512) 834-6615. To request an accommodation under the ADA, please contact Charles Pankey, ADA Coordinator in the Office of Civil Rights at (512) 458-7627, TDD, at (512) 458-7708 at least two days prior to the meeting.

Filed: July, 1996, 2:56 p.m.

TRD-9609869

Wednesday, July 24, 1996, 10:00 a.m.

University of Texas, Arlington, Gilstrap Athletic Center, Conference Room 105, 1309 West Mitchell

Arlington, Texas

Administrative Services Committee

AGENDA

The board will meet to discuss and possibly act on: open forum to receive input from interested parties; board appreciation resolutions for Methodist Hospital Lubbock and Deana McKinney; approval of minutes of the December 16, 1995, meeting of the Advisory Board of Athletic Trainers); chairman's report; division director's report; assistant division director's budget report; program director's report;

Texas Board of Chiropractic Examiners

Wednesday, July 17, 1996, 9:00 a.m.

333 Guadalupe Street, Tower III, Suite 825

Austin, Texas, 78701

Enforcement Committee

AGENDA

Consideration, discussion, any appropriate action, and/or approval of cases #94-39, 95-04, 95-74, 95-81, 95-179, 95-217, 95-297, 96-01, 96-37, 96-38, 96-57, 96-70, 96-79, 96-93, 96-100, 96-109, 96-123, 96-127, 96-131, 96-145, 96-146, 96-148, 96-149, 96-151

to 153, 96-155 to 157, 96-159, 96-160, 96-163 to 171, 96-174 to 176, 96-179 to 210.

Contact: Patte B. Kent, Executive Director, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701, (512) 305-6700.

Filed: July 9, 1996, 1:13 p.m.

TRD-9609834

◆ ◆ ◆
State Employee Charitable Campaign

Tuesday, July 16, 1996, 10:30 a.m.

LBJ State Office Building, 111 East 17th Street, Room 114

Austin, Texas, 78701

Local Employee Committee

AGENDA

I. Introductions

II. Agency Coordinator Training

III. Committee Status

IV. Materials Status

Adjourn

Contact: Anne Murphy, 200 East Martin Luther King Jr. Blvd., Austin, Texas 78702, (512) 472-6267.

Filed: July 8, 1996, 4:15 p.m.

TRD-9609794

◆ ◆ ◆
Thursday, July 18, 1996, 3:00 p.m.

3231 North McColl, Suite B

McAllen, Texas, 78605

Local Employee Committee

AGENDA

Review Campaign Materials

Look at Campaign Dates

Discuss Coordinator's Training Session(s)

Focus on Number of State Employees by County (update on on-line agencies for payroll deduction)

Set Next Meeting Date

Contact: Thelma Garza, United Way of Hidalgo County, P.O. Box 187, McAllen, Texas 78605, (210) 686-6331.

Filed: July 9, 1996, 3:21 p.m.

TRD-9609874

◆ ◆ ◆
Texas Commission on Fire Protection

Thursday, July 18, 1996, 9:00 a.m.

12675 North Research Blvd.

Austin, Texas, 78759

Personnel Advisory Committee

COMPLETE AGENDA

1. Call to order.

2. Discussion and possible action concerning rules pending before the Texas commission on Fire Protection relating to paid fire protection personnel, part-time protection employees, and local fire departments regulated under Government Code, Chapter 419, Subchapter B.

3. Discussion and possible action concerning change to 37 TAC Chapter 439 relating to examination procedures (including but not limited to, changes to performance skills testing evaluation resulting from the site team visits by the International Fire Service Accreditation Congress).

4. Discussion and possible action on future meeting dates, agenda items and locations.

Contact: Carol Menchu, 12675 North Research Blvd., Austin, Texas 78759, (512) 918-7100

Filed: July 8, 1996, 3:29 p.m.

TRD-9609790

◆ ◆ ◆
General Land Office

Tuesday, July 16, 1996, 10:00 a.m.

Stephen F. Austin Bldg. 1700 N. Congress Avenue, Room 831

Austin, Texas, 78701

School Land Board

AGENDA

Approval of previous board meeting minutes; opening and consideration of bids received for the July 16, 1996 sealed bid land sale; consideration of nominations, terms, conditions and procedures for the October 1, 1996 oil, gas and other minerals lease sale; pooling applications, Liverpool Field, Brazoria Co.; Keystone (San Andres & Holt) Field, Winkler Co.; State Tract 60-S West Field, Jefferson Co.; royalty incentive program, Nueces Bay (Sinton First Sand), Nueces Co.; Nueces Bay (2300), Nueces Co.; application to lease highway right of way for oil and gas, Karnes Co.; consideration of application by Steve J. Harper to lease zeolite in Presidio Co. under Section 53.081 of the Natural Resources Code; direct land sale, Maverick Co.; coastal public lands- lease application, and amendment, Keller Bay, Calhoun Co.; and Laguna Madre, Cameron Co.; easement application and amendment, Caney Creek, Matagorda Co.; Galveston Bay, Chambers Co.; structure (cabin) permit terminations, requests and renewals, Espiritu Santo Bay, Calhoun Co.; Carancahua Creek, Jackson Co.; Laguna Madre, Kennedy Co.; and Laguna Madre, Kleberg Co.; Executive Session — pending or contemplated litigation; Executive and Open Session — consideration of a surface lease to El Paso County Water Authority Board, El Paso Co.; Executive Session and Open Session — consideration of acquisition and lease with option to purchase, Comal and Guadalupe Counties.

Contact: Linda K. Fisher, School Land Board, 1700 N. Congress, Room 836, Austin, Texas, (512) 463-5016.

Filed: July 9, 1996, 4:16 p.m.

TRD-9609795

Office of the Governor

Tuesday, July 16, 1996, 3:00 p.m.

Texas State Technical College, Harlingen Conference Center, Loop 499 & Oak Street

Harlingen, Texas

Citizen's Committee on Property Tax Relief

AGENDA SUMMARY

Public briefing and public hearing.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Camille Welborn at (512) 475-3337 or (512) 463-1776, four working days prior to the meeting so that appropriate arrangement can be made.

Contact: Albert Hawkins, Director, Governor's Office of Budget and Planning, 4th Floor, State Insurance Building, 1100 San Jacinto, Austin, Texas 78701, (512) 463-1778.

Filed: July 8, 1996, 3:01 p.m.

TRD-9609784



Wednesday, July 24, 1996, 3:00 p.m.

Midland College, Fine Arts Building, Wagner Brown Auditorium, 3600 N. Garland

Midland, Texas

Citizen's Committee on Property Tax Relief

AGENDA SUMMARY

Public briefing and public hearing.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Camille Welborn at (512) 475-3337 or (512) 463-1776, four working days prior to the meeting so that appropriate arrangement can be made.

Contact: Albert Hawkins, Director, Governor's Office of Budget and Planning, 4th Floor, State Insurance Building, 1100 San Jacinto, Austin, Texas 78701, (512) 463-1778.

Filed: July 9, 1996, 2:23 p.m.

TRD-9609855



Tuesday, July 16, 1996, 9:00 a.m.

1100 West 49th Street, 7th Floor

Austin, Texas, 78701

Governor's Advisory Task Force on Faith-based Community Service Groups

AGENDA SUMMARY

1. Welcome from Chairman Currie.

2. Discuss how to promote faith-based volunteerism in Texas and possible legislative changes in drug/alcohol treatment and child care licensing.

3. Q&A with Texas officials regarding current law, standards, rules, etc.

4. Discuss preliminary report recommendations on the possible changes in legislative environment relating to drug/alcohol treatment and child care and the creative, non-legislative ways Texas can promote faith based volunteerism.

5. Testimony from invited guests.

6. Testimony from public.

Contact: Stuart Bowen, 1100 San Jacinto, 4th Floor, Austin, Texas 78701, (512) 463-1778.

Filed: July 10, 1996, 9:19 a.m.

TRD-9609903



Thursday, August 1, 1996, 9:00 a.m.

1100 San Jacinto, Office of the Governor, Room #443

Austin, Texas, 78701

Governor's Committee on People with Disabilities Long-Range Planning and Policy Subcommittee

AGENDA

1. Call to Order and Approval of Minutes

2. Review and Discussion of data collected for revision of the Long-Range State Plan for Texans with Disabilities

3. Action Items — Consideration and Vote on: law, standards, rules, etc.

Long —range goals for the 1997 Long-Range State Plan for Texans with Disabilities

Issue Areas for focus in the 1997 Long-Range State Plan for Texans with Disabilities

Short-term recommendations to be included in the 1997 Long-Range State Plan for Texans with Disabilities

Adjournment

Contact: Pat Pound, 1100 San Jacinto, 4th Floor, Austin, Texas 78701, (512) 463-5739.

Filed: July 10, 1996, 9:37 a.m.

TRD-9609908



Thursday, July 18, 1996, 8:30 a.m.

Texas Department of Health Complex, Room M-739, 1100 W. 49th Street

Austin, Texas, 78756

Governor's Committee to Promote Adoption

AGENDA

Contact: Beverly Jimmerson, Governor's Policy Office, 4th Floor,
State Insurance Building, 1100 San Jacinto, Austin, Texas 78701:
(512) 463-8470.

Filed: July 9, 1996, 1:29 p.m.

TRD-9609838

◆ ◆ ◆
Wednesday, July 17, 1996, 1:30 p.m.

221 E. 11th Street, 1st Floor, Main Conference Room

Austin, Texas, 78701

Criminal Justice Division — Disproportionate Minority Confinement
Committee

AGENDA

I. Welcome

II. Survey Instrument

III. Report/ Comments

IV. Open for Comments

V. Adjourn

Contact: Glenn Brooks, P.O. Box 12428, Austin, Texas 78711, (512)
463-1944, or Ed Santiago, P.O. Box 12428, Austin, Texas 78711,
(512) 463-1786.

Filed: July 8, 1996, 3:23 p.m.

TRD-9609789

Texas Higher Education Coordinating Board

◆ ◆ ◆
Thursday, July 18, 1996, 2:45 p.m.

Chevy Chase Office Complex, Bldg. 1, Room 1.100, 7700 Chevy
Chase Drive

Austin, Texas 78752

Access and Equity Committee

REVISED AGENDA:

Consideration of the United States Supreme Court denial of certiorari
in case Hopwood v. Texas and of the decision's impact on programs
administered by the Coordinating Board.

Contact: Kenneth H. Ashworth, Commissioner of Higher Education,
P.O. Box 12788, Capitol Station, Austin, Texas 78711, (512) 483-
6101.

Filed: July 9, 1996, 10:54 a.m.

TRD-9609817

Texas Historical Commission

◆ ◆ ◆
Thursday, July 18, 1996, 9:00 a.m.

Stephen F. Austin State Office Building, 1700 N. Congress, Room
1028A, (10th Floor)

Austin, Texas

Texas Antiquities Advisory Board

AGENDA

Approval of minutes from May 2, 1996 Antiquities Advisory board
(A.B.A.) Meeting #3. Designation of eleven State Archeological
Landmarks (SAL). Two in Tom Green County, 41TG307 and
41TG309. Site 41GR676 in Garza County. Six Applewhite project
sites in Bexar County: 41BX653; 41BX662; 41BX675; 41BX832;
41BX833; and 41BX857. Site 41SM193 in Smith County and the
Treue der Union (German for "True to the Union") Monument in
Kendall county. Nomination of nine State Archeological Landmarks.
Walker Ranch sites: 41BX189, 41BX197, 41BX218 and 41BX219.
The Peach Orchard Overlook Site (41CP25) in Camp County.
The Adams Ranch Site, 41NV177 in Navarro county; Sites Perry
(41FT193), Hardy (41FT200), and Bird Point Island (41FT201), all
in Freestone county. Update on staff activity related to 41 WA183 in
Walker County. A review and recommendation on draft amendments
to Chapter 26 Rules. A review of SAL nomination form to address
property ownership. Potential removal of SAL designation status on
Randall County Courthouse. A discussion setting up a task force to
handle curation problems. Listen to any public comments and any
staff reports.

Contact: Lillie Thompson, Administrative Technician, Department of
Antiquities Protection, P.O. Box 12276, Austin, Texas 78711, (512)
463-1858.

Filed: July 9, 1996, 3:30 p.m.

TRD-9609875

◆ ◆ ◆
Thursday, July 18, 1996, 1:00 p.m.

Carrington-Covert House Library, 1511 Colorado Street

Austin, Texas, 78701

Executive Committee

AGENDA

I. Legislative Appropriations Request 1998-99

II. Report on Strategic Plan 1997-2001

III. Preferred Meeting Date at Annual Conference

IV. Reallocation of Museum Grant Fund

V. Litigation at Zilker Park

VI. Historic Sites

VII. Authorization of proper designs for the "six flags over Texas"

VIII. Update on La Salle Shipwreck

IX. Governor's Memorial Park

X. Other Business

Contact: Marlene Casarez, Texas Historical Commission, P.O. Box
12276, Austin, Texas 78711, (512) 463-5768.

Filed: July 9, 1996, 10:02 a.m.

TRD-9609920

◆ ◆ ◆
Thursday, July 18, 1996, 2:30 p.m.

Texas Capitol, Agriculture Museum Conference Room

Austin, Texas, 78701

Historical Sites and Military Sites Program Committee

AGENDA

Military Sites:

- 1.) Fall Conference — Nineteenth Century Texas Military Conference
- 2.) Legislative Agenda

Historic Sites:

- 1.) Update on the historic sites legislative initiative

Contact: Stan Graves, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711, (512) 463-6094.
 Filed: July 10, 1996, 10:03 a.m.

TRD-9609021



Thursday, July 18, 1996, 3:30 p.m.

Texas Capitol, Agriculture Museum Conference Room
 Austin, Texas, 78701

Guardians of Texas Preservation Trust Fund, TPTF Committee

AGENDA

- 1) Introductions
- 2) Trust Fund Program Updates — a) Director of Development; b) TPTF Grant Program
- 3) Texas Historical Commission Program Update — a) Military Sites Program; b) LaSalle Shipwreck
- 4) Election of Chairman for 1997-1998
- 5) Closing Announcements

Contact: Stan Graves/Lisa Harvell, , Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711, (512) 463-6094.
 Filed: July 10, 1996, 10:03 a.m.

TRD-9609022



Thursday, July 18, 1996, 3:45 p.m.

Carrington-Covert House Library, 1511 North Colorado
 Austin, Texas, 78701

Awards Committee

AGENDA

- 1) Call to Order
- 2) Naming current and future THC awards
- 3) Review of current awards

Contact: Frances Rickard , Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711, (512) 463-5851.
 Filed: July 10, 1996, 10:03 a.m.

TRD-9609923



Friday, July 19, 1996, 8:00 a.m.

108 W. 16th Street, El Rose Bldg., 2nd Floor, Library

Austin, Texas, 78701

History Programs Committee

AGENDA

- 1) Call to Order
- 2) Announcements
- 3) State Board of Review appointments
- 4) Museum Grant review and recommendations

Contact: Frances Rickard , Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711, (512) 463-5851.
 Filed: July 10, 1996, 10:03 a.m.

TRD-9609924



Friday, July 19, 1996, 8:30 a.m.

Carrington Covert House Library, 1511 Colorado Street
 Austin, Texas 78701

Economic Development & Heritage Tourism Committee

AGENDA

- 1) Progress in the Main Street cities
- 2) 1997 Main Street applications
- 3) Grant Writing workshops
- 4) Heritage Tourism Update

Contact: Anice Read , Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711, (512) 463-5851.
 Filed: July 10, 1996, 10:03 a.m.

TRD-9609925



Friday, July 19, 1996, 9:30 a.m.

108 W. 16th Street, El Rose Building, First Floor Conference Room
 Austin, Texas 78701

Archeology Committee

AGENDA

- 1) FY98-99 Biennial Request
- 2) Black Seminole Research Project
- 3) TAAM 1996 Summary
- 4) Recent/Upcoming Publications
- 5) Update on LaSalle Shipwreck
- 6) Other Business

Contact: Pat Mercado-Allinger, Office of the State Archeologist, 463-6090, Jim Bruseth, Department of Antiquities Protection, 463-6096, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78701.
 Filed: July 10, 1996, 10:03 a.m.

TRD-9609926



Friday, July 19, 1996, 11:00 a.m.

William P. Clements Building, Committee room, 5, Fifth Floor, 300 W. 15th Street

Austin, Texas 78701

Quarterly board Meeting

AGENDA

I. Chairman's Report

II. Action Items

III. Information Items

IV. Department Reports

Contact: Marlene Casarez, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78701, (512) 463-5768.

Filed: July 10, 1996, 10:03 a.m.

TRD-9609927



Texas Incentive and Productivity Commission

Wednesday, July 24, 1996, 9:00 a.m.

Committee Room 5, Fifth Floor, Clements Building, 15th & Lavaca
Austin, Texas 78701

AGENDA:

SESSION ON PRODUCTIVITY BONUS PROGRAM & STATE
EMPLOYEE INCENTIVE PROGRAM

I. Call to Order and Roll Call

II. Consideration of and Possible Action on Recommendations for
Administrative and Statutory Changes to the Administration of
the Productivity Bonus Program and the State Employee Incentive
Program

Adjournment

Contact: M. Elaine Powell, P.O. Box 12482, Austin, Texas (512) 475-
2393

Filed: July 10, 1996, 10:04 a.m.

TRD-9609928



State Independent Living Council

Friday, July 19, 1996, 9:00 a.m.; Saturday, July 20, 1996,
9:00 a.m.

Harvey Suites, 6800 Main Street,

Houston, Texas 77030

SUMMARY OF AGENDA:

Amendment discussion, SILC audit report, committee work

Contact: Brenda Shaw, 8610 Broadway, Suite 420, San Antonio,
Texas 78217, 1-800-863-0908

Filed: July 9, 1996, 1:14, 3:10 p.m.

TRD-9609872, 9609835 (submitted twice)



Texas Appraiser Licensing and Certification Board

Monday, July 22, 1996, 9:30 a.m.

Executive Conference Room, 235A, 1101 Camino La Costa

Austin, Texas 78752

Budget Committee

AGENDA

Workshop on the Request for Legislative Appropriate (LAR) for FY-
98 and FY-99 and on the FY-97 FY-98 and FY-99 operating budgets.

Contact: Renil C. Liner, P.O. Box 12188, Austin, Texas 78711-2188,
(512) 465-3950.

Filed: July 10, 1996, 8:15 a.m.

TRD-9609900



Texas Life, Accident, Health & Hospital Service Insurance Guaranty Association

Tuesday, July 16, 1996, 8:30 a.m.

301 Congress Avenue, Suite 500, Board Room

Austin, Texas, 78701

AGENDA

Consideration and Possible Action on:

1. Approval of July 18, 1995, minutes of the Executive Committee
meeting

2. Executive Session

a.) review of employment contract for the Executive Director of the
Association

b.) review annual compensation for other officers of the Association

3. Matters discussed in Executive Session

4. Next meeting date

Contact: C.S. La Shelle, 301 Congress Avenue, #500, Austin, Texas
476-5101, (512) 472-1470

Filed: July 8, 1996, 11:41 a.m.

TRD- 9609768



Tuesday, July 16, 1996, 9:00 a.m.

301 Congress Avenue, Suite 500

Austin, Texas, 78701

SUMMARY OF AGENDA

Consideration and Possible Action on:

1. Approval of Minutes

2. Guaranty Association Activities

3. Executive Session

4. Matters discussed in Executive Session

5. Priority of IRS claims in estate insurance insolvency proceedings
6. Impaired/Insolvent member insurers
7. Report from committees
8. Financial matters
9. Change to Benefits Plan for Association employees
10. Request by TDI for advice on inclusion of HMOs under guaranty association statutes
11. Changes to Policy and Procedures Manual
12. Resolutions of appreciation for Board members
13. Next meeting date.

Contact: C.S. La Shelle, 301 Congress Avenue, #500, Austin, Texas 476-5101, (512) 472-1470
 Filed: July 8, 1996, 11:40 a.m.
 TRD- 9609767

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Texas Natural Resource Conservation Commission

Wednesday, September 11, 1996, 9:30 a.m.
 Building E. Room 201S, TNRCC Park 35 Office Building
 12118 North Interstate 35
 Austin, Texas

AGENDA:

Docket No. 1047-DIS; Application by Hickory Creek Water Supply Corporation for conversion from a water supply corporation to a special utility district, and transfer of Certificate of Convenience and Necessity No. 10809 from Hickory Creek Water Supply Corporation to Hickory Creek Special Utility District. The proposed special utility district is located wholly within Collin, Fannin and Hunt Counties and within the extra-territorial jurisdiction of the cities of Greenville, Leonard, Celeste, and Wolfe City, Texas. The proposed district would contain a total appropriate acreage of 100,000 acres.

Contact: Carlene Smith, TNRCC Chief Clerk, District Administration Section, MC-152, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6161.
 Filed: July 10, 1996
 TRD-9609899

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Board of Nurse Examiners

Wednesday, July 24, 1996, 4:00 p.m.
 333 Guadalupe Street, Suite 3-460
 Austin, Texas

COMPLETE AGENDA

The Executive Committee of the Board of Nurse Examiners will meet at 4:00 p.m. to follow up on their work session to complete the Board's Governance Statement and to conduct an orientation with Letrice Brown, board member.

Adjourn

Contact: Erlene Fisher, Box 140466, Austin, Texas 78714, (512) 305-6811.
 Filed: July 8, 1996, 11:37 a.m.
 TRD-9609759

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Thursday-Friday, July 25-26, 1996, 8:30 a.m.

333 Guadalupe Street, Tower 2, Suite 225
 Austin, Texas

SUMMARY OF AGENDA

the Board of Nurse Examiners will receive minutes from the May 22-24 meetings, review the Strategic Plan and LAR; consider practice issues, including petitions for Advanced Practice Waivers for graduates of Abilene Intercollegiate School of Nursing and Midwestern State University; consider education matters including a public hearing for the development of an ADN program for Lamar University at Port Arthur. The Board will take action on declaratory order requests for: Jeffrey Scott Pittman, Jordon Lee Tamas; ALJ's Proposal for Decision for: Elizabeth Ann Bateman, (Petitioner) Janet Rae Brown, (Applicant); Wendy Marie Coelho, #558490; Ann Elizabeth Langenheim-Delarosa, #56233; Agreed Orders for: Darlene Rebecca Angele, #550965; Judy Carol Borgerson, #546732; Jesusita Cavazos, #571348; Lynne M. Cenatiempo, #521657; Loyce Jeanette Crouse, #594202; Frances Jane Daley, #586490; Tammy Reddin Davis, #562292; Jacqueline Anna Echetebe, #615630; Bealita Linda Faulk, #609845; Paulette A. Diaz Garza, #512773; Jane Elizabeth Kiehle, #576856; Leslie Susan Legrand, #574949; Georgina Lozano, #436017; Maria A. Luna, #540854; Jacqueline Dianne McBride, #585845; Margaret Ann Morris, #255919; Natalie Dehesa Rago, #609889; Renelli Escorpizo Rodriguez, #596651; Vicki Marie Seifred, 3598695; Vinod Singaravelu, #608725; Elisia A. Oates White, #232902; Vanessa Marilee Wilson, #597560. The Board will hold a work session on July 26, 1996 to continue their work on Governance Policies.

Adjourn

Contact: Erlene Fisher, Box 140466, Austin, Texas 78714, (512) 305-6811.
 Filed: July 10, 1996, 12:00 p.m.
 TRD-9609757

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Texas Council on Offenders with Mental Impairments

Tuesday, July 23, 1996, 10:00 a.m.

TDCJ-ID Hospital Galveston Bldg., 701 Harborside Drive, Room 2B-26
 Galveston, Texas

AGENDA: Items discussed and action as necessary

- I. Call to Order
- II. Introductions
- III. Psychiatric Care Issues — Dr. Alan Felthouse (UTMB)

IV. Discussion of Statutory Provision/Recommendations

ADJOURNMENT

Contact: Dee Kifowit, 8610 Shoal Creek Blvd, Austin, 78757, (512) 406-5406.

Filed: July 8, 1996, 3:16 p.m.

TRD-9609788

◆ ◆ ◆
Texas Public Finance Authority

Wednesday, July 17, 1996, 10:30 a.m.

William P. Clements Building, 300 West 15th Street, Committee Room, 5th floor

Austin, Texas, 78701

Texas Public Finance Authority Board

AGENDA

1. Call to order
2. Approval of Minutes of the June 19, 1996 Board Meeting
3. Consider selection of a Certified Public Accountant for work on the Annual Financial Report.
4. Consider adoption of an amendment to a Resolution relating to the Texas Public Finance Authority Tax Exempt Commercial Paper Revenue Notes, Series B.
5. Consider approval of the Legislative Appropriation Request for 1998/1999.
6. Consider policy to establish performance and license requirements for firms serving as financial advisor and co-financial advisor, and consider the status of the current co-financial advisor contracts.
7. Consider policy to establish guidelines for underwriters and to receive information from J.M. Williams and George K. Baum.
8. Consider HUB utilization and reporting requirements.
9. Consider request of the Texas Department of Criminal Justice for additional funds in the amount of \$1,200,000 from excess interest earned on general obligation commercial paper notes.
10. Other business.
11. Adjourn

Persons with disabilities, who have special communication or other needs, who are planning to attend the meeting, should contact Jeanine Barron or Patricia Logan at 512/463-5544. Requests should be made as far in advance as possible.

Contact: Jeanine Barron, 300 W. 15th Street, suite 411, Austin, Texas 78701, (512) 463-5544.

Filed: July 9, 1996, 1:13 p.m.

TRD-9609833

◆ ◆ ◆
Rail Road Commission of Texas

Tuesday, July 16, 1996, 9:30 a.m.

1701 N. Congress Avenue, First Floor Conference room, 1-111,

Austin, Texas 78701

REVISED AGENDA:

The Commission will consider Gas Utilities Docket No. 8642; Statement of Intent Filed by Markham Gas Corporation to increase rates in the Environs of the City of Markham, Texas

Contact: Mary Ross McDonald, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711, (512) 463-7017.

Filed: July 8, 1996, 3:06 p.m.

TRD-9609785

◆ ◆ ◆
Tuesday, July 16, 1996, 9:30 a.m.

1701 N. Congress Avenue, First Floor Conference room, 1-111,

Austin, Texas 78701

REVISED AGENDA (ADD TO):

1. Consideration of a Motion for Rehearing in Oil & Gas Docket No. 02-0210799: the application of W.C. Miller Operating Company to dispose of oil & gas by injection into a porous formation not productive of oil or gas, on its W.B. Fowler Lease, Well No. 1R, Sandy Creek Field, Jackson County, Texas.
2. Discussion and action on recommendation to plug the Mood #1 in the Sinton West Field in San Patricio county with state funds.

Contact: Mary Ross McDonald, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711, (512) 463-7017.

Filed: July 8, 1996, 4:07 p.m.

TRD-9609792

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Texas State Soil & Water Conservation Board

Wednesday, July 17, 1996, 8:00 a.m.

311 N. 5th Street Hearing room

Temple, Texas

AGENDA:

Minutes from May 16 and June 7, 1996 Board Meetings; District Director Appointments; 1996 Fiscal Year Technical Assistance Grant Allocations; 1996 Fiscal Year Conservation Assistance Grant Allocations; 1997 Fiscal Year Operating budget; 1997 Fiscal Year Grant Allocations- Technical Assistance, Conservation Assistance; 1998-1999 Biennium Legislative Appropriate Request; Staffing Update; Senate Bill 503 Status Report; Section 319 Status Report; 1996 Fiscal Year Cost Share Allocations for Senate Bill 503; 1997 Fiscal Year Cost Share Allocations for Senate bill 503; Approved Practices for Senate Bill 503 Cost Share; North Bosque River Activity; Texas Coastal Management Program; Corpus Christi National Estuary Program; Galveston Bay Conference; U.S. Fish and Wildlife Service Safe Harbor Program; Reports from Agencies and Guests; Implementation of the 1996 Farm Bill; Conservation Awards Program; 1996 Annual statewide Meeting of Soil and Water conservation District Directors; Future State Meeting Sites; Sierra club vs Glickman; Information/Education Report; Board Member Travel; Risk Management Plan; Set Date for September State board

Meeting: Request from Upper Pecos Soil and Water Conservation District #213 to Restore 1995 Technical Assistance Allocated Funds; Request from Upper Pease Soil and Water Conservation District #164 to Waiver Matching Fund Program Rules.

Contact: Robert G. Buckely, P.O. Box 658, Temple, Texas 76503, (817) 773-2250.

Filed: July 9, 1996, 2:13 p.m.

TRD-9609842

◆ ◆ ◆
State Board of Examiners for Speech-Language Pathology and Audiology

Thursday, July 18, 1996, 1:00 p.m.

Wyndham Austin Hotel, Room 102, 4140 Governor's Row
Austin, Texas 78744

Audiology Scope of Practice Committee

AGENDA:

The Committee will meet to discuss the possibly act on: prepare draft procedures and/or rules on implementation of a program for early identification of hearing impaired infants and for hearing screening at 20 decibels; and proposed rules to 22 Texas Administrative Code, Chapter 29, Texas Department of Health, Purchased Health Services, to determine if a request for clarification of 42 Code of Federal Regulation, §440.110 concerning "under the direction of" is needed. This information will be presented to the full board on July 19, 1996.

Contact: Dorothy Cawthon, 1100 West 49th Street, Austin, Texas 78756 (512) 834-6627. To request ADA accommodation, please contact Charles Pankey, ADA Coordinator, at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Filed: July 9, 1996, 2:56 p.m.

TRD-9609865

◆ ◆ ◆
Thursday, July 18, 1996, 2:00 p.m.

Wyndham Austin Hotel, Room 102, 4140 Governor's Row
Austin, Texas 78744

speech-Language Pathology Scope of Practice Committee

AGENDA:

The Committee will meet to discuss the possibly act on: questions concerning therapy for dysphagia clients; response to licensees and Texas Education Agency concerning requirements to practice speech-language pathology in the public schools; and establish guidelines for caseload limits. This information will be presented to the full board on July 19, 1996.

Contact: Dorothy Cawthon, 1100 West 49th Street, Austin, Texas 78756 (512) 834-6627. To request ADA accommodation, please contact Charles Pankey, ADA Coordinator, at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Filed: July 9, 1996, 2:56 p.m.

TRD-9609866

Thursday, July 18, 1996, 3:00 p.m.

Wyndham Austin Hotel, Room 102, 4140 Governor's Row
Austin, Texas 78744

Ethics Committee

AGENDA:

The Committee will meet to discuss the possibly act on: review and revision of the Board's Code of Ethics, 22 Texas Administrative Code, §741.41, as it compares to the American Speech-Language-Hearing Association's code of ethics. This information will be presented to the full board on July 19, 1996.

Contact: Dorothy Cawthon, 1100 West 49th Street, Austin, Texas 78756 (512) 834-6627. To request ADA accommodation, please contact Charles Pankey, ADA Coordinator, at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Filed: July 9, 1996, 2:56 p.m.

TRD-9609867

◆ ◆ ◆
Thursday, July 18, 1996, 3:30 p.m.

Wyndham Austin Hotel, Room 102, 4140 Governor's Row
Austin, Texas 78744

Rules Changes Committee

AGENDA:

The Committee will meet to discuss the possibly act on: Code of Ethics; screening for hearing impaired infants and hearing screening at 20 decibels. This information will be presented to the full board on July 19, 1996.

Contact: Dorothy Cawthon, 1100 West 49th Street, Austin, Texas 78756 (512) 834-6627. To request ADA accommodation, please contact Charles Pankey, ADA Coordinator, at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Filed: July 9, 1996, 2:56 p.m.

TRD-9609868

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Texas Guaranteed Student Loan Corporation

Thursday, July 18, 1996, 11:00 a.m.

Renaissance Hotel, Canadian Room, 9721 Arboretum Blvd.

Austin, Texas, 78759

Budget/Finance/Audit Committee

AGENDA:

1. Call to Order
2. Approval for Minutes for January 18, 1996, Committee Meeting
3. Internal Auditor: — Internal Audit Planning Issues for FY97; Overview FY97 Risk Assessment; Review and Recommendation on TGSLC Amended Internal Audit Plan FY96 (Status Report); Internal Audit Planning Issues, FY 97
4. Review and Recommendation on Summary of Year To Date Budget Transfers

5. Summary of Updated Financial Model Information Reported on ED Form 704

6. Report on Year-To-Date Actual Versus Budget Revenues and Expenses with Year-End Projections

7. Report on Status of Planning and Budget Activities

8. Report on Facilities Space Issues

9. Report on Department of Education's Review, Findings, and Responses

10. Report on Status of Direct Lending Bid

11. Adjourn

Contact: Pat Boulton, 13809 North Hwy. 183, Austin, Texas, 78750, (512) 219-4550.

Filed: July 9, 1996, 2:25 p.m.

TRD-9609857



Thursday, July 18, 1996, 4:30 p.m.

Renaissance Hotel, Canadian Room, 9721 Arboretum Blvd.

Austin, Texas, 78759

Personnel Committee

AGENDA:

1. Call to Order

2. Approval for Minutes for January 25, 1996, Meeting

3. Review and Recommendation on Incentive Plan for Managers, Team Leaders and Team Members

4. Adjourn to Executive Session: Review and Recommendation on CEO Salary Surveys

5. Resume Open Session

6. Action on CEO Salary Survey

7. Adjourn

Contact: Pat Boulton, 13809 North Hwy. 183, Austin, Texas, 78750 (512) 219-4550.

Filed: July 9, 1996, 2:25 p.m.

TRD-9609858



Thursday, July 18, 1996, 7:00 p.m.

Renaissance Hotel, Canadian Room, 9721 Arboretum Blvd.

Austin, Texas, 78759

Board of Directors

AGENDA:

1. Call to Order

2. Presentation and Discussion of System 97

3. Adjourn

Contact: Pat Boulton, 13809 North Hwy. 183, Austin, Texas, 78750, (512) 219-4550.

Filed: July 9, 1996, 2:25 p.m.

TRD-9609859



Friday, July 19, 1996, 9:00 a.m.

13809 North Hwy. 183, Suite 301

Austin, Texas

Board of Directors

AGENDA:

1. Call to Order

2. Approval of Minutes for April 11, 1996 Meeting

3. Report from Budget/Audit/Finance Committee

4. Review and Action on Amended Internal Audit Plan FY96

5. Review and Action on Summary of Year-To-Date Budget Transfers

6. Action on President's Recommendation Concerning Award of Collection Agency Contract(s)

7. Report from Personnel Committee

8. Review and Action on Incentive Plan for Managers, Team Leaders and Team Members

9. President's Report: Reauthorization; Guarantor Initiatives; Discussion of Possible Proposal to Department of Education Regarding Guarantor Incentive Funding Focusing on Prevention of Defaults; Report on Planning; Review and Action on System 97.

10. Adjourn to Executive Session: Review of CEO Salary Survey; Discussion of Board Appointments to Education Assistance Services, Inc. (EASI); Consultation with Attorney on Litigation Issues

11. Resume Open Session

12. Action on CEO Salary Survey

13. Action on Board Appointments to EASI

14. Adjourn

Contact: Pat Boulton, 13809 North Hwy. 183, Austin, Texas, 78750, (512) 219-4550.

Filed: July 9, 1996, 2:25 p.m.

TRD-9609860



Friday, July 19, 1996, 9:00 a.m.

13809 North Hwy. 183, Suite 301

Austin, Texas

Board of Directors

REVISED AGENDA:

1. Call to Order

2. Approval of Minutes for April 11, 1996 Meeting

3. Report from Budget/Audit/Finance Committee

4. Review and Action on Amended Internal Audit Plan FY96

5. Review and Action on Summary of Year-To-Date Budget Transfers
6. Action on President's Recommendation Concerning Award of Collection Agency Contract(s)
7. Report from Personnel Committee
8. Review and Action on Incentive Plan for Managers, Team Leaders and Team Members
9. President's Report: Reauthorization; Guarantor Initiatives; Discussion of Possible Proposal to Department of Education Regarding Guarantor Incentive Funding Focusing on Prevention of Defaults; Report on Planning; Review and Action on System 97.
10. Adjourn to Executive Session: Review of CEO Salary Survey; Discussion of Board Appointments to Education Assistance Services, Inc. (EASI); Consultation with Attorney on Litigation Issues; Review of Facility Space Issues
11. Resume Open Session
12. Action on CEO Salary Survey
13. Action on Board Appointments to EASI
14. Action on Facility Space Issues
15. Adjourn

Contact: Pat Boulton, 13809 North Hwy. 183, Austin, Texas, 78750, (512) 219-4550.

Filed: July 10, 1996, 4:38 p.m.

TRD-9609957

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Texas State Technical College System

Friday, July 12, 1996, 10:00 a.m.

Systems Office building, No. 32-01, Conference/Board Room, 3801 Campus Drive

Waco, Texas 76705

Executive Committee Board of Regents

SUMMARY OF AGENDA:

Agenda Attached.

Contact: Murray Watson, Jr. 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915

Filed: July 9, 1996, 10:36 a.m.

TRD-9609808

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Texas Tech University & Texas Tech University Health Sciences Center

Friday, July 12, 1996, 10:15 a.m.

Board of Regent's Suite, Administration Building, Campus

Lubbock, Texas, 79409

Executive Session

AGENDA:

TELEPHONE CONFERENCE CALL MEETING

V.T.C.A. Government Code 551.074--To consider the employment of an individual to the position of Chief Executive Officer of Texas Tech University and Texas Tech University Health Sciences Center.

V.T.C.A. Government Code 551.075-- To receive information from University employees.

Note: It is necessary to meet immediately in order the review and evaluate the candidates for the Chief Executive Officer of Texas Tech University and Texas Tech University Health Sciences Center and it was impossible to convene a quorum of the Board members at one location. Therefore, in order to properly exercise its duty of governance of the Universities, a meeting by conference call was initiated.

Contact: Donna Davidson Kittrell, box 42011, Lubbock, Texas 79409
Filed: July 9, 1996, 10:35 a.m.

TRD-9609807

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University of Houston

Monday, July 15, 1996, 2:00 p.m.

SRII Bldg. Room 201, University of Houston, 4800 Calhoun Blvd.

Houston, Texas 77204

Institutional Animal Care and Use Committee

AGENDA:

To discuss and/or act on the following: Approval of May Minutes, Renewal Protocol, Review of Program of Animal Care and Use and Facility Inspection

Contact: Rosemary Grimmet, 4800 Grimmet, 4800 Calhoun Blvd., Houston, Texas 77204, (713) 743-9222

Filed: July 9, 1996, 11:46 a.m., 1:15 p.m.

TRD-9609770, 9609776 (filed twice)

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Utilization Review Advisory Committee

Tuesday, July 16, 1996, 10:00 a.m.

Texas Department of Insurance, 333 Guadalupe, Tower I, Room 1264

Austin, Texas 78701

AGENDA:

1. Call to Order
2. Brief review of Changes discussed at the June 24 meeting
3. Continuation of review of proposed changes
4. Adjourn

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code, #113-2A, Austin, Texas 78701, (512) 463-6328

Filed: July 8, 1996, 5:00 p.m.

TRD-969797

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Texas Water Development Board

Wednesday, July 17, 1996, 3:00 p.m.

Stephen F. Austin Building, Room 513F, 1700 No. Congress Avenue
Austin, Texas 78701

Finance Committee

AGENDA:

1. Consider approval of the minutes of the meeting of June 19, 1996.
2. Consider a grant/loan to the North Alamo Water Supply Corporation (Hidalgo County) for the design and construction of water system improvements (Economically Distressed Areas Program and Water Supply Account of the Water Development Fund).
3. Approve a grant/loan to the City of Primera (Cameron County) for the design and construction of wastewater system improvements (Economically Distressed Areas Program).
4. Briefing and discussion on the status of I/A Technology projects including contingency fund requirements for the replacement of I/A Technology systems with conventional facilities.
5. Briefing and discussion on Colonia Wastewater Treatment Assistance Program- State match requirements.
6. Briefing on present and future EDAP projects.
7. Report on the status of approved contracts.
8. May consider items on the agenda of the July 18, 1996 Board or TWRFA meetings.

*Additional non-committee Board members may be present to deliberate but will not vote in the Committee meeting.

Contact: Craig D. Pedersen, Executive Administrator, TWDB, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.
Filed July 9, 1996, 3:53 p.m.:

TRD-9609876

Wednesday, July 17, 1996, 4:00 p.m.

Stephen F. Austin Building, Room 513F, 1700 No. Congress Avenue
Austin, Texas 78701

Finance Committee

AGENDA:

1. Consider approval of the minutes of the meeting of May 15, 1996.
2. Consider approval of the audit plan for Fiscal Year 1997.
3. Briefing and discussion on current audit activities of the Internal Auditor.
4. Briefing and discussion on external audit activities of the Development Fund Audit Section.
5. May discuss items on the agenda of the July 18, 1996 Board or TWRFA meetings.

*Additional non-committee Board members may be present to deliberate but will not vote in the Committee meeting.

Contact: Craig D. Pedersen, Executive Administrator, TWDB, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.
Filed July 9, 1996, 3:53 p.m.:

TRD-9609877

Texas Water Resources Finance Authority

Thursday, July 18, 1996, 9:00 a.m.

Stephen F. Austin Building, Room 118, 1700 North Congress
Austin, Texas 78701

AGENDA:

1. Consider approval of the minutes of the meetings of June 19, 1996.
2. Consider authorizing the Development Fund Manager to transfer \$4,460,606 from the Texas Water Resources Finance Authority (TWRFA) to the Economically Distressed Areas Account, Interest and Sinking Fund, (Fund #357) of the Water Development Fund to pay debt service required on Economically Distressed Areas bonds in compliance with provisions of the Appropriations Act.
3. Approve the payment of expenses to be incurred for fiscal Years 1997, 1998 and 1999.

Contact: Craig D. Pedersen, Executive Administrator, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

Filed: July 11, 1996, 2:29 p.m.

TRD-9609952

Texas Workforce Commission

Tuesday, July 16, 1996, 9:00 a.m.

Room 644, TEC Building, 101 East 15th Street, Austin, Texas 78778
Austin, Texas

SUMMARY OF AGENDA:

Prior meeting notes: Staff reports; Discussion, consideration and possible action with regard to submitted applications for certification of various local Workforce development boards; Consideration and action on whether to assume continuing jurisdiction on unemployment compensation cases; Consideration and action on tax liability cases listed on Texas Workforce commission Docket 29; Executive session to consult with counsel regarding Joyce Elam vs. TEC and Walt Baker, Actions, if any, resulting from Executive session; Consideration and action on higher level appeals in unemployment compensation cases listed on Texas Workforce Commission Dockets 28 and 29; and Set date and discuss agenda for next meeting.

Contact: Esther Hajdar, Director of Legal Services, Texas Workforce Commission, 101 East 15th Street, Austin, Texas 78778, (512) 463-7833.

Filed: July 8, 1996, 4:09 p.m.

TRD-9609793

Regional Meetings

Date Filed: July 8, 1996

Angelina & Neches River Authority, ANRA Board of Directors, met at Temple-Inland North Boggy Slough Hunting Lodge, Highway 7,

July 12, 1996, at 3:00 p.m. Information may be obtained from Gary L. Neighbors, General Manager, P.O. Box 387, Lufkin, Texas, 75901, (409) 632-7795. TRD 9609783.

Harris County Appraisal District, Appraisal Review Board, met at 2800 North Loop West, 8th Floor, Houston, on July 12, 1996, at 8:00 a.m. Information may be obtained from Susan Jordan, 2800 North Loop West, Houston, Texas, 77092, (713) 957-5222. TRD 9609771.

Houston-Galveston Area Council Board of Directors will meet at 3555 Timmons Lane, Conference Room A, Houston, on July 16, 1996, at 10:00 a.m. Information may be obtained from Mary Ward, P.O. Box 22777, Houston, Texas, 77227, (713) 627-3200. TRD 9609791.

Central Appraisal District of Johnson County, Board of Directors, will meet at 109 N. Main Street, Suite 201, Room 202, Cleburne, on July 18, 1996, at 4:30 p.m. Information may be obtained from Don Gilmore, 109 N. Main Street, Cleburne, Texas 76031, (817) 558-8100. TRD 9609796.

Kempner Water Supply Corporation, Membership Committee, met at Hwy 190, Kempner Water Supply Corp. Kempner, July 11, 1996 at 6:30 p.m. Information may be obtained from Donald W. Guthrie, P.O. Box 103, Kempner, Texas, (512) 932-3701. TRD 9609777.

Mills County Appraisal District, Board of Directors, will meet at the Mills County Courthouse Jury Room on Pisher Street, Goldthwaite, on July 16, 1996, at 6:30 p.m. Information may be obtained from Bill Presley, P.O. Box 565, Goldthwaite, Texas 76844, (915) 648-2253. TRD 9609782.

Central Appraisal District of Nolan County, Board of Directors, met at the Nolan County Courthouse, Third Floor, Sweetwater, on July 9, 1996, at 7:30 a.m. Information may be obtained from Patricia Davis, Chief Appraiser, P.O. Box 1256, Sweetwater, Texas 79556, (915) 235-8421. TRD 9609780.

North Texas Regional Library System, Board of Directors, will meet at 1111 Foch Street, Fort Worth, on July 25, 1996, at 1:30 p.m. Information may be obtained from Cynthia Brown, 1111 Foch Street, Suite 100, Fort Worth, Texas 76107, (817) 335-6076. TRD 9609786.

North Texas Regional Library System, Board of Directors (Search), will meet at 1111 Foch Street, Fort Worth, on July 25, 1996, at 2:30 p.m. Information may be obtained from Cynthia Brown, 1111 Foch Street, Suite 100, Fort Worth, Texas 76107, (817) 335-6076. TRD 9609787.

Red River Authority of Texas, Board of Directors, will meet at Four Points Sheraton, 100 Central Freeway, Wichita Falls, July 17, 1996, at 9:00 a.m. Information may be obtained from Ronald J. Glenn, 520 Hamilton Building, 900 Eighth Street, Wichita Falls, Texas 76301-6894, (817) 723-0855. TRD 9609766.

Rusk County Appraisal District, Appraisal Review Board, met at 107 N. Van Buren, Henderson, July 15, 1996, and will meet July 17, 1996, at 8:45 a.m. Information may be obtained from Melvin R. Cooper, P.O. Box 7, Henderson, Texas 75653-0007, (903) 657-3578. TRD 9609778.

Rusk County Appraisal District, Appraisal Review Board, will meet at 107 N. Van Buren, Henderson, July 18, 1996, at 8:45 a.m. Information may be obtained from Melvin R. Cooper, P.O. Box 7, Henderson, Texas 75653-0007, (903) 657-3578. TRD 9609779.

Swisher County Appraisal District, Appraisal Review Board, will meet at 130 N. Armstrong, Tulia, on July 12, 1996, at 8:30 a.m. Information may be obtained from Rose Lee Powell, P.O. Box 8, Tulia, Texas 79088, (806) 995-4118. TRD 9609769

Texas Public Worker's Compensation Program, Board of Directors, will meet at 208 Barton Springs Road, Austin, July 15, 1996, at 11:00 a.m. Information may be obtained from Russ Edwards, 1205 Lakeshore Drive, Marble Falls, Texas 78654, (210) 693-2508. TRD 9609781.

Date Filed: July 9, 1996

Angelina & Neches River Authority, ANRA Board of Directors, met at Temple-Inland North Boggy Slough Hunting Lodge, Highway 7, July 12, 1996, at 8:30 a.m. Information may be obtained from Gary L. Neighbors, General Manager, P.O. Box 387, Lufkin, Texas, 75901, (409) 632-7795. TRD 9609804.

Bexar Appraisal District, Board of Directors, will meet at 535 South Main Street, San Antonio, on July 15, 1996, at 5:00 p.m. Information may be obtained from Beverly Houston, P.O. Box 830248, San Antonio, Texas 78283-0248, (210) 224-8511. TRD 9609886.

Blanco County Appraisal District, Board of Directors, met at 200 N. Avenue G, Johnson City, July 8, 1996, at noon. Information may be obtained from Hollis Boatright, Chief Appraiser, P.O. Box 338, Johnson City, Texas 78636, (210) 858-4013. Revised Agenda — TRD 9609818.

Coryell County Appraisal District, Appraisal Review Board, will meet at 107 North 7th Street, Gatesville, July 16, 1996, at 9:30 a.m. Information may be obtained from Darrell Lisenbe, P.O. Box 142, Gatesville, Texas 76528, (817) 865-6593. TRD 9609819.

Coryell County Appraisal District, Board of Directors, will meet at 107 North 7th Street, Gatesville, July 16, 1996 at 5:30 p.m. Information may be obtained from Darrell Lisenbe, P.O. Box 142, Gatesville, Texas 76528, (817) 865-6593. TRD 9609883.

Coryell County Appraisal District, Directors, will meet at 107 North 7th Street, Gatesville, July 16, 1996 at 5:30 p.m. Information may be obtained from Darrel Lisenbe, P.O. Box 142, Gatesville, Texas 76528, (817) 865-6593. TRD 9609864.

Central Counties Center for MHMR Services, Board of Trustees, will meet at 304 South 22nd Street, Temple, July 18, 1996 at 6:30 p.m. Information may be obtained Eldon Tietje, Executive Director, 304 South 22nd Street, Temple, Texas 76501, (817) 778-4841, est. 301. TRD 9609863.

Edwards Aquifer Authority Committee will meet at 1615 N. St. Marys Street, San Antonio, on July 13, 1996, at 8:00 a.m. Information may be obtained from Sally Tamez-Salas, 1615 N. St. Marys Street, San Antonio, Texas 78212, (210) 222-2204. TRD 9609880.

Edwards Aquifer Authority Committee will meet at 1615 N. St. Marys Street, San Antonio, on July 13, 1996, at 8:30 a.m. Information may be obtained from Sally Tamez-Salas, 1615 N. St. Marys Street, San Antonio, Texas 78212, (210) 222-2204. TRD 9609881.

Edwards Aquifer Authority Committee will meet at 1615 N. St. Marys Street, San Antonio, on July 13, 1996, at 9:00 a.m. Information may be obtained from Sally Tamez-Salas, 1615 N. St. Marys Street, San Antonio, Texas 78212, (210) 222-2204. TRD 9609879.

Edwards Aquifer Authority Committee will meet at 1615 N. St. Marys Street, San Antonio, on July 13, 1996, at 10:00 a.m. Information may be obtained from Sally Tamez-Salas, 1615 N. St. Marys Street, San Antonio, Texas 78212, (210) 222-2204. TRD 9609882.

Edwards Aquifer Authority Committee will meet at 1615 N. St. Marys Street, San Antonio, on July 13, 1996, at 10:00 a.m. Information may be obtained from Sally Tamez-Salas, 1615 N. St. Marys Street, San Antonio, Texas 78212, (210) 222-2204. REVISED AGENDA — ITEM I. TRD 9609896.

Edwards Aquifer Authority Committee will meet at 1615 N. St. Marys Street, San Antonio, on July 13, 1996, at 6:00 p.m. Information may be obtained from Sally Tamez-Salas, 1615 N. St. Marys Street, San Antonio, Texas 78212, (210) 222-2204. TRD 9609878.

Gray County Appraisal District, Appraisal Review Board, met at 815 N. Sumner, Pampa, July 15, 1996, and will meet July 16, 1996, at 9:00 a.m. Information may be obtained from Sherri Schaible, P.O. Box 836, Pampa, Texas 79066-0836, (806) 665-0791. TRD 9609871.

Henderson County Appraisal District, Board of Directors, will meet at 1751 Enterprise Street, Athens, on July 16, 1996, at 5:00 p.m. Information may be obtained from Lori Fetterman, 1751 Enterprise, Athens, Texas 75751, (903) 675-9296. TRD 9609836.

Henderson County Appraisal District, Board of Directors, will meet at 1751 Enterprise Street, Athens, on July 16, 1996, at 5:30 p.m. Information may be obtained from Lori Fetterman, 1751 Enterprise, Athens, Texas 75751, (903) 675-9296. TRD 9609837.

Houston-Galveston Area Council, Public Hearing, will meet at 910 South Friendswood Drive, City Hall, Council Chambers, Friendswood, on July 31, 1996, at 7:00 p.m. Information may be obtained from Melanie Goldstone, H-GAC, 3555 Timmons Lane, Houston, Texas 77027, (713) 627-3200. TRD 9609856.

Houston-Galveston Area Council, Public Hearing, will meet at 910 South Friendswood Drive, City Hall, Council Chambers, Friendswood, on August 6, 1996, at 7:00 p.m. Information may be obtained from Melanie Goldstone, H-GAC, 3555 Timmons Lane, Houston, Texas 77027, (713) 627-3200. TRD 9609843.

Appraisal District of Jones County, Appraisal Review Board, will meet at 1137 East Court Plaza, Anson, on July 15, 1996, at 9:30 a.m. Information may be obtained from Susan Holloway, P.O. Box 348, Anson, Texas 79501, 915-923-2422. TRD 9609820.

Appraisal District of Jones County, Appraisal Review Board, will meet at 1137 East Court Plaza, Anson, on July 16, 1996, at 8:00 a.m. Information may be obtained from Susan Holloway, P.O. Box 348, Anson, Texas 79501, 915-923-2422. TRD 9609821.

Appraisal District of Jones County, Board of Directors, will meet at 1137 East Court Plaza, Anson, on July 18, 1996, at 8:30 a.m. Information may be obtained from Susan Holloway, P.O. Box 348, Anson, Texas 79501, 915-923-2422. TRD 9609822.

Limestone County Appraisal District, Board of Directors, will meet at 200 W. State Street, LCAD Office, Ground Floor, County Courthouse, Groesbeck, on July 16, 1996, at 1:30 p.m. Information may

be obtained from Karen Wietzikoski, P.O. Drawer 831, Groesbeck, Texas 76642, (817) 729-3009. TRD 9609810.

Rio Grande Council of Governments, Board of Directors, will meet at Rio Grande Council of Governments, 1100 N. Stanton, 4th Floor, El Paso, on July 19, 1996, at 1:00 p.m. (MST). Information may be obtained from Lidia Flynn, Executive Secretary, RGCG, 1100 N. Stanton, Suite 610, El Paso, Texas 79902 (915) 533-0998. TRD 960825.

Date Filed: July 10, 1996

Dallas Housing Authority, Board of Commissioners, met at the Dale V. Kesler Board Room of the Authority, 3939 N. Hampton Road, Dallas, July 10, 1996 in an emergency meeting at 10:00 a.m. Information may be obtained from Mattye G. Jones, General Counsel, 3939 N. Hampton Road, Dallas, Texas 75212, (214) 951-8305. TRD 9609901.

Dewitt County Appraisal District, Appraisal Review Board, will meet at 103 Bailey Street, Cuero, on July 18, 1996, at 9:00 a.m. Information may be obtained from Kay Rath, Admin. Asst., P.O. Box 4, Cuero, Texas 77954, (512) 275-5753. TRD 9609897.

Hood County Appraisal District, Appraisal Review Board, will meet at 1902 West Pearl Street, District Office, Granbury, on July 16, 1996, July 17, 1996, and July 18, 1996, at 8:20 a.m. Information may be obtained from Harold Chesnut, P.O. Box 819, Granbury, Texas 76048, (817) 573-2471. TRD 9609823.

Hood County Appraisal District, Board of Directors, will meet at 1902 West Pearl Street, District Office, Granbury, on July 16, 1996, at 7:30 p.m. Information may be obtained from Harold Chesnut, Chief Appraiser, P.O. Box 819, Granbury, Texas 76048, (817) 573-2471. TRD 9509824.

Lampasas County Appraisal District, Appraisal Review Board, will meet at 109 East fifth Street, Lampasas, on July 17, 1996, at 8:45 a.m. Information may be obtained from Katrina Perry, Chief Appraiser, P.O. Box 175, Lampasas, Texas 76550, (512) 556-8058. TRD 9609911.

Lampasas County Appraisal District, Appraisal Review Board, will meet at 109 East fifth Street, Lampasas, on July 18, at 7:00 p.m. Information may be obtained from Katrina Perry, Chief Appraiser, P.O. Box 175, Lampasas, Texas 76550, (512) 556-8058. TRD 9609912.

Mason County Appraisal District, Appraisal Review Board, will meet at 210 Westmoreland, Mason, on July 16, 1996, at 9:00 a.m. Information may be obtained from Deborah Geistweidt, P.O. Box 1119, Mason, Texas 76856, (915) 347-5989. TRD 9609902.

South East Texas Regional Planning Commission, Executive Committee, will meet at 801 Main, City Council Chambers, Beaumont, on July 17, 1996, at 7:00 p.m. Information may be obtained from Jackie Vice Solis, P.O. Drawer 1387, Nederland, Texas 77627, (409) 727-2384. TRD 9609904.

Tarrant Appraisal District, Board of Directors, will meet at 2301 Gravel Road, Fort Worth, on July 19, 1996 at 9:00 a.m. Information may be obtained from Mary McCoy, 2315 Gravel Road, Fort Worth, Texas, 76118, (817) 595-6198. TRD 9609914.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Department of Agriculture

Notice of Public Hearings

The Texas Department of Agriculture will hold public hearings to take public comment regarding the department's proposed regulation changes governing the quarantines, rose grading, and seed quality programs, as published in the July 12 and 16, 1996, issues of the *Texas Register*. The hearings are being rescheduled from their original date of July 12, 1996.

The hearings will be Tuesday, July 23, 1996, at the Texas Department of Agriculture, Stephen F. Austin building, 1700 North Congress Avenue, Suite 911, Austin, Texas. Hearings will begin at the following times: 9:00 a.m. Citrus Quarantine 9:15 a.m. Burrowing Nematode Quarantine 9:30 a.m. Camellia Flower Blight Quarantine 9:45 a.m. Caribbean Fruit Fly Quarantine 10:00 a.m. Lethal Yellowing Quarantine 10:15 a.m. Gypsy Moth Quarantine 10:30 a.m. Pecan Pest Quarantine 10:45 a.m. Sweet Potato Weevil Quarantine 11:00 a.m. Karnal Bunt Quarantine 11:15 a.m. Rose Grading 11:30 a.m. Seed Law

For more information, please contact David Kostroun, Coordinator for Plant Quality Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78701, (512) 463-0012.

Issued in Austin, Texas, on July 10, 1996.

TRD-9609906

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Filed: July 10, 1996

Coastal Coordination Council

Correction of Error

The Coastal Coordination Council adopted an amendment to §506.28. The rule appeared in the March 26, 1996, issue of the *Texas Register* (21 TexReg 2472).

An error occurred in the submission of §506.28. Subsection (c) was not submitted with the adoption and was not published, it should be as follows.

"(c) Disposal or placement of dredged material in existing dredge disposal sites identified and actively used as described in an environmental assessment or environmental impact statement issued prior to the effective date of this chapter shall be presumed consistent with §501.14(j)(1) of this title (relating to Policies for Specific Activities and Coastal Natural Resource Areas), unless such existing disposal or placement is modified in design, size, use, or function, provided that the material is generated by maintenance dredging of commercially navigable waterways for which a federal development project undergoes evaluation pursuant to the interagency coordination group process under subsection (b) of this section and such process was initiated prior to the adoption of this chapter, and provided further, if the interagency coordination group approves the project that requires disposal or placement in confined sites and/or beneficial use of the dredged material from those waterways and results in cessation of open water disposal of dredged material and such project is authorized in a final supplemental environmental impact statement."

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Title 79, Texas Civil Statutes, Articles 1.04, as amended (Texas Civil Statutes, Articles 5069-1.04).

<u>Types of Rate Ceilings</u>	<u>Effective Period (Dates are Inclusive)</u>	<u>Consumer (1)/Agricultural/ Commercial (2) thru \$250,000</u>	<u>Commercial(2) over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	07/15/96-07/21/96	18.00%	18.00%

(1)Credit for personal, family or household use. (2)Credit for business, commercial, investment or other similar purpose.

Issued in Austin, Texas, on July 8, 1996.

TRD-9609905
Leslie L. Pettijohn
Acting Commissioner
Office of Consumer Credit Commissioner
Filed: July 10, 1996



Office of the Governor

Posting of Public Hearing-Governor's Committee to Promote Adoption

The Governor's Committee to Promote Adoption will hold a public hearing on Wednesday, July 17, 1996, from 2:30 p.m. to 7:00 p.m., in Room E.103 the Senate Finance Hearing Room at the Capitol Building. Notice is hereby given that due to time constraints the length of public testimonies are limited. Comments may be addressed to Beverly Jimmerson, Governor's Policy Office, 4th Floor, State Insurance Building, 1100 San Jacinto, Austin, Texas 78701: (512) 463-8470.

PERSONS WITH DISABILITIES WHO PLAN TO ATTEND THIS MEETING AND WHO MAY NEED AUXILIARY AIDS OR SERVICES SUCH AS INTERPRETERS FOR PERSONS WHO ARE DEAF OR HEARING IMPAIRED, READERS, LARGE PRINT, OR BRAILLE, ARE REQUESTED TO CONTACT LINDA FARIAS (512) 463-8470, FOUR WORKING DAYS PRIOR TO THE MEETING SO THAT APPROPRIATE ARRANGEMENTS CAN BE MADE.

The Agenda is as follows:

1. Call to Order
2. Introduction
3. Opening Remarks
4. Public Testimony
5. Closing Remarks

Issued in Austin, Texas, on July 9, 1996.

TRD-9609839
Pete Wassdorf
Deputy General Counsel
Office of the Governor
Filed: July 8, 1996

Texas Department of Health

Correction of Errors

The Texas Department of Health proposed amendments to §§229.341-229.343, 229.345-229.352, and 229.354-229.357. The rules appeared in the February 13, 1996, issue of the *Texas Register* (21 TexReg 1030).

Due to submission error the following editorial errors need to be corrected.

Concerning §229.354(a)(1)(C), delete the word "and" at the end of the sentence.

Concerning §229.354(a)(1)(D), change romanette "(iv)" to roman numeral "(V)", and delete the word "and" at the end of the sentence.

The Texas Department of Health adopted amendments to §§143.1-143.9, 143.11, and 143.13. The rules appeared in the June 18, 1996, issue of the *Texas Register* (21 TexReg 5556).

Concerning §143.5(d)(1), page 5572, second column, insert the acronym and comma, "(NCT)," after non-certified technicians, and delete "non-certified technicians" and insert the acronym "NCT" in §143.5(d)(2).

Concerning §143.11(b)(8), page 5573, second column, insert the word "certificate" between the words "limited" and "provided" in the first sentence.

Concerning §143.17(k), page 5580, second column, change the word "years" to "year".

The effective date is June 28, 1996, as submitted instead of July 8, 1996, as published.

Texas Department of Health

Notice of Request for Proposals (RFP) for Grant Reviewer Services

PROJECT DEFINITION

The Texas Department of Health (TDH), HIV/STD Health Resources Division, wishes to contract with qualified individuals to perform review of and provide funding recommendations regarding competitive HIV Prevention applications for Calendar Year 1997 activities.

PROJECT OBJECTIVES

The objectives of this review process are to:

review and score all grant applications assigned by the project staff during the time allowed;

provide recommendations to the TDH regarding funding of grant applications.

SCOPE OF SERVICES

The reviewers will serve as a resource to the TDH to review, score, rank, and provide funding recommendations for all 1997 HIV Prevention grant applications accepted for review. The reviewers will attend reviewer training, review 30 or more applications, and will work with TDH employees to finalize award recommendations during September 16-20, 1996, at a location to be determined in Austin, Texas. Reviewers will also participate in an evaluation of the process.

ASSURANCES

In order to avoid conflict of interest, applicants may not be state employees; may not currently be employed by a TDH HIV contractor; and may not work for a contractor who is submitting an application for 1996 HIV Targeted Prevention Activities. The applicant must agree to ensure confidentiality of all reviewer decisions and comments. The applicant must sign assurances that no prejudice or conflict of interest exists which would prevent the person from making a fair judgment in the review of HIV Prevention grant applications in Texas, and must agree to disqualify him/herself if a conflict of interest arises during the review process. The applicant must be available for the entire period of September 16-20, 1996, inclusive, at Austin, Texas.

QUALIFICATIONS OF APPLICANTS

Minimum qualifications are as follows:

Bachelor's degree from an accredited college or university in public administration, health or behavioral science, or a related field, or will have equivalent experience in one of those fields. One year of experience is equivalent to one year of college.

Knowledge of organizational, operational, and programmatic concepts and practices applied by public, private, or non-profit agencies engaged in public health or other related activities.

Knowledge of the methods, processes, and techniques used to plan, develop, implement, and evaluate public health or public health-related programs in state and local settings.

Knowledge of developing, writing, and/or reviewing grants application, or proposals for funding assistance.

Knowledge of HIV/STD prevention programs.

PAYMENT FOR SERVICES

Each person selected will be paid a fee of \$250 per day, plus travel expenses. Travel expenses will be reimbursed at rates set by State of Texas travel regulations.

DEADLINE

The original and two copies of the application must be received by the Manager, Grants and Contracts Branch, HIV/STD Health Resources Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, on or before 5:00 p.m., August 15, 1996.

REVIEW AND AWARD CRITERIA

Each application will be evaluated by a panel of reviewers using a standardized scoring instrument. Applicants will be selected based on quality and range of experience demonstrated. Applications which arrive after the deadline for submission will not be reviewed.

FOR INFORMATION

For a copy of the Request for Proposal (RFP), contact Ms. Laura Ramos, HIV/STD Health Resources Division, at (Telephone (512) 490-2525). No copies of the RFP will be released prior to July 15, 1996.

Issued in Austin, Texas, on July 9, 1996.

9609884

Susan K. Steeg

General Counsel

Texas Department of Health

Filed: July 9, 1996

Texas Department of Housing and Community Affairs

HOME Investment Partnerships Program Public Notice

HOME Rental Project Assistance Combined with Low-Income Housing Tax Credits

The State of Texas HOME Program, administered by the Texas Department of Housing and Community Affairs, has reserved approximately \$3 million in FY 1996 HOME funds as an additional source of financing for rental housing developers requesting FY 1996 low-income housing tax credits.

The HOME Program is presently seeking Board approval on its proposed policies and procedures for the use and distribution of HOME funds when combined with tax credits. The highlights of this document include:

Eligible Applicants: nonprofit organizations, community housing development organizations, units of general local government, for-profit entities and/or sole proprietors, and public housing agencies.

Maximum Application Amount: \$1 million.

Maximum HOME Per-Unit Subsidy Amount: the lesser of 30% of total unit cost or \$15,000. The Department reserves the right to reduce the subsidy amount after underwriting analysis and review of subsidy layering.

Eligible Activities: acquisition, new construction, reconstruction or rehabilitation of non-luxury housing with suitable amenities, including real property acquisition, site improvements, conversion, and demolition.

Income Targeting: Rental housing assisted with HOME funds must be occupied by low- (annual incomes not exceeding 80% AMFI) and very-low (annual incomes not exceeding 50% AMFI) income households.

HOME Program Rule: At least 90% of HOME-assisted rental units must be occupied by households whose annual incomes do not exceed 60% AMFI. The remaining HOME-assisted rental units must be occupied by households whose annual incomes do not exceed 80% AMFI.

HOME Project Rule: In the case of projects with 3 or more rental units, or in the case of an owner of multiple one or two unit projects with a total of three or more rental units, not less than 20% of the HOME-assisted units in a project must be occupied by very-low income families (annual incomes not exceeding 50% AMFI).

Rent Limits: HOME-assisted units have two HOME rents, with the exception of one and two unit rental projects: "High HOME Rents" and "Low HOME Rents." In one- or two-unit rental projects, the maximum rent will be the High HOME Rent.

Low HOME Rents are the maximum rents that can be applied to at least 20% of the HOME-assisted units in a rental project of three or more HOME-assisted units. Low HOME Rents are the lesser of the Section 8 Fair Market Rents or HUD's 50% Rent limits, minus a monthly allowance for utilities paid by the tenant. These units must be occupied by households with incomes at or below 50% of the area median income.

High HOME Rents are the maximum rents that may be charged for the remaining HOME-assisted units. High HOME Rents are the lesser of the Section 8 Fair Market Rents or HUD's 65% Rent limits, minus a monthly allowance for utilities paid by the tenant.

Affordability Period: HOME-assisted units, at a minimum, must remain affordable for the period determined by 24 CFR 92.252(a)(5), or a longer affordability period designated by the applicant in the HOME application, or as otherwise determined by the Department and specified in a Land Use Restriction Agreement.

Terms of HOME Loan: 3% interest rate, 30 year term.

Priority for Funding: priority will be given to multi-family projects in HOME Program non-participating jurisdictions with populations not exceeding 40,000.

Upon approval of the policies and procedures (anticipated date-July 26, 1996), the HOME Program will publish a Notice of Funds Availability (NOFA) in Texas Register and make available a HOME Application requesting information pertaining to the HOME Program and other information not requested in the Low-Income Housing Tax Credit Program Application. Requests for HOME Applications may be made by calling (512) 475-3109 or by written request. The HOME Application submission deadline will be the same deadline established by Low-Income Housing Tax Credit Program for its 1996 tax credit allocation.

If you have any questions, please contact Mike Harms, Regional Monitor Supervisor, at (512) 475-1767 or Robert Chavira, Planning and Operations Supervisor, at (512) 475-3969.

Issued in Austin, Texas, on July 10, 1996.

TRD-9609909

Larry Paul Manley
Executive Director

Texas Department of Housing and Community Affairs
Filed: July 10, 1996

Texas Department of Insurance

Correction of Errors

The Texas Department of Insurance proposed new §§3.11001-3.11005. The rules appeared in the July 5, 1996, issue of the *Texas Register* (21 TexReg 6201).

The title was incorrectly published as "Title 30. Environmental Quality" instead of "Title 28. Insurance".

The Texas Department of Insurance adopted amendments to §§3.501-3.520. The rules appeared in the June 25, 1996, issue of the *Texas Register* (21 TexReg 5856).

On page 5868, §3.519 begins "The requirements of this subchapter apply...", omitting language which was necessary for clarification. It should read as follows:

"§3.519. Compliance. Except as otherwise provided by these sections, the requirements of this subchapter apply to plans offered, delivered, or issued for delivery on or after June 1, 1996."

Notices

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Commercial Union Insurance Company proposing rates outside the flexibility band limits promulgated by the Commissioner of Insurance pursuant to Texas Insurance Code Annotated, Article 5.101, §3(g). They are proposing various percentages of rates ranging from +32% up to +55% above the benchmark for various territories for homeowners insurance.

Copies of the filing may be obtained by contacting Gifford Ensey, at the Texas Department of Insurance, Legal and Compliance, P.O. Box 149104, Austin, Texas 78714-9104, extension (512) 475-1761.

This filing is subject to Department approval without a hearing unless an objection is filed with the Chief Economist, Birny Birnbaum, at the Texas Department of Insurance, 333 Guadalupe, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.

Issued in Austin, Texas, on July 5, 1996.

9609894

Caroline Scott
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: July 8, 1996

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by American Employers' Insurance Company proposing rates outside the flexibility band limits promulgated by the Commissioner of Insurance pursuant to Texas Insurance Code Annotated, Article 5.101, §3(g). They are proposing a rate of +35% above the benchmark for various territories for homeowners insurance.

Copies of the filing may be obtained by contacting Gifford Ensey, at the Texas Department of Insurance, Legal and Compliance, P.O. Box 149104, Austin, Texas 78714-9104, extension (512) 475-1761.

This filing is subject to Department approval without a hearing unless an objection is filed with the Chief Economist, Birny Birnbaum, at the Texas Department of Insurance, 333 Guadalupe, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.

Issued in Austin, Texas, on July 5, 1996.

9609893

Caroline Scott
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: July 9, 1996

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by The Employers' Fire Insurance Company proposing rates outside the flexibility band limits promulgated by the Commissioner of Insurance pursuant to Texas Insurance Code Annotated, Article 5.101, §3(g). They are proposing various percentages of rates ranging from +32% up to +55% above the benchmark for various territories for homeowners insurance.

Copies of the filing may be obtained by contacting Gifford Ensey, at the Texas Department of Insurance, Legal and Compliance, P.O. Box 149104, Austin, Texas 78714-9104, extension (512) 475-1761.

This filing is subject to Department approval without a hearing unless an objection is filed with the Chief Economist, Birny Birnbaum, at the Texas Department of Insurance, 333 Guadalupe, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.

Issued in Austin, Texas, on July 5, 1996.

9609892

Caroline Scott
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: July 9, 1996

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by The Northern Assurance Company of America proposing rates outside the flexibility band limits promulgated by the Commissioner of Insurance pursuant to Texas Insurance Code Annotated, Article 5.101, §3(g). They are proposing various percentages of rates ranging from +33% up to +45% above the benchmark for various territories for homeowners insurance.

Copies of the filing may be obtained by contacting Gifford Ensey, at the Texas Department of Insurance, Legal and Compliance, P.O. Box 149104, Austin, Texas 78714-9104, extension (512) 475-1761.

This filing is subject to Department approval without a hearing unless an objection is filed with the Chief Economist, Birny Birnbaum, at the Texas Department of Insurance, 333 Guadalupe, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.

Issued in Austin, Texas, on July 5, 1996.

9609891

Caroline Scott
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: July 9, 1996

Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of American Special Risk Management Corporation, a foreign third party administrator. The home office is Maple Shade, New Jersey.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

Issued in Austin, Texas, on July 9, 1996.

9609895

Caroline Scott
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: July 9, 1996

Texas State Library and Archives Commission

Quarterly Report of Consultant Contract Reports Received by the Texas State Library

By law (V.T.C.A., Government Code 2254, Subchapter B), state agencies and regional councils of governments are required to file with the Office of the Secretary of State invitations to bid and details on bidding on private consultant contracts expected to exceed \$10,000. Within ten days of the award of the contract, the agency must file with the Secretary of State a description of the study to be conducted, the name of the consultant, the amount of the contract, and the due dates of the reports. Additionally, Article 6252-11c, directs the contracting agencies to file copies of all documents, films, recordings, or reports developed by the private consultants with the Texas State Library. The Library is required to compile a list of the materials received and submit the list quarterly for publication in the *Texas Register*.

The following is a list of materials received for the second quarter of 1996. These materials may be examined in Room 300, Texas State Library, 1201 Brazos Street, Austin, Texas.

Agency: Texas Education Agency.

Consultant: Deloitte and Touche.

Title: Texas Education Agency financial accountability system resource guide [computer file, CD-ROM version 1.0].

Agency: University of Texas System.

Consultant: Concepts in Healthcare, Inc.

Title: Report to the University of Texas MD Anderson Cancer Center: materials management reengineering initiative, procurement services analysis and recommendations.

Agency: Comptroller of Public Accounts.

Consultant: KPMG Peat Marwick.

Title: School performance review, Beaumont Independent School District.

Agency: Comptroller of Public Accounts.
Consultant: Empirical Management Services, Inc.
Title: School performance review, Tyler Independent School District.
Agency: North Central Texas Council of Governments.
Consultant: Bucher, Willis and Ratliff.
Title: Transit needs assessment for the city of Grand Prairie.
Agency: Teacher Retirement System.
Consultant: Deloitte and Touche LLP.
Title: Phase III deliverable document : MERIT project.
Issued in Austin, Texas, on July 9, 1996.

9609805
Raymond Hitt
Assistant State Librarian
Texas State Library and Archives Commission
Filed: July 9, 1996

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Texas Lottery Commission

Invitation for Bids for Court Reporter Services

The Texas Lottery Commission is soliciting bids to obtain court reporter services for the Texas Lottery Commission as provided in the Invitation for Bid.

Objectives.

The Texas Lottery requires court reporter services on an as needed basis as indicated in the Invitation to Bid.

Schedule.

Event Date

IFB Issued July 16, 1996

Letter of Intent to Bid July 23, 1996 (3:00 p.m. CT)

Written Questions July 24, 1996 (3:00 p.m. CT)

TLC Answer to Written Questions July 26, 1996 (or as soon as possible thereafter)

Bid Due Date July 31, 1996 (2:00 p.m. CT)

Primary term. Prices quoted must be in effect for the primary term of this contract which is the date of execution through August 31, 1996. At its sole option, the Texas Lottery Commission may extend this contract for two one-year periods following the primary term (August 31, 1996).

For a copy of the complete Invitation for Bids please contact:

Joanne Severn

Purchasing Supervisor, Texas Lottery Commission, (512) 323-3662

Issued in Austin, Texas, on July 9, 1996.

TRD-9609806

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: July 9, 1996

Texas Natural Resource Conservation Commission

Correction of Errors

The Texas Natural Resource Conservation Commission proposed new §§39.101, 39.103, 39.105, 39.107, and 39.109. The rule appeared in the June 18, 1996, issue of the *Texas Register* (21 TexReg 5542).

In §39.101(e)(3)(A)(page 5543), §39.103(f)(3)(A) (page 5544), and §39.251(f)(3)(A)(page 5548), the mile measurement referenced should be 1/2 mile, instead of the figure "<<."

The Texas Natural Resource Conservation Commission adopted new and amended §§330.802, 330.803, 330.805-330.813, 330.815, 330.818, 330.820-330.833, 330.835, 330.836, 330.838, 330.841-330.846, 330.848-330.859, 330.861-330.886, and 330.889. The rule appeared in the June 21, 1996, issue of the *Texas Register* (21 TexReg 5722).

On page 5723, §330.802(b), line six "\$330.80" should be "\$330.807." On line eight "...(relating to the Beneficial Use or Scrap Tires)" should be "...(relating to Special Conditions for Beneficial Use of Scrap Tires)."

On page 5733, §330.41(j), lines two, six and eight, the space following the decimal in "\$.85" should be deleted. It should read "\$.85".

On page 5735, §330.843(1)(2), line four should end with "...the registration of waste tire facilities". "§330.844. *Evidence of Financial Responsibility*. The applicant seeking registration for a waste tire facility shall submit evidence of financial responsibility in conformance with the requirements contained in §§330.885-330.888 of this title (relating to Cost Estimate for Closure; Financial Assurance for Closure; Incapacity of Owners or Operators or Financial Institutions; and Wording of the Instruments)." should be in a separate paragraph.

On page 5737, §330.845(d), the last line, "\$330.884" should be §330.879

On page 5745, §330.877(e), the last line, "*Texas Register*" should be italicized.

On page 5746, §330.885(d)(4), line 12, the text broke off at "dire" (director) and picked up with text from §330.886(e)(6), fourth sentence beginning with "...an initial request for..." and continuing through the end of paragraph (6). All text after "executive" on line 12 of §330.885(d)(4) needs to be replaced with "director within 15 days of the executive director's written request to revise the registration closure cost estimate." followed by subsection (e): "(e) The owner or operator must keep at the facility during the operating life of the facility a copy of the latest approved registration cost estimate."

The Texas Natural Resource Conservation Commission submitted a correction of error. The correction appeared in the June 28, 1996, issue of the *Texas Register* (21 TexReg 6022).

On page 6023, first column, paragraph eight, rather than a correction to §770.109, the correction was made to §70.109.

Enforcement Orders

An agreed enforcement order was entered regarding DONNYS PAINT AND BODY, Docket Number 95-0571-IHW-E (SWR

#82932) on June 26, 1996 assessing \$15,560 in administrative penalties with \$13,560 deferred.

Information concerning any aspect of this order may be obtained by contacting William Foster, Staff Attorney, at (512) 239-3407 or Subhash Jain, Enforcement Coordinator, (512) 239- 5867, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.

An agreed enforcement order was entered regarding MARTIN RESENDEZ, SR., Docket Number 95-1629-MSW-E (MSW Unauthorized Site Number MSW-33832) on June 26, 1996 assessing \$960 in administrative penalties and deferring the entire amount.

Information concerning any aspect of this order may be obtained by contacting Steve Shepherd, Staff Attorney, at (512) 239-0464 or Kristina LaRue, Enforcement Coordinator, (512) 239-2562, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.

An agreed enforcement order was entered regarding QUINLAN, CITY OF, Docket Number 96-0458-MWD-E (Permit Number 13725-001) on June 26, 1996 assessing \$8,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Guy Henry, Staff Attorney, at (512) 239-6259 or Roxanne Cook, Enforcement Coordinator, (512) 239-4496, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.

An agreed enforcement order was entered regarding ROBERSON RENT ALL, Docket Number 96-0253-PST-E (TNRCC Facility 036954, Enforcement ID E11480) on June 26, 1996 assessing \$1,800 in administrative penalties with \$540 deferred.

Information concerning any aspect of this order may be obtained by contacting Ray Winter, Staff Attorney, at (512) 239-0600 or Sushil Modak, Enforcement Coordinator, (512) 239-2142, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.

An agreed enforcement order was entered regarding COASTAL REFINING & MARKETING, INC., Docket Number 96-0304-PST-E (TNRCC Facility 021784, Enforcement ID E11484) on June 26, 1996 assessing \$600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ray Winter, Staff Attorney, at (512) 239-0600 or Sushil Modak, Enforcement Coordinator, (512) 239-2142, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.

An agreed enforcement order was entered regarding RAUL H. RODRIGUEZ, Docket Number 96-0305-PST-E (TNRCC Facility 038964, Enforcement ID E11488) on June 26, 1996 assessing \$1,800 in administrative penalties with \$540 deferred.

Information concerning any aspect of this order may be obtained by contacting Ray Winter, Staff Attorney, at (512) 239-0600 or Sushil Modak, Enforcement Coordinator, (512) 239-2142, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.

An agreed enforcement order was entered regarding FRED GARRISON OIL COMPANY, Docket Number 96- 0363-PST-E (TNRCC Facility 007685, Enforcement ID E11135) on June 26, 1996 assessing \$600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ray Winter, Staff Attorney, at (512) 239-0600 or Sushil Modak, Enforcement Coordinator, (512) 239-2142, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.

An agreed enforcement order was entered regarding FRED GARRISON OIL COMPANY, Docket Number 96- 0364-PST-E (TNRCC Facility 007669, Enforcement ID E11136) on June 26, 1996 assessing \$1,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ray Winter, Staff Attorney, at (512) 239-0600 or Sushil Modak, Enforcement Coordinator, (512) 239-2142, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.

An agreed enforcement order was entered regarding ACCO WASTE PAPER OF AUSTIN, Docket Number 96-0386-PST-E (TNRCC Facility 048208, Enforcement ID E11503) on June 26, 1996 assessing \$600 in administrative penalties with \$180 deferred.

Information concerning any aspect of this order may be obtained by contacting Ray Winter, Staff Attorney, at (512) 239-0600 or Sushil Modak, Enforcement Coordinator, (512) 239-2142, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.

An agreed enforcement order was entered regarding K & S PETROLEUM COMPANY, Docket Number 96-0387-PST-E (TNRCC Facility 012063, Enforcement ID E11496) on June 26, 1996 assessing \$1,800 in administrative penalties with \$540 deferred.

Information concerning any aspect of this order may be obtained by contacting Ray Winter, Staff Attorney, at (512) 239-0600 or Sushil Modak, Enforcement Coordinator, (512) 239-2142, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.

An agreed enforcement order was entered regarding HENNINGS, MEYER AND LEIFESTE, Docket Number 96-0476-PST-E (TNRCC Facility 065369, Enforcement ID E11511) on June 26, 1996 assessing \$4,400 in administrative penalties with \$1,320 deferred.

Information concerning any aspect of this order may be obtained by contacting Ray Winter, Staff Attorney, at (512) 239-0600 or Mick Wilson, Enforcement Coordinator, (512) 239-2228, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.

An agreed enforcement order was entered regarding BROWNFIELD, CITY OF, Docket Number 96-0570-PST-E and 96-0571-PST-E (TNRCC Facility Nos. 0020343 & 0020339, Enforcement ID Numbers E11176 and E11177) on June 26, 1996 assessing \$1,600 in administrative penalties with \$480 deferred.

Information concerning any aspect of this order may be obtained by contacting Ray Winter, Staff Attorney, at (512) 239-0600 or Sushil Modak, Enforcement Coordinator, (512) 239-2142, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.

An agreed enforcement order was entered regarding CANTRELL OIL COMPANY, Docket Number 96-0574-PST-E (TNRCC Facility 011123, Enforcement ID E10734) on June 26, 1996 assessing \$3,200 in administrative penalties with \$960 deferred.

Information concerning any aspect of this order may be obtained by contacting Ray Winter, Staff Attorney, at (512) 239-0600 or Jaime Lopez, Enforcement Coordinator, (512) 239-2175, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.

An agreed enforcement order was entered regarding WESTEX INVESTMENT CORPORATION, Docket Number 96-0642-PST-E (TNRCC Facility Numbers 0029991 and 0032050, Enforcement ID Numbers E11251 and E11252) on June 26, 1996 assessing \$3,600 in administrative penalties with \$1,080 deferred.

Information concerning any aspect of this order may be obtained by contacting Ray Winter, Staff Attorney, at (512) 239-0600 or Sushil Modak, Enforcement Coordinator, (512) 239-2142, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.

An agreed enforcement order was entered regarding SUNLAND DISTRIBUTORS, Docket Number 96-0720-PST-E (TNRCC Facility 31020, Enforcement ID E11132) on June 26, 1996 assessing \$600 in administrative penalties with \$180 deferred.

Information concerning any aspect of this order may be obtained by contacting Ray Winter, Staff Attorney, at (512) 239-0600 or Mick Wilson, Enforcement Coordinator, (512) 239-2228, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.

An agreed enforcement order was entered regarding SUNLAND DISTRIBUTORS, Docket Number 96-0721-PST-E (TNRCC Facility 55479, Enforcement ID E11133) on June 26, 1996 assessing \$600 in administrative penalties with \$180 deferred.

Information concerning any aspect of this order may be obtained by contacting Ray Winter, Staff Attorney, at (512) 239-0600 or Mick Wilson, Enforcement Coordinator, (512) 239-2228, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.

An agreed enforcement order was entered regarding COLLEGE STATION INDEPENDENT SCHOOL DISTRICT, Docket Number 96-0769-PST-E (TNRCC Facility 025285, Enforcement ID E11401) on June 26, 1996 assessing \$4,400 in administrative penalties with \$1,320 deferred.

Information concerning any aspect of this order may be obtained by contacting Ray Winter, Staff Attorney, at (512) 239-0600 or Mick Wilson, Enforcement Coordinator, (512) 239-2228, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.

An agreed enforcement order was entered regarding FORBES, MR. JOHN, Docket Number 96-0812-PST-E (TNRCC Facility 031099, Enforcement ID E11247) on June 26, 1996 assessing \$3,200 in administrative penalties with \$3,200 deferred.

Information concerning any aspect of this order may be obtained by contacting Ray Winter, Staff Attorney, at (512) 239-0600 or Sushil Modak, Enforcement Coordinator, (512) 239-2142, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.

An agreed enforcement order was entered regarding U-PUMP UM, INC., Docket Number 96-0813-PST-E (TNRCC Facility 029154, Enforcement ID E11433) on June 26, 1996 assessing \$600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ray Winter, Staff Attorney, at (512) 239-0600 or Sushil Modak, Enforcement Coordinator, (512) 239-2142, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.

An agreed enforcement order was entered regarding LAMESA BUTANE, Docket Number 96-0814-PST-E (TNRCC Facility 023557, Enforcement ID E11468) on June 26, 1996 assessing \$600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ray Winter, Staff Attorney, at (512) 239-0600 or Sushil Modak, Enforcement Coordinator, (512) 239-2142, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.

An agreed enforcement order was entered regarding BELK COUNTY STORE, Docket Number 96-0815-PST-E (TNRCC Facility 036032, Enforcement ID E11363) on June 26, 1996 assessing \$2,400 in administrative penalties with \$1,800 deferred.

Information concerning any aspect of this order may be obtained by contacting Ray Winter, Staff Attorney, at (512) 239-0600 or Sushil Modak, Enforcement Coordinator, (512) 239-2142, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.

An agreed enforcement order was entered regarding HILL, MR. A.G., Docket Number 96-0833-PST-E (TNRCC Facility 041079, Enforcement ID E10688) on June 26, 1996 assessing \$600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ray Winter, Staff Attorney, at (512) 239-0600 or Mick Wilson, Enforcement Coordinator, (512) 239-2228, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.

An agreed enforcement order was entered regarding CEPEDA, MR. LUIS M., Docket Number 96-0835-PST-E (TNRCC Facility 056160, Enforcement ID E10799) on June 26, 1996 assessing \$1,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ray Winter, Staff Attorney, at (512) 239-0600 or Mick Wilson, Enforcement Coordinator, (512) 239-2228, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.

An agreed enforcement order was entered regarding BROOKS OPERATING COMPANY, INC., Docket Number 96-0926-PST-E (OWNER ID #16208, Enforcement ID E10854) on June 26, 1996 assessing \$3,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lisa Newcombe, Staff Attorney, at (512) 239-2269 or Karen Berryman, Enforcement Coordinator, (512) 239-2172, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.

An agreed enforcement order was entered regarding SWIFT OIL COMPANY, Docket Number 96-0927-PST-E (OWNER ID #4175, Enforcement ID E10898) on June 26, 1996 assessing \$69,685 in administrative penalties with \$15,200 deferred.

Information concerning any aspect of this order may be obtained by contacting Lisa Newcombe, Staff Attorney, at (512) 239-2269 or Mick Wilson, Enforcement Coordinator, (512) 239-2228, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.

An agreed enforcement order was entered regarding MEDINA WATER SUPPLY CORPORATION, Docket Number 96-0502-PWS-E (PWS Number 0100013, CCN Number 12368) on June 26, 1996 assessing \$930 in administrative penalties with \$279 deferred.

Information concerning any aspect of this order may be obtained by contacting Guy Henry, Staff Attorney, at (512) 239-3400 or Katharine Wheatley, Enforcement Coordinator, (512) 239-4466, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.

An agreed enforcement order was entered regarding AUSTIN HIGHWAY WATER SUPPLY CORPORATION, Docket Number 96-0504-PWS-E (PWS #0150041, CCN #11251) on June 26, 1996 assessing \$930 in administrative penalties with \$279 deferred.

Information concerning any aspect of this order may be obtained by contacting Guy Henry, Staff Attorney, at (512) 239-3400 or Katharine Wheatley, Enforcement Coordinator, (512) 239-4466, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.

An agreed enforcement order was entered regarding CANYON LAKE VILLAS COUNCIL OF CO-OWNERS, Docket Number 96-0536-PWS-E (PWS #0460104) on June 26, 1996 assessing \$930 in administrative penalties with \$279 deferred.

Information concerning any aspect of this order may be obtained by contacting Guy Henry, Staff Attorney, at (512) 239-3400 or Katharine Wheatley, Enforcement Coordinator, (512) 239-4466, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.

An enforcement order was entered regarding TEMPLE, JESSE, Docket Number 96-0880-WWD-E (DRILLERS LICENSE #2745WD) on June 26, 1996 resolving enforcement action based on respondents payment of \$250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathy Keils, Staff Attorney, at (512) 239-0678 or Lee Parham, Enforcement Coordinator, (512) 239-0539, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.

An agreed enforcement order was entered regarding SMITH, FLOYD, Docket Number 96-0358-WWD-E (LICENSE #2748W) on June 26, 1996 assessing \$1,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathy Keils, Staff Attorney, at (512) 239-0678 or Lee Parham, Enforcement Coordinator, (512) 239-0539, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.

An agreed enforcement order was entered regarding MOLINA, RUBIN, Docket Number 96-0355-WWD-E (LICENSE #2691WD) on June 26, 1996 assessing \$2,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathy Keils, Staff Attorney, at (512) 239-0678 or Lee Parham, Enforcement Coordinator, (512) 239-0539, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.

An agreed enforcement order was entered regarding ALLEN, STEVE, Docket Number 96-0350-WWD-E (No License) on June 26, 1996 assessing \$1,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathy Keils, Staff Attorney, at (512) 239-0678 or Lee Parham, Enforcement Coordinator, (512) 239-0539, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.

An enforcement order was entered regarding LEWIS, MARK, Docket Number 96-0346-WWD-E (LICENSE #4586M) on June 26, 1996 assessing \$500 in administrative penalties, \$250 of which has been paid.

Information concerning any aspect of this order may be obtained by contacting Kathy Keils, Staff Attorney, at (512) 239-0678 or Lee Parham, Enforcement Coordinator, (512) 239-0539, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.

An enforcement order was entered regarding TORRES, REYNALDO, Docket Number 96-0349-WWD-E (No License) on June 26, 1996 assessing \$2,000 in administrative penalties, \$200 of which has been paid.

Information concerning any aspect of this order may be obtained by contacting Kathy Keils, Staff Attorney, at (512) 239-0678 or Lee Parham, Enforcement Coordinator, (512) 239-0539, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.

An agreed enforcement order was entered regarding HUFFMAN, CHARLES, Docket Number 96-0345-WWD-E (No License) on June 26, 1996 assessing \$2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathy Keils, Staff Attorney, at (512) 239-0678 or Lee Parham, Enforcement Coordinator, (512) 239-0539, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.

An enforcement order was entered regarding DOWNS, KARL, Docket Number 95-0239-SLG-E (Not Registered) on June 26, 1996 assessing \$14,720 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Guy Henry, Staff Attorney, at (512) 239-6259 or Merrilee Mears, Enforcement Coordinator, (512) 239-4490, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.

An agreed enforcement order was entered regarding C.H. WATER SUPPLY CORPORATION, Docket Number 96-0561-PWS-E (PWS Number 0810031, CCN Number 11629) on June 26, 1996 assessing \$930 in administrative penalties with \$279 deferred.

Information concerning any aspect of this order may be obtained by contacting Guy Henry, Staff Attorney, at (512) 239-3400 or Katharine Wheatley, Enforcement Coordinator, (512) 239-4466, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas.

Issued in Austin, Texas, on July 5, 1996.

9609774

Gloria A. Vasquez
Chief Clerk

Texas Natural Resource Conservation Commission
Filed: July 8, 1996

◆ ◆ ◆
Notice of Applications for Waste Disposal

Permits Issued during the period of June 24th—June 28, 1996.

The Executive Director will issue these permits unless one or more persons file written protests and/or a request for a hearing within 30 days after newspaper publication of this notice.

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address and daytime phone number; the permit number or other recognizable reference to this application; the statement I/we request a public hearing; a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; a description of the location of your property relative to the applicant's operations; and your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. In the event a hearing is held, the Office of Hearings Examiners will submit a recommendation to the Commission for final decision. If no protests or requests for hearing are filed, the Executive Director will sign the permit 30 days after newspaper publication of

this notice or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Information concerning any aspect of these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, Chief Clerks Office- MC105, P.O. Box 13087, Austin, Texas 78711, (512) 239-3300.

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.

ANDERSON MILL MUNICIPAL UTILITY DISTRICT, 11500 El Salido Parkway, Austin, Texas 78750; the Water Reclamation Wastewater Treatment Facilities; the facilities are located 1,700 feet southwest of the intersection of U.S. Highway 183 and Farm-to-Market Road 620 and approximately 5,800 feet northwest of the intersection of U.S. Highway 183 and Anderson Mill Road in Williamson County, Texas; renewal; 11459-01.

KANSAS CITY SOUTHERN RAILWAY COMPANY THE, 114 West 11th Street, Kansas City, Missouri 64105; the KCS Transportation Yard Mechanical Facility is located north of the Sabine-Neches Canal, south of Seventh Street in the City of Port Arthur, Jefferson County, Texas; renewal; 02289.

LAKE FOREST PLANT ADVISORY COUNCIL, 14223 Lakewood Forest Drive, Houston, Texas 77070-2506; the Lake Forest Regional Wastewater Treatment Facilities are south of Cypress Creek approximately 1/2 mile west of Farm-to-Market Road 149 and 1 1/4 miles north of Grant Road in Harris County, Texas; renewal; 11084-01.

STARR COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 2, P.O. Box 19, Rio Grande City, Texas 78582; the wastewater treatment facilities are located on the north bank of the Rio Grande, approximately 1/2 mile upstream of the International Bridge (Farm-to-Market Road 755) on the Old Fort Ringgold site east of Rio Grande City in Starr County, Texas; renewal; 10802-01.

Issued in Austin, Texas, on June 28, 1996.

9609827

Gloria A. Vasquez

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: July 9, 1996



Notices of Opportunity to Comment on Permitting Actions

For the Week Ending June 28, 1996

The following applications will be signed by the Executive Director in accordance with 30 TAC §263.2, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain uncontested permit matters. The Executive Director will issue the permits unless one or more persons file written protests and/or requests for hearing within ten days of the date notice concerning the application(s) is published in the *Texas Register*.

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address and daytime phone number; the permit number or other recognizable reference to this application; the statement I/we request a public

hearing; a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; a description of the location of your property relative to the applicant's operations; and your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Commissioners who will determine whether or not to send the matter to the State Office of Administrative Hearings. If no protests or requests for hearing are filed, the Executive Director will sign the permit ten days after publication of this notice or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Requests for a public hearing on this application should be submitted in writing to the Chief Clerk's Office (Mailcode 105), Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 239-3300.

Consideration of the application of Webb County for a Sewer CCN and to Cancel CCN Number 20709 Issued to Martha Codero and D & A Realty, Inc., a Limited Partnership dba Standard Realty Investors in Webb County, Texas. (Application Number 31010-C, Albert Holck)

Consideration of the application of Webb County to Acquire the Sewer Facilities of the City of El Cenizo in Webb County, Texas. (Application Number 31011-S, Albert Holck)

Consideration of the application of Webb County to amend Water Certificate of Convenience and Necessity Number 12704 in Webb County, Texas. (Application Number 30868-C, Albert Holck)

Signature of a Proposed Order Approving the Application by Southland Oaks Municipal Utility District of Travis County for Approval of \$1,720,000 Unlimited Tax and Revenue Bonds, Third Issue, 6.92% Net Effective Interest Rate, Series 1996. The District's application requests Commission approval of a bond issue to finance water, wastewater and drainage facilities for Cherry Creek, Section 10A, and Southland Oaks, Sections 3A, 3B and 3C. (TNRCC Internal Control Number 022296-D02; Robert Cummins)

Signature of a Proposed Order Approving the Application by Harris County Municipal Utility District Number 359 for approval of \$2,180,000 unlimited Tax Bond Issue; First Issue; 6.98% Net Effective Interest Rate, Series 1996. Applicant requests that the Commission Approve a \$2,180,000 Unlimited Tax Bond Issue to fund expansion of District facilities. (Internal Control Number 031896-D01, Robert Cummins)

URI, INC. for a minor amendment to Radioactive Material License Number RW3653. The minor amendment would change the Radiation Safety Officer (RSO) at the Kingsville Dome Site (000) and would name a corporate vice president as Corporate RSO. The individual recommended by URI, Inc. for RSO at the Kingsville Dome Site meets the criteria set forth in 30 TAC Chapter 336. The individual named as Corporate RSO also meets necessary qualifications. The Kingsville Dome Site is located in Kleberg County on FM 1118 approximately eight miles southeast of Kingsville, Texas, and approximately four miles east of U.S. Highway 77.

USX CORPORATION, Texas Uranium Operations for minor amendments to Radioactive Material License Number RW2449. The minor

amendments would be the following: suspension of monitor well and/or French Drain sampling at six ponds and the Burns Ranch curbed pad, deletion of four thermoluminescent dosimeter stations, and change of the Radiation Safety Officer (RSO) to Charles N. Wentz and of assistant RSO to Douglas P. Boyea, Jr. The Clay West/ Burns Ranch Project is located in Live Oak County approximately eight miles southwest of George West, Texas on U.S. Highway 59.

KOCH REFINING COMPANY for a minor amendment to Permit Number 00457 to delete Outfalls 002 and 005 from the existing permit. The proposed amendment would authorize a discharge of treated process water, treated ballast water, treated contaminated groundwater generated as a result of a groundwater remediation system and treated stormwater at a volume not to exceed an average flow of 2,160,000 gallons per day via Outfall 001 and intermittent, flow variable discharges of stormwater, hydrostatic tank test water, fire water pump test water and steam condensate via Outfalls 003, 004, 006, 007 and 008. The applicant operates the Corpus Christi Petroleum Refinery. The plant site is at 1700 Nueces Bay Boulevard between Ebony Street and the Corpus Christi Inner Harbor on the north side of the City of Corpus Christi in Nueces County, Texas.

Issued in Austin, Texas, on June 28, 1996.

9609828

Gloria A. Vasquez

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: July 9, 1996



For the Week Ending July 5, 1996

The following applications will be signed by the Executive Director in accordance with 30 TAC §263.2, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain uncontested permit matters. The Executive Director will issue the permits unless one or more persons file written protests and/or requests for hearing within ten days of the date notice concerning the application(s) is published in the *Texas Register*.

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address and daytime phone number; the permit number or other recognizable reference to this application; the statement "I/we request a public hearing"; a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; a description of the location of your property relative to the applicant's operations; and your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Commissioners who will determine whether or not to send the matter to the State Office of Administrative Hearings. If no protests or requests for hearing are filed, the Executive Director will sign the permit ten days after publication of this notice or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Requests for a public hearing on this application should be submitted in writing to the Chief Clerk's Office (Mailcode 105), Texas Natural

Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 239-3300.

CIBOLO CREEK MUNICIPAL AUTHORITY a minor amendment to Permit Number 11269-01 in order to add a diazinon provision requiring, among other things, a public education program for diazinon control in accordance with 30 TAC §307.6(e)(2)(E). The permit currently authorizes a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 4,500,000 gallons per day, which will remain the same. The wastewater treatment facilities are on the south side of Cibolo Creek approximately 1.5 miles east of downtown Schertz and 3,600 feet south of Farm-to-Market Road 78 in Bexar County, Texas.

Consideration of the application of Cade Lakes Water Supply Corporation to Acquire Facilities and Transfer Water CCN Number 11673 from Russell Wiggins dba Cade Lake Water Company in Burleson County, Texas. (Application Number 30802-S, Albert Holck).

Issued in Austin, Texas, on July 5, 1996.

9609773

Gloria A. Vasquez

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: July 8, 1996



Notices of Receipt of Application for Municipal Solid Waste Management Facility Permits

For the Week Ending June 28, 1996

APPLICATION BY COUGAR DISPOSAL, INC.; Proposed Permit Amendment No. MSW1921-A, authorizing a vertical height increase to their current Type IV municipal solid waste management facility permit. The site covers approximately 114.57 acres of land and receives approximately 750 tons of solid waste per day. The existing site is located about 3.5 miles east of the intersection of Mount Houston Road and U.S. Highway 59, near the City of Houston, in Harris County, Texas.

APPLICATION BY CITY OF CARTHAGE; Proposed Permit No. MSW2259, authorizing a Type I (Landfill) municipal solid waste management facility. The proposed site covers about 29.4903 acres of land and is to receive about 13 tons municipal solid waste per day for disposal or other processing. The site is located about 1400 feet east of LaSalle Parkway and about 5000 feet north of the intersection of La Salle Parkway and U.S. Highway 79, north of the city of Carthage, in Panola County, Texas.

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address and daytime phone number; the application number, TNRCC docket number or other recognizable reference to the application; the statement "I/we request an evidentiary public hearing."; a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; and a description of the location of your property relative to the applicant's operations.

Requests for a public hearing or questions concerning procedures should be submitted in writing to the Chief Clerk's Office, Park 35 TNRCC Complex, Building F, Room 1101, Texas Natural Resource

Conservation Commission, Mail Code 105, P.O. Box 13087, Austin, Texas 78711, (512) 239-3300

Issued in Austin, Texas, on June 26, 1996.

9609826

Gloria A. Vasquez

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: July 9, 1996



For the Week Ending July 5, 1996

APPLICATION BY THE CITY OF VICTORIA; Proposed Permit Amendment No. MSW1522-A, authorizing a vertical expansion of their current Type I (landfill) municipal solid waste management facility permit. The site covers approximately 159.13 acres of land and receives approximately 378 tons of solid waste per day. The site is located at on Farm to Market Road 1686, 0.75 mile east of the intersection of Farm to Market Road 1686 and State Highway 404, near the City of Victoria, in Victoria County, Texas.

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address and daytime phone number; the application number, TNRCC docket number or other recognizable reference to the application; the statement "I/we request an evidentiary public hearing."; a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; and a description of the location of your property relative to the applicant's operations.

Requests for a public hearing or questions concerning procedures should be submitted in writing to the Chief Clerk's Office, Park 35 TNRCC Complex, Building F, Room 1100, Texas Natural Resource Conservation Commission, Mail Code 105, P.O. Box 13087, Austin, Texas 78711, (512) 239-3300

Issued in Austin, Texas, on July 5, 1996.

9609775

Gloria A. Vasquez

Chief Clerk

Texas Natural Resource Conservaton Commission

Filed: July 8, 1996



Public Hearing Notice (Chapter 285)

Notice is hereby given that pursuant to the requirement of the Texas Government Code, Subchapter B, Chapter 2001, the Texas Natural Resource Conservation Commission (TNRCC) will conduct a public hearing to receive testimony concerning the repeal of existing Chapter 285 and a proposed new Chapter 285, relating to on-site sewage facilities.

The purpose of the proposed new rules is to revise the technical standards for on-site sewage facilities to reflect the evolution of on-site wastewater technology since 1990. In addition, these new rules are being proposed to provide minimum levels of acceptable criteria to assure that the proper facilities are being installed in the state to eliminate and prevent health hazards for the public and the waters in the state.

A public hearing on the proposal will be held at 10:00 a.m. on August 8, 1996 in Room 2210, of TNRCC Building F, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, a TNRCC staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments on the proposal should mention Rule Log Number 95122-285-WT and may be submitted to Lutrecia Oshoko, TNRCC Office of Policy and Regulatory, Development, MC 201, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640. Written comments must be received by 5:00 p.m. 30 days from the date of publication of this proposal in the Texas Register. For further information or questions concerning this proposal, please contact Michael Fahy, Field Operations Division, at (512) 239-1490.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

Issued in Austin, Texas, on July 3, 1996.

TRD-9609745

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Filed: July 8, 1996

Provisionally-Issued Temporary Permits to Appropriate State Water

Permits Issued during the period of July 5, 1996

Application Number TA-7692 by Hidalgo County Irrigation District Number 16 for diversion of five acre-feet in a one-year period for mining purposes. Water may be diverted from the Rio Grande (from the perimeter of Falcon Reservoir), approximately 20 miles southeast of Zapata, Zapata County, Texas, Rio Grande Basin.

Application Number TA-7696 by Nate Lawton Piute Contractor's Inc. for diversion of one acre-foot in a one month period for industrial purposes. Water may be diverted from the Chevron Pipeline Right-of-way, near Highway 287, approximately 17 miles north of Fairfield in Freestone County, Texas, Trinity River Basin.

Application Number TA-7697 by John E. Mauney for diversion of two acre-feet in a one-year period for irrigation purpose. Water may be diverted from White Oak Bayou at a location approximately 11 miles northwest of Houston, near N. Houston Rosslyn Road, in Harris County, Texas, San Jacinto River Basin.

Application Number TA-7698 by HRH Energy Group, Inc. for diversion of 1 acre-foot in a three month period for mining purposes. Water may be diverted from the Little Wichita River, approximately 1 miles north of Henrietta in Clay County, Texas, Red River Basin.

The Executive Director of the TNRCC has reviewed each application for the permits listed and determined that sufficient water is available at the proposed point of diversion to satisfy the requirements of the application as well as all existing water rights. Any person or persons who own water rights or who are lawful users of water on a stream affected by the temporary permits listed above and

who believe that the diversion of water under the temporary permit will impair their rights may file a complaint with the TNRCC. The complaint can be filed at any point after the application has been filed with the TNRCC and the time the permit expires. The Executive Director shall make an immediate investigation to determine whether there is a reasonable basis for such a complaint. If a preliminary investigation determines that diversion under the temporary permit will cause injury to the complainant the commission shall notify the holder that the permit shall be cancelled without notice and hearing. No further diversions may be made pending a full hearing as provided in §295.174. Complaints should be addressed to Water Rights Permitting Section, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 239-4433. Information concerning these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78731, (512) 239-3300.

Issued in Austin, Texas, on July 8, 1996.

9609772

Gloria A. Vasquez
Chief Clerk

Texas Natural Resource Conservation Commission

Filed: July 8, 1996

Public Utility Commission of Texas

Invitation to Bid

(1) Notice of Extension of Deadline for Invitation to Bid. Pursuant to the Public Utility Regulatory Act of 1995, Texas Revised Civil Statutes Annotated Article 1446c-0 (Supplement 1996), (hereafter PURA 95), the Public Utility Commission of Texas (PUC), the State agency charged with the regulation of the rates and services of public utilities (electric and telephone, not municipal corporations), announced in the June 28, 1996 issue of the *Texas Register* (21 TexReg 6032), an Invitation to Bid to provide mediations services with regard to pending telecommunications issues. The deadline for submissions in response to the Invitation to Bid is EXTENDED to 5:00 p.m., August 5, 1996.

The initial notice also referred to the Invitation to Bid as a Request for Proposal. Hereafter, the Invitation to Bid will be referred to solely as an Invitation to Bid and not a Request for Proposal. The PUC is issuing only an Invitation to Bid with regard to this matter and not a Request for Proposal.

For additional information concerning this Invitation to bid, please refer to the previous announcement in the June 28, 1996 issue of the *Texas Register* (16 TexReg 6032).

(2) Contact Person. Persons interested in offering mediation services should contact Carole Vogel, Director, Office of Regulatory Affairs, Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas, 78757 or (512) 458-0297 for a complete copy of the Invitation to Bid.

(3) Closing Date. Proposals should be received by the PUC no later than 5:00 p.m., August 5, 1996. The period for performance is estimated to be September 9, 1996, to December 30, 1996.

Issued in Austin, Texas, on July 9, 1996.

TRD-9609873

Paula Mueller

Secretary of the Commission
Public Utility Commission of Texas

Filed: July 9, 1996

Notices of Intent to File Pursuant to Public Utility Commission Substantive Rule 23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application on July 8, 1996, pursuant to Public Utility Commission Substantive Rule 23.27 for approval of a customer-specific contract for the Grapevine Colleyville Independent School District.

Tariff Title and Number: Application of GTE Southwest Incorporated for Approval of a Customer-Specific Contract for the Grapevine Colleyville Independent School District Pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 16131.

The Application: GTE Southwest Incorporated seeks approval to provide 450 CentraNet lines to the Grapevine Colleyville Independent School District at its Colleyville business address. GTE proposes to offer these services within its Colleyville exchange to the business operations of the ISD in Colleyville, Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas, 78757, or call the Public Utility Commission Consumer Affairs Section at (512) 458-0223, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on July 9, 1996.

TRD-9609811

Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Filed: July 9, 1996

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Harlingen Independent School District in Harlingen, Texas.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for Harlingen Independent School District in Harlingen, Texas. Pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 16142.

The Application. Southwestern Bell Telephone Company is requesting approval for a 25 station addition to the existing PLEXAR-Custom service for Harlingen Independent School District. The geographic service market for this specific service is the Harlingen, Texas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Consumer Affairs Division at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on July 9, 1996.

TRD-9609812

Paula Mueller

Secretary of the Commission
Public Utility Commission of Texas
Filed: July 9, 1996

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Aldine Independent School District in Houston, Texas.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for Aldine Independent School District in Houston, Texas. Pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 16143.

The Application. Southwestern Bell Telephone Company is requesting approval for a 105 station addition to the existing PLEXAR-Custom service for Aldine Independent School District. The geographic service market for this specific service is the Houston, Texas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Consumer Affairs Division at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on July 9, 1996.

TRD-9609813
Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas
Filed: July 9, 1996

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Spring Branch Independent School District in Spring Branch, Texas.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for Spring Branch Independent School District in Spring Branch, Texas. Pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 16144.

The Application. Southwestern Bell Telephone Company is requesting approval for a 10 station addition to the existing PLEXAR-Custom service for Spring Branch Independent School District. The geographic service market for this specific service is the Spring Branch, Texas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Consumer Affairs Division at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on July 9, 1996.

TRD-9609814
Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas
Filed: July 9, 1996

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Brownsville ISD in Brownsville, Texas.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for Brownsville ISD in Brownsville, Texas. Pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 16145.

The Application. Southwestern Bell Telephone Company is requesting approval for a 45 station addition to the existing PLEXAR-Custom service for Brownsville ISD. The geographic service market for this specific service is the Brownsville, Texas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Consumer Affairs Division at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on July 9, 1996.

TRD-9609815
Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas
Filed: July 9, 1996

Public Notice

On June 28, 1996, Southwestern Bell Telephone Company (SWB) filed notice of intent to file LRIC studies pursuant to Substantive Rule §23.91 for Digital Basic Rate Interface Transport Termination, ISDN Additional Call Offering per Channel, ISDN Bridging per Channel, ISDN Call Forwarding Interface Busy per Channel, ISDN Call Forwarding Don't Answer per Channel, ISDN Call Forwarding Variable per Channel, ISDN Calling Number Delivery per Channel, ISDN Calling Number Delivery Blocking per Channel, ISDN Key System Coverage for Analog Lines per Channel, ISDN Message Waiting Indicator per Channel, ISDN Outgoing Calling Line ID per Channel, ISDN Speed Call Long per Channel, ISDN Three Way Conference Calling per Channel, NAC Digital Basic Rate Interface per NAC, SmartTrunk Interface per Interface, Dynamic Channel Allocation - ISDN, ISDN Basic Rate Interface Equipment per BRI in Project Numbers 12475 and 12481, Applications of Southwestern Bell Telephone Company and GTE Southwest, Inc. for Approval of LRIC Workplans Pursuant to Substantive Rule §23.91. SWB expects to file these studies on July 8, 1996.

Persons who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Commission by August 21, 1996. A request to intervene, participate, or for further information should be mailed to the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757. Further information may also be obtained by calling the Public Utility Commission Public Information Office at (512) 458-0256. The telecommunications device for the deaf (TDD) is (512) 458-0221.

Issued in Austin, Texas, on July 9, 1996.

TRD-9609816
Paula Mueller

Secretary of the Commission
Public Utility Commission of Texas
Filed: July 9, 1996

Railroad Commission of Texas

The Railroad Commission of Texas, Surface Mining and Reclamation Division (Commission), is soliciting bids for the revegetation of approximately 295 acres at the Butler-Weddington (Area 2A) Abandoned Mine Land (AML) site as well as erosion control and vegetation management on previously reclaimed Butler-Weddington (Area 1), Manka, and Smith AML project sites.

The FY96 Uranium AML Revegetation and Erosion Control Project will establish vegetative cover on bare ground resulting from a separate reclamation earthwork contract (Butler-Weddington (Area 2A) AML Regrade Project). Revegetation work is estimated to begin as early as the fall 1996. Maintenance of revegetated areas, in the form of shredding/mowing, herbicide application, and erosion repair, is also included in the scope of the Revegetation and Erosion Control Project.

As the designated state agency for implementation of the "Surface Mining Control and Reclamation Act of 1977" (30 U.S.C.A. Section 1201 et seq.), the Commission will award a unit price contract to the lowest and best bidder for completion of this work. Sealed bids will be received until 2:00 p.m., August 28, 1996, at which time the bids will be publicly opened and read at the address given below. A mandatory pre-bid conference will be held at the site at 10:00 a.m., August 7, 1996. Construction work item will include:

- 1) Mobilization
- 2) Seedbed Preparation
- 3) Fertilization
- 4) Seeding
- 5) Mulching
- 6) Vegetation Maintenance
- 7) Herbicide Application
- 8) Erosion Repair
- 9) Gradient Terrace Construction
- 10) Grassed Waterway Construction
- 11) Fences
- 12) Low Water Crossing

Copies of the specifications, drawings and other contract documents are on file in Austin at the following address. The complete bid package may be obtained from the following mailing address: FY96 Uranium AML Revegetation and Erosion Control Project; Surface Mining and Reclamation Division; Railroad Commission of Texas; 1701 North Congress Avenue; P.O. Box 12967 Austin, Texas 78711-2967; Attention: Melvin B. Hodgkiss, P.E., Director. All questions concerning the work or bid document must be received by 5:00 p.m., August 14, 1994. For further information contact Mark Rhodes at 463-7313.

Issued in Austin, Texas, on July 9, 1996.

TRD-9609885
Mary Ross McDonald

Assistant Director, Office of General Counsel, Gas Services Section
Railroad Commission of Texas
Filed: July 9, 1996

San Antonio-Bexar County Metropolitan Planning Organization

Request for Proposals

The San Antonio-Bexar County Metropolitan Planning Organization (MPO) is seeking proposals from qualified firms to conduct a Infrastructure Needs Assessment for Kelly Air Force Base.

A copy of the Request for Proposals (RFP) may be requested by calling Betsy Boyd, Transportation Planner, at (210) 227-8651. Anyone wishing to submit a proposal must do so by 12:00 p.m. July 30, 1996, at the MPO office: South Texas Building 603 Navarro, Suite 904 San Antonio, Texas 78205

A mandatory pre-proposal meeting is scheduled for 1:30 p.m., Tuesday, July 16, 1996 in the Henry B. Gonzalez Convention Center, 200 E. Market at Alamo Street, Room 107, San Antonio, Texas. Proposals will not be accepted from any Prime Consultant who fails, for any reason, to attend the mandatory pre-proposal meeting.

The contract award will be made by the MPO's Transportation Steering Committee based on the recommendation of the Kelly Transportation Task Force. The Kelly Transportation Task Force and Technical Group will review the proposals based on the evaluation criteria listed in the RFP.

Funding for this study, in the amount of \$250,000 is contingent upon the availability of Federal transportation planning funds.

Issued in San Antonio, Texas, on July 9, 1996.

TRD-9609799
Janet A. Kennison
Administrator
San Antonio-Bexar County Metropolitan Planning Organization
Filed: July 9, 1996

Telecommunications Infrastructure Fund

Request for Proposal

The Telecommunications Infrastructure Fund Board (TIFB) announces the availability of approximately \$25 million through a competitive grant process to provide Internet access to Texas secondary schools. Priority will be given to secondary schools with no access or very limited access to Internet resources. Future requests for proposal will target other purposes and entities, including other schools, higher education, hospitals and libraries.

Background: On May 26, 1995, Governor George W. Bush signed into law House Bill 2128 which created the Telecommunications Infrastructure Fund (TIF). This fund, governed by a nine member board, will disburse up to \$150 million per year to schools, hospitals, and libraries to assist them in purchasing computer, video and distance learning equipment, inter and intra-campus wiring, program development, and teacher training.

General Guidelines: This initial Request for Proposal has been structured to give qualifying school districts an opportunity to submit a proposal for a TIF grant. We view the fulfillment of this proposal as critical for meeting the TIF goals. The response must outline the

framework for how the new technology will be incorporated into the educational curriculum and the academic goals to be achieved.

Grant funds may be used for equipment for classrooms, including computers, printers, and video equipment, software, training program development, installation costs or any local area network. Equipment purchased or leased under this grant should be available commercially. These funds are not for prototyping. If you intend to rely on a third party for fulfilling any part of the proposal, please identify the third party and the nature and extent of their involvement, i.e., value added software, etc. Proposed products should be fully configured to meet the specified requirements.

If you require additional information to provide a more accurate proposal, please contact the TIFB at (512) 936-8432 or write to TIF, 221 East 11th Street, Suite 103, Austin, Texas 78701. Send e-mail messages to: tifb@governor.texas.gov. Frequently Asked Questions (FAQ) will be posted by August 15 on TIF's Internet homepage: <http://www.state.tx.us/TIF>.

It is anticipated that most grants will not exceed \$300,000. To assist the TIFB in conducting a timely review, proposals should provide requested information in a format that follows the guidelines in the section entitled Application Content. If you wish to elaborate beyond the scope of requested information, please do so in the Appendix section. Please note that content is more important than volume.

Please note: The Eligibility Requirements, Selection Criteria, Application Content and General Instructions outlined in this RFP pertain to this RFP only and may change for future grants.

Purpose of Grants: This TIF Grant Application addresses a resolution passed by the TIFB as a statement of direction for the initial deployment of funds. The grants will provide funds to secondary schools (high schools, junior high schools and middle schools) to use the Internet and complementary technology as teaching and learning tools. The academic goals of the grant are to (1) improve academic performance in math, science, English and social studies, and (2) give students the opportunity to become adept at using advanced technology.

The TIFB encourages superintendents and other administrators to view this competition as the first step in funding a long-term plan to use technology to redesign the educational delivery system, especially in schools whose students and their families and teachers do not have access to advanced technology. The TIFB anticipates that many of these schools will be in rural areas. Others will be urban schools with disproportionate numbers of at-risk youths or high dropout rates.

Eligibility Requirements: The TIF Grant for Internet Access is available to Texas secondary schools with a high percentage or number of children living below the poverty line and/or of unique geographic location and limited access to resources for technology and infrastructure, and/or urban school districts with disproportionate numbers of at-risk youths or with high dropout rates. Priority will be given to schools in which teachers and students have no access or very limited access to Internet resources. K-12 schools are eligible to apply for funds, but the target population to be served by the funds must be students in grades 6-12. The district shall submit the proposal on behalf of its eligible secondary school(s) and serve as the fiscal agent for the grant.

Selection Criteria: A school district must present a well structured plan that demonstrates a commitment to improved student performance and criteria for measurement. The particular components will

outline a step-by-step approach for enhancing the student's educational experience and the staff and teacher's ability to implement the program. The plan should include on-going incentives for the teachers to integrate technology into the curriculum, including areas such as training, release time, technical support, computers to use at home, and even financial incentives.

Grant applications must present a clear and compelling action plan for how the schools will be organized to make computers and information networks available to students and teachers in day-to-day learning activities integrated with the curriculum. Also, as technology extends the time and place for learning beyond the schools, consideration should be given to opportunities for improved learning in the home.

Schools submitted by districts will be evaluated against six criteria. While each criterion is weighted equally, applicants must meet one of the following two threshold criteria.

1. 70% or higher level of economically disadvantaged students in the school. (as reported by the Texas Education Agency for 1995-96)

2. School not receiving requested telecommunications services, especially those schools in rural and remote areas.

Upon meeting one of the above threshold criteria, projects judged to be qualified will be further evaluated on the following four criteria:

3. Narrative Content

4. Budget

5. Project Timeline

6. Evaluation Plan

In addition to meeting five of the six elements listed previously, the TIFB will give priority to proposals that meet the following criteria: represent collaborative efforts involving multiple schools, universities, or libraries; contribute matching funds from other sources; show promise of becoming self-sustaining; help users of information learn new ways to acquire and use information through telecommunications; extend specific educational information and knowledge services to groups not previously served, especially those in rural and remote areas; demonstrate unique approaches to integrating technological tools into the core curriculum; demonstrate innovative uses of technological tools in the development of creative reading programs; and take advantage of distance learning opportunities in rural and urban school districts with disproportionate numbers of at risk youths or with high dropout rates.

The TIFB reserves the right to accept or reject responses based on its own assessment of district competency in meeting grant requirements, and to negotiate portions thereof. The TIFB also reserves the right to clarify terms and conditions of responses.

Applications will be reviewed and evaluated by the staff and Board of the Telecommunications Infrastructure Fund. Each applicant will be notified in writing of action taken on the application submitted.

Deadline for Submitting Applications: The deadline for receipt of applications is September 27, 1996. All applications must be received by 4:45 p.m. CST on that date. This closing date and procedures guaranteeing timely submission will be strictly observed.

Obtaining a Request for Proposal and Application Packet: Copies of the RFP and Application Packet may be obtained in any of the following manners: by sending a regular or certified letter, telefax, or express/overnight letter requesting a copy to: Karen Zimmerman,

TIF, 221 East 11th Street, Suite 103, Austin, Texas 78701, or an e-mail message to: tifb@governor.texas.gov. Telefax: (512) 936-2681. Copies of the RFP and Application Packet may also be obtained through TIF's Internet homepage: <http://www.state.tx.us/TIF>.

Issued in Austin, Texas, on July 10, 1996.

9609929

Arnold Viramontes

Executive Director

Telecommunications Infrastructure Fund

Filed: July 10, 1996



The University of Texas System

Request for Proposals for Management Information Technology Consulting Services

The University of Texas Health Science Center at San Antonio (UTHSCSA), in accordance with the provisions of the Government Code, §2254, requests the submission of proposals to provide consulting services as an Information Management Technology Consultant. The consultant will be responsible for assisting UTHSCSA in identifying, prioritizing, and coordinating information technology needs at the institution level. In addition, the consultant will be required to temporarily provide the functionality of a chief information officer and to develop strategies regarding information technology- in support of all policies, plans, and programs of UTHSCSA, for a period of six months.

Additional Project Description:

The UTHSCSA needs an organization-level process to make decisions about administrative and cross-cutting academic information technology needs. This central process should be developed to re-define the role of information technology and to provide direction for information management technology at UTHSCSA. The process or function would also provide guidance and coordination at other levels within the Health Science Center.

For a period of six months, the consultant will serve by delegation from the UTHSCSA President, as the Chief Information Officer (CIO), and within the period of time will be responsible for the development of an Information Management Strategic Plan.

Preproposal Meeting and Proposal Deadline:

A representative from each firm or entity interested in responding to this Request for Proposals will be required to attend a mandatory

preproposal conference, scheduled for Monday, July 29, 1996, at 2:00 p.m., CDT, in Room 444B, in the UTHSCSA Medical School Building, 7703 Floyd Curl Drive, San Antonio, Texas.

In order to submit a proposal for consideration by UTHSCSA, an original, plus seven copies of the full and complete proposal shall be submitted by 2:00 p.m., CDT, on August 9, 1996 to:

The University of Texas Health Science Center at San Antonio, Purchasing Department, Administration Building, Room 314, 7703 Floyd Curl Drive, San Antonio, 78284-7962.

(Proposals submitted from firms or entities which do not attend the mandatory preproposal conference will not be accepted for consideration, late proposals will not be considered.)

Obtaining Complete Request for Proposal Package:

To obtain a complete Request for Proposal package, please contact The University of Texas Health Science Center Purchasing Department, Administration Building, Room 314, 7703 Floyd Curl Drive, San Antonio, Texas 78284-7962, (210) 567-6030, Fax: (210) 567-6032, prior to the Preproposal Conference, schedule for July 29, 1996. Copies of the Request for Proposal will also be available at the Preproposal Conference, on July 29, 1996.

Consultant Selecting Information:

For consultant selection, the proposals are to be evaluated by a University committee, with the selection to be based upon the criteria identified in the Request for Proposals-§3.9: Criteria for Selection, as included on Pages 11 and 12, of the Request for Proposals.

Additional Information:

For additional information, please contact: The University of Texas Health Science Center at San Antonio, R. B. Price, Executive Vice President for Administration of Business Affairs, Medical School Building, Room 414A, 7703 Floyd Curl Drive, San Antonio, Texas 78284-7962, (210) 567-2013.

Issued in Austin, Texas, on July 2, 1996.

TRD-9609472

Arthur H. Dilly

Executive Secretary of the Board of Regents

The University of Texas System

Filed: July 2, 1996



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