

Texas Register

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- Governor** - Appointments, executive orders, and proclamations
- Attorney General** - summaries of requests for opinions, opinions, and open records decisions
- Secretary of State** - opinions based on the election laws
- Texas Ethics Commission** - summaries of requests for opinions and opinions
- Emergency Sections** - sections adopted by state agencies on an emergency basis
- Proposed Sections** - sections proposed for adoption
- Withdrawn Sections** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date
- Adopted Sections** - sections adopted following a 30-day public comment period
- Open Meetings** - notices of open meetings
- In Addition** - miscellaneous information required to be published by statute or provided as a public service

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes accumulative quarterly and annual indexes to aid in researching material published.

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How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which a document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 17 (1992) is cited as follows. 17 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example. on page 2 in the lower left-hand corner of the page, would be written: "17 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 17 TexReg 3"

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, Austin. Material can be found using *Texas Register* indexes, the *Texas Administration Code*, section numbers, or TRD number.

Texas Administrative Code

The *Texas Administrative Code* (TAC) is the approved, collected volumes of Texas administrative rules.

How to Cite: Under the TAC scheme, each agency section is designated by a TAC number. For example in the citation 1 TAC §27.15.

1 indicates the title under which the agency appears in the *Texas Administrative Code*; TAC stands for the *Texas Administrative Code*; §27.15 is the section number of rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

Texas Register Art Project

This program is sponsored by the *Texas Register* to promote the artistic abilities of Texas students, grades K-12, and to help students gain an insight into Texas government. The artwork is used to fill otherwise blank pages in the *Texas Register*. The blank pages are a result of the production process used to create the *Texas Register*. The artwork does not add additional pages and does not increase the cost of the *Texas Register*.

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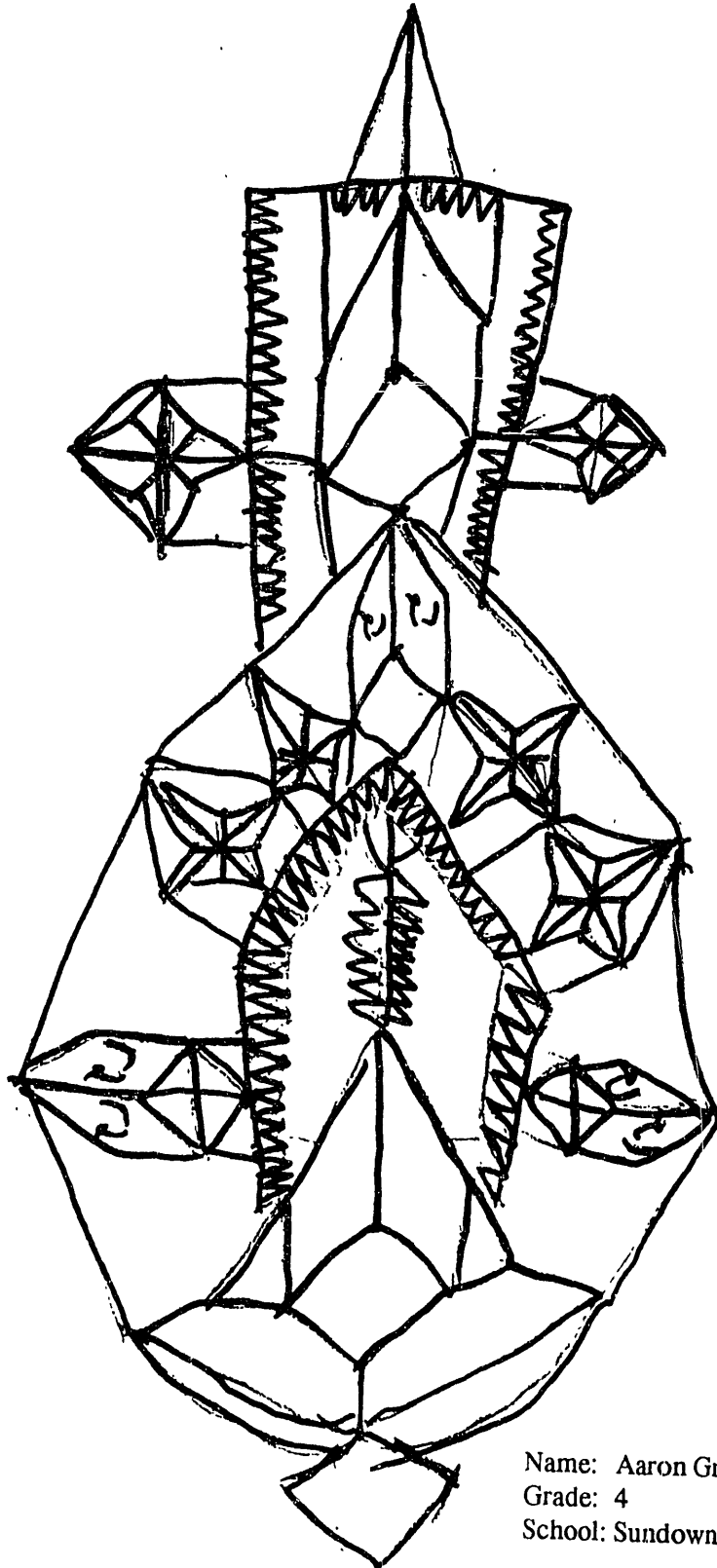
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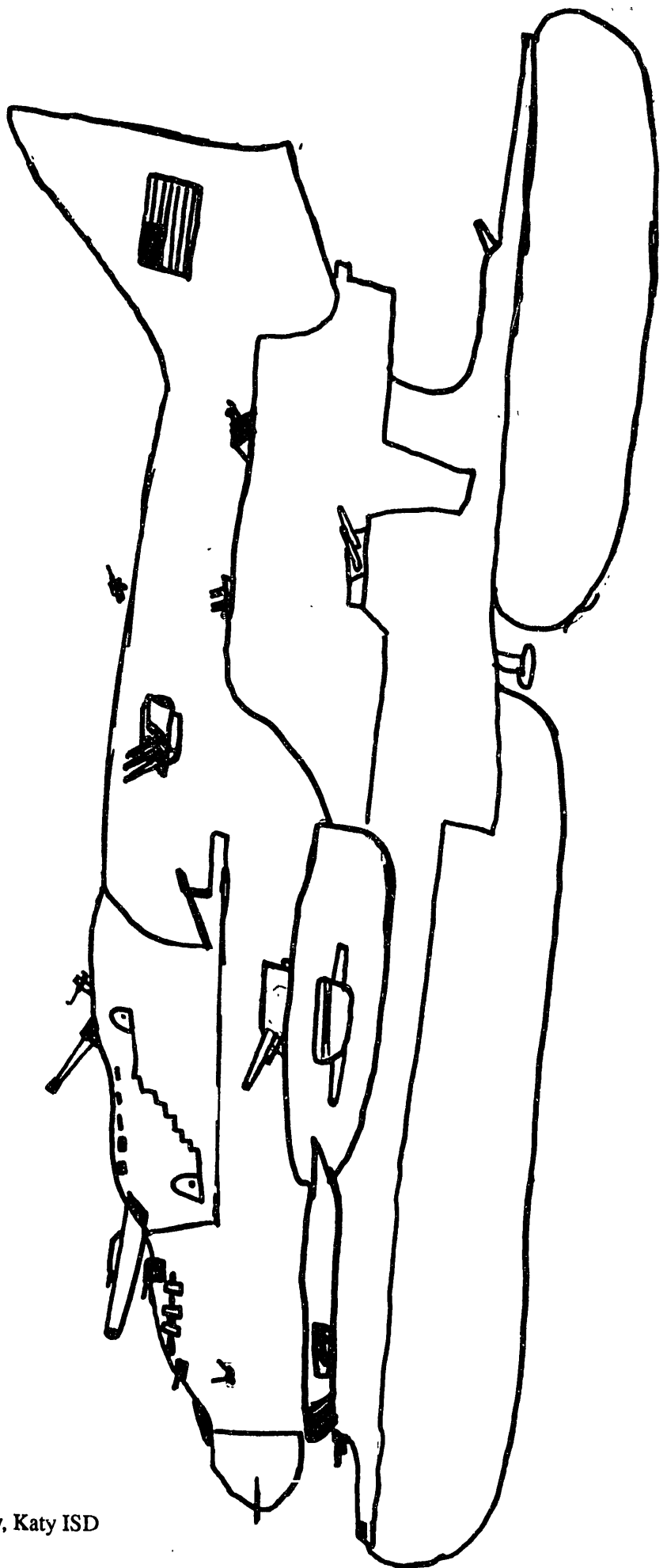
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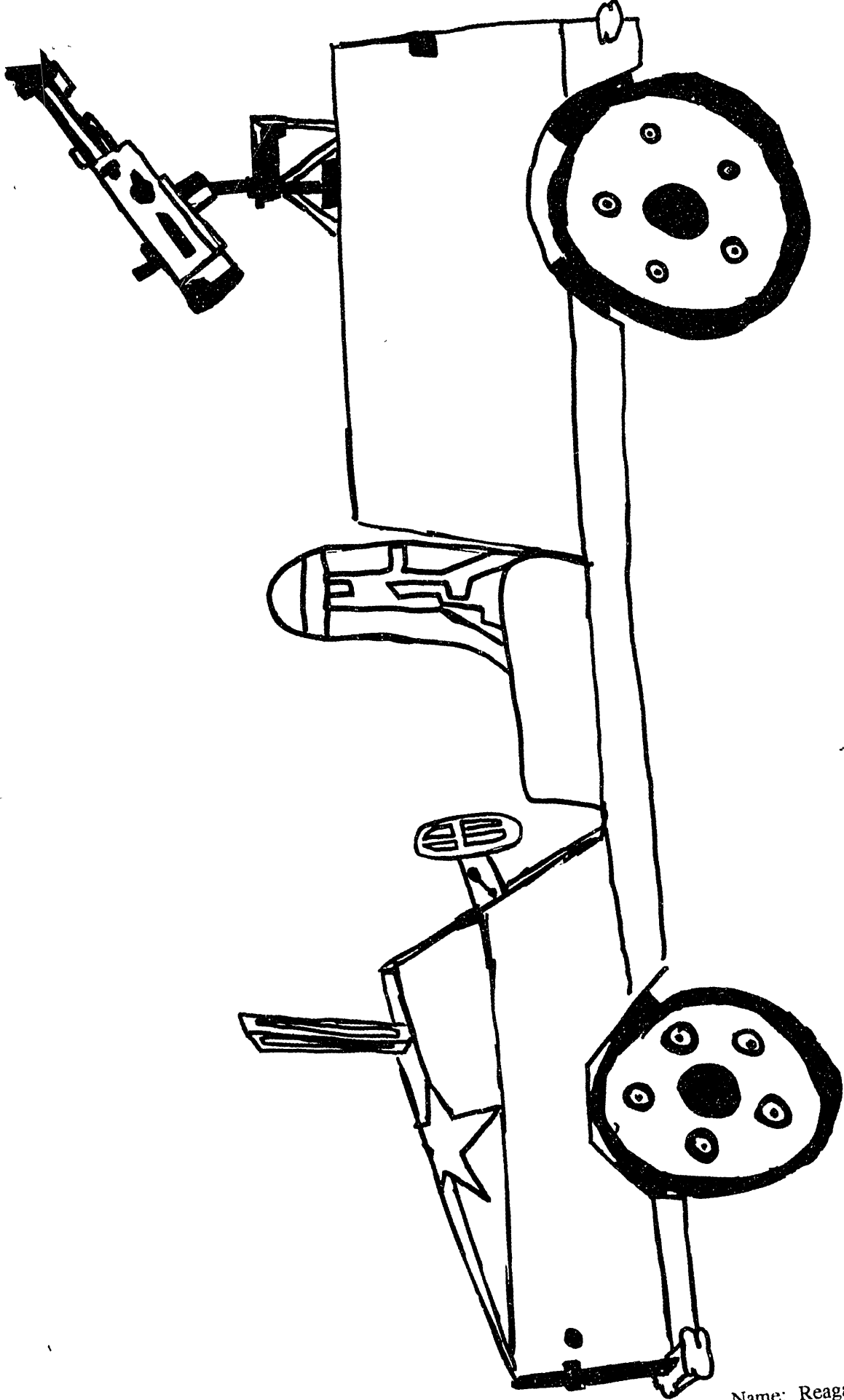
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Grade: 4
School: Sundown Elementary, Katy ISD

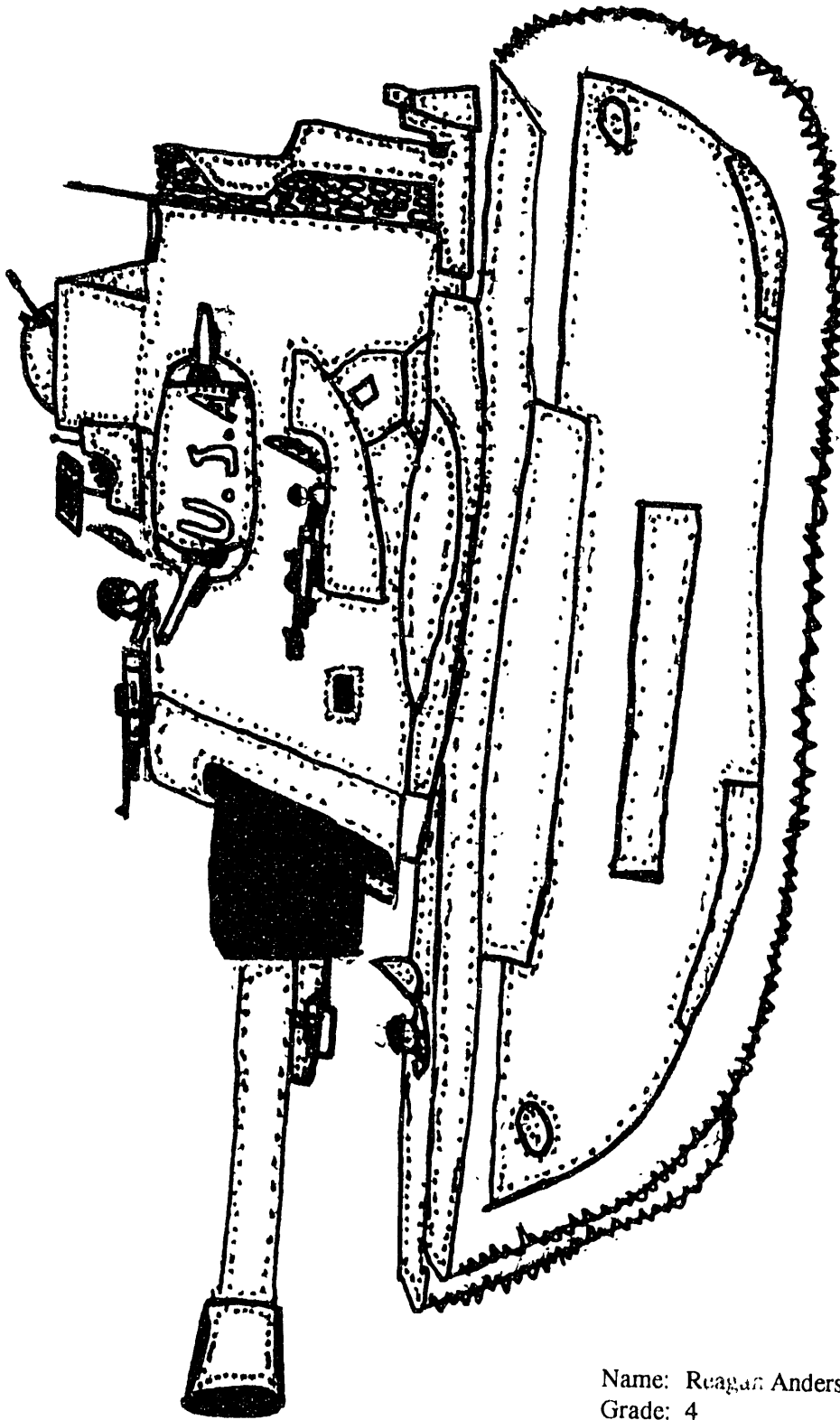


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Grade: 4
School: Sundown Elementary, Katy ISD



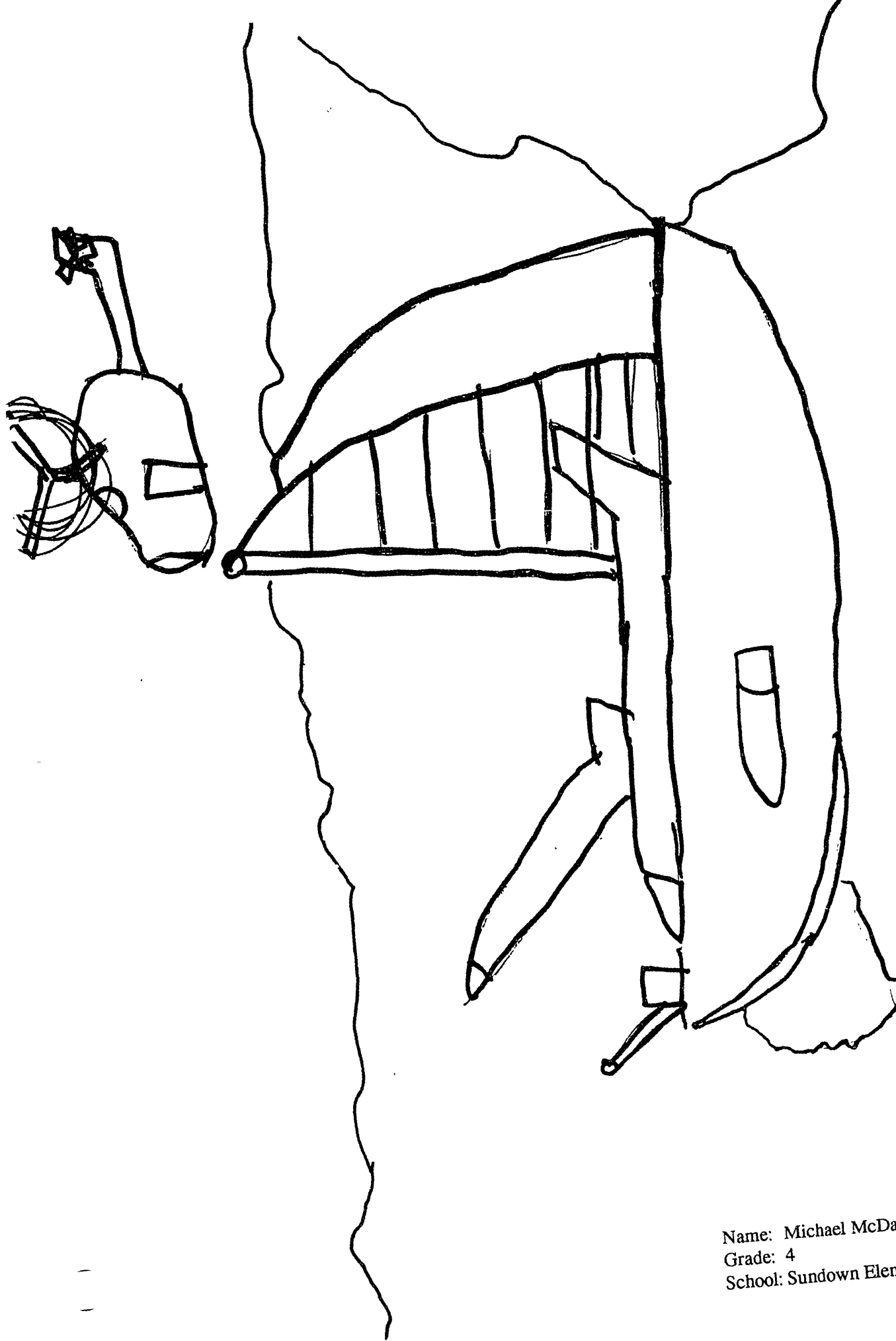
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Grade: 4
School: Sundown Elementary, Katy ISD

Bullet Proof Tank

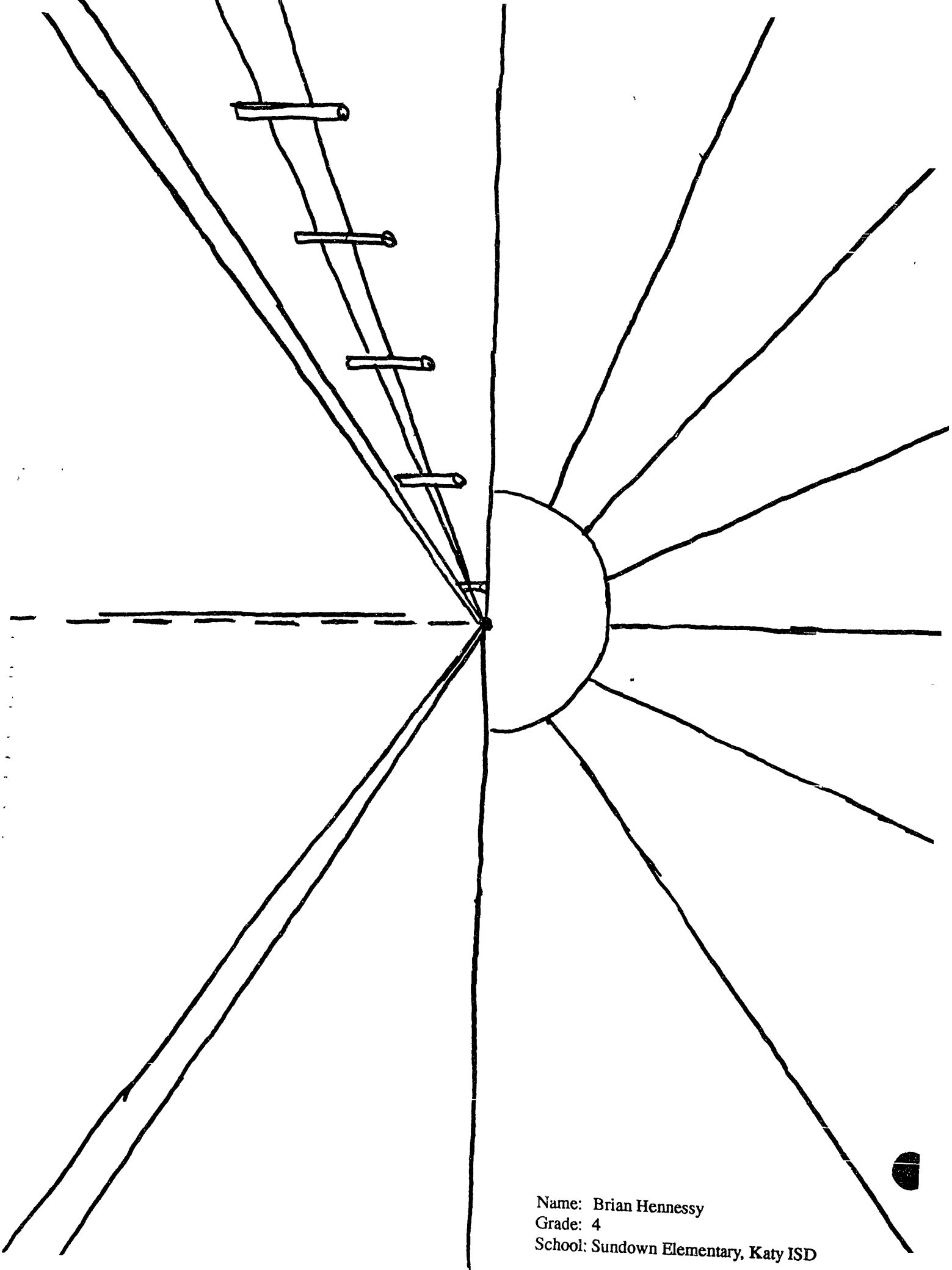


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Grade: 4
School: Sundown Elementary, Katy ISD



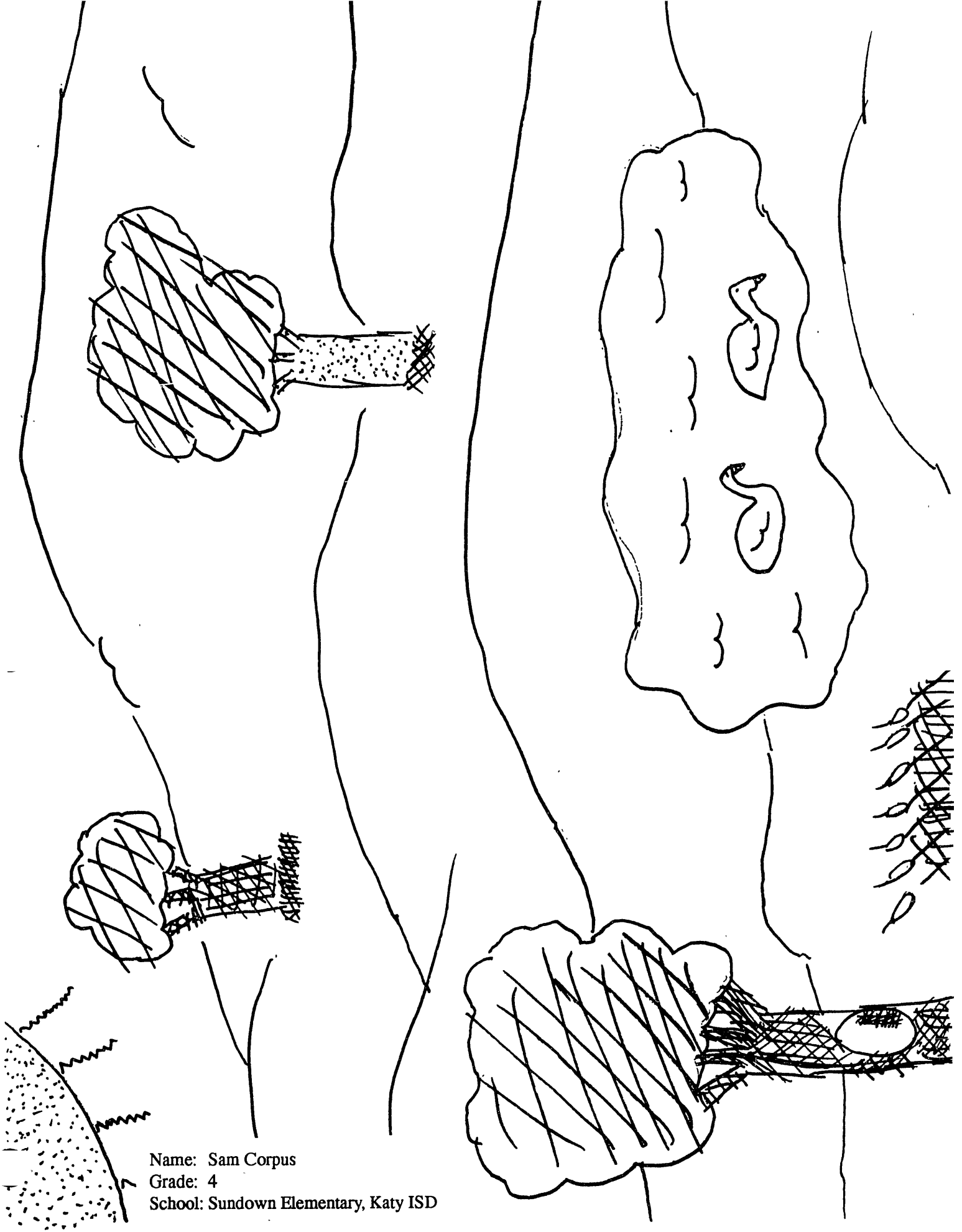


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Name: Brian Hennessy
Grade: 4
School: Sundown Elementary, Katy ISD





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Emergency Sections

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

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

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part IX. Texas Water Commission

Chapter 305. Consolidated Permits

Subchapter D. Amendments, Renewals, Transfers, Corrections, Revocations, and Suspension of Permits

• 31 TAC §305.69, §305.70

The Texas Water Commission is renewing the effectiveness of the emergency adoption of amended and new §305.69 and §305.70, for a 60-day period effective December 24, 1992. The text of amended and new §305.69 and §305.70 was originally published in the September 4, 1992, issue of the *Texas Register* (17 TexReg 6045).

Issued in Austin, Texas, on December 9, 1992.

TRD-9216438 Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Effective date: December 24, 1992

Expiration date: February 22, 1993

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



Chapter 330. Municipal Solid Waste

Subchapter Z. Waste Minimization and Recyclable Materials

Used Oil Reimbursement Fund

• 31 TAC §§330.1170-330.1174

The Texas Water Commission is renewing the effectiveness of the emergency adoption of new §§330.1170-330.1174, for a 60-day period effective December 24, 1992. The text of new §§330.1170-330.1174 was originally published in the September 4, 1992, issue of the *Texas Register* (17 TexReg 6072).

Issued in Austin, Texas, on December 9, 1992.

TRD-9216440 Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Effective date: December 24, 1992

Expiration date: February 22, 1993

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



Used Oil Filter Collection, Management, and Recycling

• 31 TAC §§330.1180-330.1190

The Texas Water Commission is renewing the effectiveness of the emergency adoption of new §§330.1180-330.1190, for a 60-day period effective December 24, 1992. The text of new §§330.1180-330.1190 was originally published in the September 4, 1992, issue of the *Texas Register* (17 TexReg 6073).

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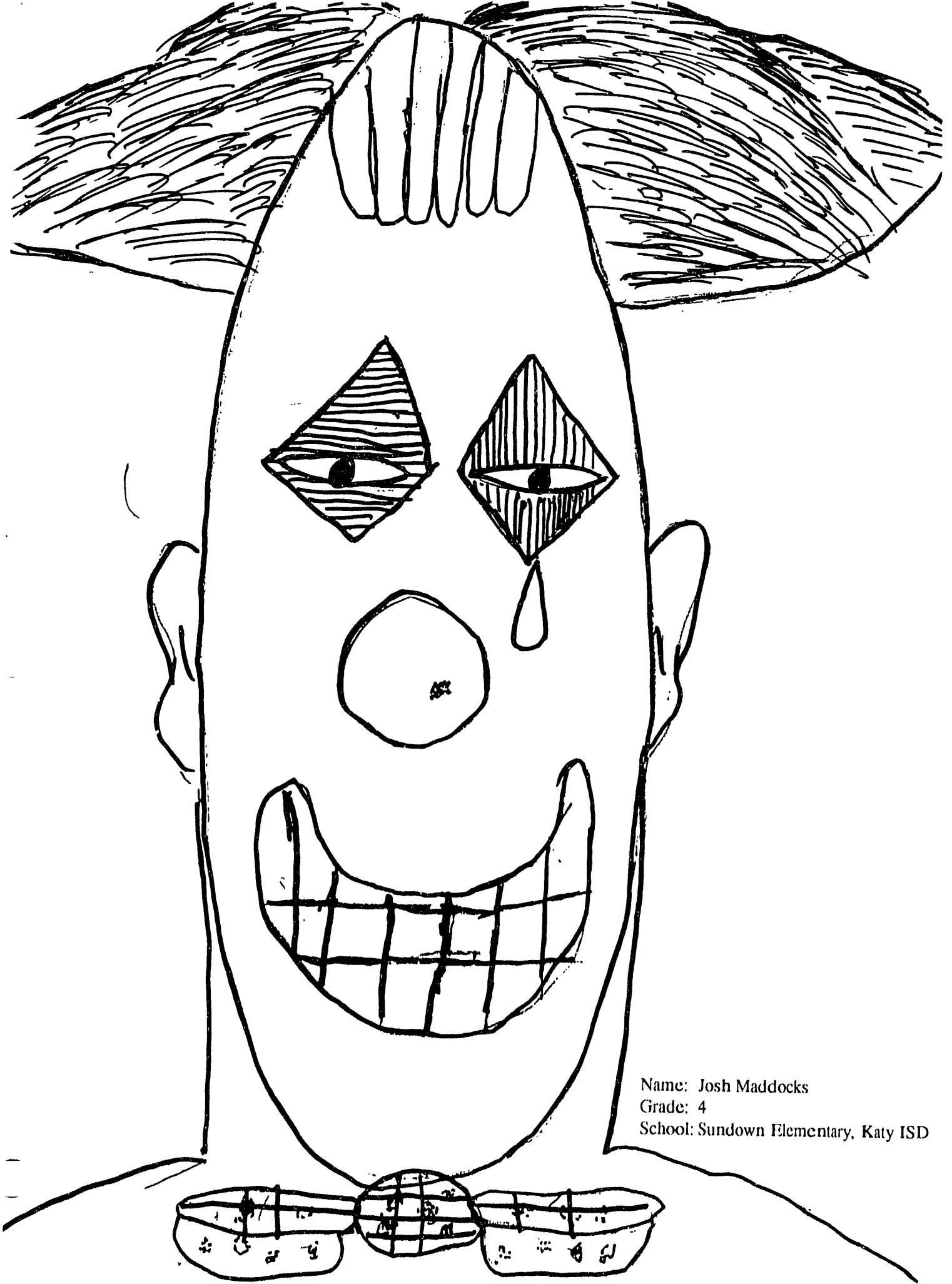
TRD-9216439 Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Effective date: December 24, 1992

Expiration date: February 22, 1993

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





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Proposed Sections

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

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

TITLE 22. EXAMINING BOARDS

Part V. Texas State Board of Dental Examiners

Chapter 101. Dental Licensure

General Qualifications

• 22 TAC §101.1

The Texas State Board of Dental Examiners proposes an amendment to §101.1, concerning general qualifications. Section 101.1 states the general qualifications for any person desiring to practice dentistry in the State of Texas.

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

Mr. Camp 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 to ensure that applicants for dental licensure receive the highest standards and to assure that the people of the State of Texas receive the highest quality of dental care. Also, to allow access to dental licensure to as many applicants in order to serve the people of Texas. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Mei Ling Clendennen, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 3800, Austin, Texas 78701.

The amendment is proposed under Texas Civil Statutes, Article 4544, §2, which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

§101.1. General Qualifications.

(a) (No change.)

(b) An applicant for licensure from the Texas State Board of Dental Examiners shall:

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

(A)[(3)] present proof of graduation from a dental school accredited by the Commission on Dental Accreditation of the American Dental Association;

(B) pursuant to Texas Civil Statutes, Article 4544, §2, if an applicant is a foreign and non-accredited dental school graduate, the applicant shall present evidence satisfactory to the Board that the applicant is capable of performing minimum clinical tasks, where clinical performance is required on an exam;

(4)-(8) (No change.)

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

Issued in Austin, Texas, on December 10, 1992.

TRD-9216509

C. Thomas Camp
Executive Director
Texas State Board of
Dental Examiners

Earliest possible date of adoption: January 18, 1992

For further information, please call. (512) 463-6400

Part XXIII. Texas Real Estate Commission

Chapter 535. Provisions of the Real Estate License Act

Suspension or Revocation of Licensure

• 22 TAC §535.164

The Texas Real Estate Commission proposes an amendment to §535.164, concerning disclosure of agency. The amendment adopts by reference a revised disclosure form containing information about the services real estate brokers provide to consumers. The form also describes agency relationships that may be created between a licensee and a consumer in a real estate transaction.

The amendment would require a real estate licensee to furnish a copy of the disclosure form signed by the licensee to a prospective

buyer, seller, landlord, or tenant upon a face-to-face meeting with the licensee or in a written communication from the licensee regarding a real estate transaction. The current section requires a disclosure form to be provided prior to discussing the negotiating position of the buyer or tenant, or before preparing a written offer.

The proposed disclosure form suggests that a consumer ask who the real estate licensee will represent in the transaction and ask what the licensee's duties will be to the consumer. Information is provided about legal duties of brokers who represent property owners, who represent prospective buyers or tenants or who act as agents for both principals as permitted by law.

Exceptions are provided for licensees acting solely as principals, for transactions involving a residential lease of one year or less with no sale of the property, for transactions in which the consumer is represented by another licensee and for transactions in which the consumer is also a real estate licensee.

The amendment also would require a real estate licensee who represents a principal in a transaction to disclose that representation to the other principal, to any real estate licensee representing the other principal and to any other authorized representative of the principal at every contact with the other principal, licensee, or authorized representative. The disclosure may be oral or written. If the licensee is dealing with an authorized representative of a principal, and the authorized representative is not a real estate licensee, the amendment requires the licensee to provide the disclosure form and disclose the representation to the authorized representative.

The amendment is proposed in connection with a proposed repeal of §535.165 of this title (relating to Disclosure of Buyer or Tenant Agency).

Mark A. Moseley, general counsel, has determined that for the first five-year period the section is in effect the public benefit anticipated as a result of enforcing the section will be increased consumer awareness of available real estate services and agency relationships. There will be no effect on small businesses as a result of enforcing the section. The only anticipated economic cost to persons who are required to comply with the section is the cost of copies of the form, estimated to be \$3.50 for a pad of 50 copies.

Comments on the proposal may be submitted to Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under Texas Civil Statutes, Article 6573a, §5(h), which provide the Texas Real Estate Commission with the authority to make and enforce all rules and regulations necessary for the performance of its duties

§535.164 Disclosure of Agency

(a) The Texas Real Estate Commission adopts by reference Agency Disclosure Form 1-2 [1-1], approved by the Texas Real Estate Commission in 1992 [1990]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

(b) Except as provided by subsection (d), a real estate licensee shall furnish a prospective buyer, seller, landlord or tenant with a copy of TREC Agency Disclosure Form 2-1 ("the form") signed by the licensee upon the first of the following events regarding a real estate transaction [A real estate licensee dealing face-to-face with a prospective buyer or tenant shall provide the prospective buyer, tenant, or its representative with a copy of the Agency Disclosure Form signed by the licensee before the time the first of the following events occurs].

(1) a face-to-face meeting with the licensee; or [discussing any position the prospective buyer or tenant may wish to take in negotiating a contract to purchase, rent, or lease a specific property, such as the amount or terms to be offered, provided, however, that a real estate licensee may qualify a prospective buyer or tenant to a price range or generally discuss prices and financing prior to making disclosure in accordance with this section; or]

(2) a written communication from the licensee [preparing a written offer to purchase, rent, or lease real property].

(c) The licensee should retain a copy of the form [Agency Disclosure Form] signed by the prospective buyer, seller, landlord or tenant, or its representative in order to demonstrate compliance with this section

(d) A real estate licensee is not required to provide a copy of the form to a prospective buyer, seller, landlord or tenant in the following instances:

(1) the licensee is acting solely as a principal and not as an agent;

(2) the proposed transaction is for a residential lease for one year or less and no sale is involved;

(3) the prospective buyer, seller, landlord, or tenant is represented by another real estate licensee; or

(4) the prospective buyer, seller, landlord, or tenant is a real estate

licensee [This section does not apply to a real estate licensee who enters into a written agreement to represent a prospective buyer or tenant prior to the occurrence of either of the two preceding events, or to a real estate licensee acting as a principal and not as an agent, or to residential leases for one year or less where no sale is contemplated].

(e) (No change.)

(f) A real estate licensee who represents a principal in a proposed real estate transaction shall disclose the representation to the other principal, to any real estate licensee representing the other principal and to any other authorized representative of the principal at every contact with the other principal, licensee, or authorized representative.

(g) If a buyer, seller, landlord, or tenant has an authorized representative other than a real estate licensee, such as a trustee, attorney or attorney-in fact, a real estate licensee dealing only with the authorized representative shall provide the authorized representative with a copy of the form and make the disclosure required by subsection (f) of this section as if the licensee were dealing directly with the buyer, seller, landlord, or tenant.

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 December 11, 1992

TRD-9216578

Mark A. Moseley
General Counsel
Texas Real Estate
Commission

Earliest possible date of adoption January 18, 1993

For further information, please call (512) 465-3960

• 22 TAC §535.165

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

The Texas Real Estate Commission proposes the repeal of §535.165, concerning disclosure of buyer or tenant agency. The section requires a written disclosure form to be provided to a prospective seller or landlord by a real estate licensee representative a prospective buyer or tenant. The repeal is proposed in connection with the commission's proposed amendment to §535.164 adopting a revised disclosure form containing information about real estate services and agency relationships.

Mark A. Moseley, general counsel, has determined that for the first five-year period the repeal is in effect there will be no fiscal impli-

cations for state or local government as a result of enforcing or administering the repeal.

Mr. Moseley also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be increased consumer awareness of available real estate services and agency relationships. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The repeal is proposed under Texas Civil Statutes, Article 6573a, §5(h), which provide the Texas Real Estate Commission with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§535.165 Disclosure of Buyer or Tenant Agency

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 December 11, 1992

TRD-9216579

Mark A. Moseley
General Counsel
Texas Real Estate
Commission

Earliest possible date of adoption January 18, 1993

For further information, please call (512) 465-3960

Part XXIX. Texas Board of Professional Land Surveying

Chapter 661. General Rules of Procedures and Practices

Contested Case

- 22 TAC §§661.60, 661.62, 661.64, 661.72, 661.78-661.80, 661.82, 661.85, 661.86-661.88

The Texas Board of Professional Land Surveying proposes new §661.60 and amendments to §§661.62, 661.64, 661.72, 661.78-661.80, 661.82, 661.85, and 661.86-661.88, concerning contested case. The amendments regard how a contested case is now required to be conducted pursuant to the State Office of Administrative Hearings.

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

Ms. Smith, 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 section will be to insure the fair and expeditious determination of every contested case in compliance with the rules of the State Office of Administrative Hearings. 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 Sandy Smith, Executive Director, 7701 North Lamar Boulevard, Suite 400, Austin, Texas 78752. Written public comment is invited for 30 days from the date of this register.

The amendments are proposed under Texas Civil Statutes, Article 5282c, §9, which provide the Texas Board of Professional Land Surveying with the authority to make and enforce all reasonable and necessary rules, regulations, and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this Act

§661.60 Administrative Hearings.

(a) Pursuant to Texas Civil Statutes, Article 6252-13f, all formal administrative hearings in contested cases shall be conducted by the State Office of Administrative Hearings (SOAH) in accordance with the Administrative Procedure and Texas Register Act (APTRA), Texas Civil Statutes, Article 6252-13a, and the applicable law and rules of the board.

(b) If there is any conflict between the rules of SOAH and the rules of the board, the board rules control unless otherwise specifically stated in the rules of SOAH.

(c) It shall be the responsibility of the party or parties in a contested case to ascertain the rules of SOAH.

§661.62. *Filing of Documents.* All complaints, motions, replies, answers, notices, requests for hearings by applicants whose applications the board has rejected, and other pleadings relating to any proceeding [pending or] to be instituted before the board shall be filed with the administrative law judge [executive director]. After the board has filed either a Request for Setting of Hearing form with the State Office of Administrative Hearings (SOAH) or a Request for Assignment of Administrative Law Judge form, SOAH acquires jurisdiction. As a consequence all further matters shall be filed with SOAH. [They shall be deemed filed only when actually received in the board's office.]

§661.64. Computation of Time

(a) (No change.)

(b) Extensions. Unless otherwise provided by statute, the time for filing any

pleading may be extended by order of the administrative law judge [executive director], upon written motion duly filed prior to the expiration of the applicable period of time for the filing of the same, showing that there is good cause for such extension of time and that the need therefore is not caused by neglect, indifference, or lack of diligence of the movant.

§661.72. Motions for Postponement, Continuance, Withdrawal, Dismissal of Other Matter before the Agency.

(a) Motions for postponement, continuance, withdrawal, or dismissal, or matters which have been duly set for hearing, shall be in writing, shall be filed with the administrative law judge [executive director], and distributed to all interested persons under a certificate of service, no less than five days prior to the designated date that the matter is to be heard, except upon an unforeseen emergency. Such motion shall set forth, under oath, the specific grounds upon which the moving party seeks such action and shall make reference to all prior motions of the same nature filed in the same proceeding

(b) Failure to comply with subsection (a) of this section, except for good cause shown, may be construed as lack of diligence on the part of the moving party, and at the discretion of the administrative law judge [executive director], may result in the dismissal of the matter in issue, with prejudice to refiling.

§661.78. *Rules of Evidence.* In all cases, irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in nonjury civil cases in the district courts of this state shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonable prudent men in the conduct of their affairs. The rules of privilege apply as recognized by law. [The presiding board member shall give effect to the rules of privilege recognized by law.] Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, if a hearing will be expedited and in the interest of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

§661.79. Documentary Evidence and Official Notice.

(a) Documentary evidence may be received. When numerous documents are offered, the administrative law judge [presiding member] may limit those admitted to

a number which are typical and representative, and may, at his or her discretion, require the abstracting of the relevant data from the documents and the presentation of the abstracts in the form of an exhibit; provided, however, that all parties of record or their representatives may be given the right to examine the documents from which such abstracts were made.

(b) (No change.)

§661.80. *Limitations on Number of Witnesses.* The administrative law judge [presiding member] shall have the right in any proceeding to limit:

(1) the number of witnesses whose testimony is merely cumulative; and/or

(2) the number of cumulative exhibits.

§661.82. *Offer of Proof.* When testimony is excluded, the person offering such testimony shall be permitted to make an offer of proof by dictating or submitting in writing the substance of the proposed testimony, prior to the conclusion of the hearing, and such offer of proof shall be sufficient to preserve the point for review by the board [The board may ask such questions of the witness as it deems necessary to satisfy itself that the witness would testify as represented in the offer of proof.] An alleged error in sustaining an objection to questions asked on cross-examination may be preserved without making an offer of proof.

§661.85. *Oral Argument.* Any party may request oral argument prior to the final determination in any proceeding, but oral argument shall be allowed only in the sound discretion of the administrative law judge [presiding member].

§661.86 Final Decisions and Orders.

(a) Upon receipt of the proposal for decision (PFD) prepared by the administrative law judge the party or parties may within the time period indicated therein by the administrative law judge file exceptions and/or briefs with the State Office of Administrative Hearings. Time periods for responses and replies if any, are likewise determined by the administrative law judge. Upon receipt of any such exceptions, responses, or replies, the administrative law judge may add his/her written comments, which may include any amendments in his/her PFD pursuant to the exceptions, replies, or briefs submitted by the parties, to the combined documents to be transferred to the board. Upon receipt of the contested case documents, the board will inform the party or parties involved

of the date of the meeting at which the contested case will be considered.

(b) All final decisions, recommendations, and orders of the board shall be in writing and shall be signed by the presiding member. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submits proposed findings of fact, the decision shall include a ruling on each proposed finding. Parties shall be notified either personally or by mail of any decision or order. A copy of the decision, recommendation, or order shall be delivered or mailed to the party and to his attorney of record.

§661.87. Administrative Finality.

(a) (No change.)

(b) If [the executive director finds that] an imminent peril to the public health, safety, or welfare requires immediate effect of a final decision or order in a contested case, [it shall recite the finding in] the decision or order shall recite that finding as well as the fact that the decision or order is final and effective on the date rendered, in which event the decision or order is final and appealable on the date rendered and no motion for rehearing is required as a prerequisite for appeal.

§661.88. Motion for Rehearing. A motion for rehearing is a prerequisite to an appeal. A motion for rehearing must be filed by a party within 20 days after the date the party or his attorney of record is notified of the final decision or order. Replies to a motion for rehearing must be filed with the board within 30 days after the date the party or his attorney of record is notified. Any appeals of the board's decision shall be controlled by, and in conformity with, the Administrative Procedure and Texas Register Act. Motions for Rehearing shall be filed with the board with a copy simultaneously forwarded to the State Office of Administrative Hearings (SOAH) administrative law judge assigned to the case. Should the board issue a timely order granting a Motion for Rehearing, the rehearing will also be conducted by the SOAH administrative law judge.

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 December 9, 1992.

TRD-9216469

Sandy Smith
Executive Director
Texas Board of
Professional Land
Surveying

Earliest possible date of adoption: January 18, 1992

For further information, please call: (512) 452-9427

◆ ◆ ◆
TITLE 28. INSURANCE
Part II. Texas Workers'
Compensation
Commission

Chapter 102. Practice and
Procedures

• **28 TAC §102.9**

The Texas Workers' Compensation Commission proposes new §102.9 concerning submission of information required by the commission. This section establishes that the commission may require participants to supply information necessary for the commission to carry out its obligation of monitoring and enforcing the Texas Workers' Compensation Act. It also establishes that failure to provide the information required may result in administrative actions and penalties.

The new section is necessary to fully enable the commission to monitor and enforce the Act and commission rules.

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

There will not be any effect of enforcing or administering this section which is not generally true in the Act. The Act clearly authorizes the commission to require information to be provided and this section clarifies to the public how the commission intends to exercise that authority.

Ms. Chamness 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 clearer communication with the participants in the workers' compensation system; a better understanding of what the commission expects; and more efficient commission operation based on the clear source for authority to act. There will be no effect on small businesses

Comments on the proposal may be submitted to Ken Forbes, Policy and Rules Administrator, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

The new section is proposed under Texas Civil Statutes, Article 8308-2 09(a), which authorizes the commission to adopt rules necessary to administer the Act, and Texas Civil Statutes, Article 8308-2.11(f), which allows the executive director to prescribe the form, manner, and procedure for transmission of information to the commission.

§102.9. Submission of Information Requested By the Commission.

(a) The commission shall require those subject to the Act to provide information at such times and in such manner as necessary to administer the Act or commis-

sion rules. This requirement to provide information shall:

(1) be communicated by telephone or in writing; and

(2) inform the participant of:

(A) where the information is to be sent; and

(B) when the information must be submitted.

(b) Upon receipt of the requirement from the commission, those subject to the Act will have the period of time specified by the commission, not to be less than 24 hours for readily available information, to provide the information required to the commission.

(c) Failure to provide the information may result in an order to produce the information, violation of which carries a maximum penalty of \$10,000 and sanctions as provided by the Act.

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 December 11, 1992.

TRD-9216574

Susan Cory
General Counsel
Texas Workers'
Compensation
Commission

Earliest possible date of adoption. January 18, 1993

For further information, please call: (512) 440-3592

◆ ◆ ◆
TITLE 31. NATIONAL RE-
SOURCES AND CON-
SERVATION

Part II. Texas Parks and
Wildlife Department

Chapter 59. Parks

Park Entrance and Park User
Fees

• **31 TAC §59.2, §59.3**

The Texas Parks and Wildlife Department proposes amendments to §59.2 and §59.3, concerning Park Entrance and Park User Fees set by the Commission. Fee increases are necessary to provide additional funding to maintain the current level of park services for the benefit of the public.

Jim Dickinson, deputy executive director, has determined that for the first five-year period the sections are in effect there will be fiscal implications as a result of enforcing or administering the sections

The effect on state government will be an estimated net increase in revenue of

\$500,000 in fiscal years 1993-1997. There will be no effect on local government.

Jim Dickinson 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 park fees sufficient to maintain park services. There will be no effect on small businesses. The anticipated economic impact to park visitors with the sections as proposed will be the payment of the fees indicated.

The department has filed a local employment impact statement with the Texas Employment Commission in compliance with the Administrative Procedure and Texas Register Act, §4A and has not yet received a response.

Comments may be submitted to Jim Dickinson, Deputy Executive Director, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4815.

The amendments are proposed under the Texas Parks and Wildlife Code, §13.015 and §21.111, which provides the Texas Parks and Wildlife Commission with the authority to set certain park fees.

§59.2. Park Entrance and Use Fees.

(a)-(c) (No change.)

(d) A Youth Group Annual Entrance Permit may be purchased by youth organizations composed of individuals age 18 and under for an annual fee of \$50-\$300. The group must have state or national affiliation and be sponsored by a governmental agency or non-profit organization, as defined under the Internal Revenue Code, §501. The permit is valid for entry only at parks with a per vehicle entrance fee and is non-transferable. No more than 50 persons, including adult supervisors will be admitted with each permit and the number of vehicles may be limited by the park superintendent. Additional permit(s) is required if the group exceeds 50 persons. Permit is valid for 12 months from date of purchase. To purchase the group permit, eligible organizations must submit an application along with the required fee to the Chief, Park Operations, or designee, for approval. The permit authorizes entry of vehicles carrying group members provided the adult sponsor presents the permit(s) at the park entrance and identifies each vehicle carrying group members.

(e)[(d)] An entrance and use fee of \$2.00 to \$6.00 per motorized vehicle per day will apply at parks designated by the department in lieu of an annual or parklands passport. Where variable entrance and use fees are authorized by the Commission, they may be set on an individual park basis.

(f)[(e)] An entrance fee will apply on a per person basis at parks designated by the department.

(g)[(f)] The executive director may, at his discretion, temporarily waive any entrance fees or conditions thereof established in this section at any park when construction activities at the park adversely affect public enjoyment of the recreational opportunities normally available. The executive director may discount or waive entrance fees in order to enhance utilization of existing facilities.

(h)[(g)] No entrance fee will be charged or collected at parks unless the department deems it feasible to collect the fees.

(i)[(h)] Persons entering parks by boat, bicycle, or on foot are authorized to use a valid annual park entrance permit receipt in lieu of paying an individual entrance fee. An individual presenting a receipt must be the same person to whom the annual permit was issued or a member of the original permit holder's immediate family. Individuals eligible for park entry as specified herein may be accompanied by as many as three other persons.

(j)[(i)] Persons 65 years of age or over and veterans of the armed services of the United States who, as a result of military service, have a service-oriented disability as defined by the Veterans Administration, consisting of the loss of the use of a lower extremity or of a 60% disability rating and who are receiving compensation from the United States government because of the disability, will not be required to pay an entrance fee at state parks. State parklands passports will be issued to eligible persons at state parks and the Austin headquarters. A driver's license, birth certificate, military discharge papers, or any other suitable identification considered sufficient proof for establishing the age and identity of an individual must be presented at the time the passport is issued to persons 65 years of age and over. Disabled veterans must establish eligibility by presenting one of the following:

- (1) disabled veteran's of Texas license plate receipt;
- (2) veteran's award letter (which establishes the degree of service-connected disability);
- (3) tax exemption letter for Texas veterans.

(k)[(j)] All motor vehicles carrying the holder of a state parklands passport may enter the park without payment of an entrance fee. This passport does not exempt the holder from payment of fees for fishing privileges or tour fees required in certain units of the state park system.

(l)[(k)] A duplicate state parklands passport may be issued for use on additionally owned motor vehicles. A replacement for a state parklands passport may be issued

when the original registration or windshield sticker is lost, stolen, damaged, or the motor vehicle is sold, traded, or stolen, or when the motor vehicle windshield is replaced.

(m)[(l)] Entrance fees established in subsections (b) and (d) of this section will apply to all private aircraft noncommercial motorized vehicles which includes two or more-wheeled vehicles. Commercial, quasi-public, or public buses or other vehicles are excluded.

(n)[(m)] Persons entering parks by bus, where entrance and use fees are charged on a per-car basis, will be charged [a group rate] as follows: Adults [1-11 persons], \$1.00-\$3.00 each, minimum \$4.00-\$20; [12-47 persons, \$12; 48 or more persons, \$20;] children 12 years of age and under, [1-29 persons,] \$50-\$1.50 cents each, minimum \$4.00-\$20 [30 or more persons, \$12].

(o) Students, teachers, bus drivers, and children on group, school-sponsored visits to historic sites or parks for educational purposes may enter at the rate of \$.50-\$1.00 per person at historic sites where a tour fee is charged or at a park where entrance and use fees are charged on a per-vehicle basis. The group or class must be accompanied by an adult supervisor(s). The \$.50 per person fee applies to individuals from all public or private schools, colleges, and universities offering accredited courses.

[(n)] Organized groups consisting of individuals 12 years of age and under may enter the park in buses or other type vehicle at the rate \$.50 per person, provided they are accompanied by adult supervisors and the entrance fee for the entire group is paid at one time.]

(p) Students of any age are entitled to the student historic site tour fee. Students 19 and over are required to present a current, valid student identification card.

(q)[(o)] Persons entering parks on foot, bicycle, or by boat where entrance and use fees are charged on a per-car basis will be charged an individual rate of \$1.00-\$3.00 for adults and \$.50-\$1.50 for children 12 years of age and under.

(r)[(p)] The valid time period for daily entrance fees will be:

(1) for day use, the time period encompassing the day-use opening hours of the park on the date on which admission is paid; and

(2) for overnight use, a 24-hour period beginning at 2 p.m. on the date admission is paid.

(s)[(q)] At the discretion of the executive director, any person or persons may be exempted from the provisions of this

section if the entry of such person or persons to a park or parks is necessary or desirable in order to provide a service for the state. The executive director is authorized to issue such entrance fee waivers under certain circumstances and conditions. A written record shall be maintained of all such exemptions.

(t)[(r)] The executive director is authorized to establish an entrance fee in accordance with these sections at any site hereafter established as a state park when he deems such action is appropriate and in accord with applicable statutes.

(u)[(s)] Any fees established in this section may be waived or reduced at the discretion of the executive director for public use of a park during special events or exhibitions.

(v)[(t)] The executive director may designate the amount of use fee and entrance fee within the total amount provided for by this section.

§59.3. Facility Use Fees. The amount of user fees will be determined by the Parks and Wildlife Commission and will be based primarily on comparisons of current fees for facilities and services of comparable character under similar conditions, with due consideration for length of season, provisions for peak loads, average percentage of occupancy, accessibility, availability, cost of labor, materials and supplies, type of patronage, and other such factors deemed significant, except the costs of park acquisition, development, and major repairs. The executive director will cause to be collected a user fee at the time a park facility is assigned or occupied, and as new parks and facilities are added to the system, the approved fee schedule will be implemented when feasible. Where variable use fees are authorized by the Commission they may be set on an individual park basis or an individual facility basis by the department based on visitation and site desirability. **Fees may also be set on a basis other than daily, e.g., weekly, monthly, etc.** The Executive Director may discount or waive use fees in order to enhance utilization of existing facilities. The following Park use fees are effective March 1, 1993 [September 1, 1991]:

- (1) Campsite-Primitive-\$4.00-\$12 [\$10.00];
- (2) Campsite-Regular-\$5.00-\$16 [\$12];
- (3) Campsite-with Electricity-\$9.00-\$18 [\$14];
- (4) Campsite-with Electricity and Sewer Connection-\$10-\$20 [\$16];
- (5) Screened Shelter-\$15-\$30 [\$20];

(6) Recreation Hall:

(A) day use only-\$50-\$100;

(B) overnight use-\$80-\$150, (If equipped with kitchen add)-\$25-\$45;

(7) Group Lodge:

(A) Bastrop-Lost Pines, one-eight persons-\$70-\$150;

(B) Lake Brownwood-Beach, one-26 persons-\$110-\$180;

(C) Lake Brownwood-Fisherman's, one-10 persons-\$80-\$125;

(D) Daingerfield-Bass, one-20 persons \$105-\$160;

(E) Special-one-eight persons-\$70-\$125, Each additional person-\$5.00-\$15;

(8) Dining Hall-\$65-\$100;

(9) Tabernacle:

(A) one-25 persons-\$17-\$40;

(B) 26 or more-\$29-\$60;

(10) Pavilion-\$25-\$200 according to type of facility and size of group. [No charge;]

(11) Auditorium-\$200-\$300;

(12) Gymnasium-\$200-\$300; (with kitchen privileges add)-\$25-\$45;

(13) Group Picnic Area:

(A) one-25 persons-\$17-\$40;

(B) 26 or more-\$29-\$60;

(14) Picnic Shelter with Kitchen:

(A) one-25 persons-\$17-\$40;

(B) 26 or more-\$29-\$60;

(C) (with kitchen privileges add)-\$25-\$45;

(15) Group Camp with Bunk-Houses and Dining Hall (Lake Brownwood State Park only)-\$65-\$100; plus \$12-\$30 for each bunk house used (Bunk houses not rented without dining hall);

(16) Group Camp with Screened Shelters and Dining Hall-\$65-\$100 plus

\$15-\$30 [\$20] for each screened shelter used;

(17) (No change.)

(18) Group Camp with Barracks or Screened Shelters with Bunk Beds; Dining Hall and Restroom with showers available (Screened shelters with bunk beds rented to individuals on the 90 day reservation system after annual drawings, except at Garner)-\$150-\$250 Screened Shelter-only 17-\$30 [\$22.00];

(19) Lodge, Court, or Inn:

(A) Indian Lodge:

(i) single-\$40-70;

(ii) Double-\$45-\$75;

(iii) Double with double beds-\$50-\$80;

(iv) Suite with double beds-\$55-\$85;

(v) Each additional adult-\$5.00-\$10;

(vi) Each additional child (six-12)-\$2.00-\$4.00;

(vii) (No change.)

(B) Balmorhea-San Solomon Springs Court:

(i) Single-\$35-\$50;

(ii) Each additional adult \$5.00-\$10;

(iii) Each additional child (six-12)-\$2.00-\$4.00;

(iv) (No change.)

(v) With kitchen unit add \$5.00-\$10;

(C) Landmark Inn:

(i) Single \$35-\$50;

(ii) Double (two persons) \$40-\$55;

(iii) Children (six-12) \$2.00-\$4.00;

(iv) (No change.)

(v) (Additional adult when space is available for cot)-\$5.00-\$10;

(20) Cabins-\$35-\$100 [\$55.00];

(21) Swimming Pools:

(A) Adults-\$2.00-\$4.00;

(B) Child (six-12)-\$1.00-\$2.00;

(C) Group rate (before or after closing hours)-\$35-\$50;

(22) Golf Course (Staff Operated) Lockhart only-nine holes:

(A) Green Fees-Daily \$7.00-\$10;

(i) Weekends and Holidays-\$8.00-\$11;

(ii) Annual Family-\$150-\$200;

(iii) Annual Individual-\$100-\$150;

(iv) 18 years of age and under excluding (weekends and holidays)-\$3.00-\$6.00;

(B) Trail fee for privately owned golf carts:

(i) Daily-\$3.00-\$6.00;

(ii) Annual-\$50-\$100;

(23) Texas State Railroad:

(A) Fares:

(i) Adult (one-way)-\$8.00-\$13;

(ii) Adult (R-T)-\$13-\$18 [\$11 00];

(iii) Child (three-12) (one-way)-\$4.00-\$9.00;

(iv) Child (three-12) (R-T)-\$7.00-\$12 [\$6.00];

(B) Train lease for filming purposes:

(i) Steam Locomotive and Tender (per day)-\$1,500-\$2,000;

(ii) Diesel Locomotives (per day)-\$700-\$1,000;

(iii) Steam Engine Firing Fuel and Lubricants (per running hour)-\$100-\$200;

(iv) Diesel Locomotives Fuel and Lubricants (per running hour)-\$50-\$100;

(v) Railroad Car per unit (any type) (per day)-\$120-\$200;

(vi) Rail Mounted Truck with Driver (per day)-\$280-\$400;

(vii) Motor Car with Driver (per day)-\$240-\$400;

(viii) Short Term Steam Train Use (after regular schedule run) three-hour minimum (per hour)-\$400-\$600;

(ix) Plus Salaries for Train Crew Surety bond of \$500,000 may be required; Train Charter Rates: 50-Mile Round Trip-Regular Passenger Fares-Minimum-\$2,500-\$3,500;

(x) 15-Mile Round Trip-Regular Passenger Fares-Minimum-\$1, 650-\$2,500;

(24) Fees [Lease] for filming purposes by private, profit oriented businesses (per day). Surety bond may be required-\$250 [\$1, 000]-\$5,000

(25) Excess Vehicle Parking (With overnight facility use only) Per Vehicle-\$2.00-\$4.00 (Areas for parking designated by the Park Manager);

(26) Activity Use Fee Per person-\$2.00-\$6.00;

(27) Overnight Activity Use Fee Per person-\$2.00-\$6.00;

(28) [(27)] Purts Creek Lake Use Fee-\$5.00-\$10;

(29) [(28)] Big Bend Ranch State Natural Area Bus Tour Fee-\$30-\$60;

(30) [(29)] Matagorda Island Boat Transportation Fee:

(A) Adults (R-T)-\$10-\$15;

(B) Child (six-12) (R-T)-\$5.00-\$10;

(C) On Island Tour Fee-\$3.00-\$12 [\$1.00-\$6.00];

(31) Beach Shuttle Fee:

(A) Adults-\$2.00-\$4.00;

(B) Child (six-12)-\$1.00-\$2.00;

(32) [(30)] Historic Site Tour Fees:

(A) Adult (19 and Over)-\$2.00-\$6.00 [\$1.00-\$3.00];

(B) Student [Child (six-12)]-\$1.00-\$3.00 [\$.50-\$1. 50];

(33) [(31)] Fishing Pier Fees-Per Fishing Device-\$1. 00-\$3.00;

(34) [(32)] Recreational Vehicle-Annual Fee-\$5.00-\$25;

(35) [(33)] Excess occupancy fee (with overnight facility use fee) per person-\$1.00-\$3.00;

(36) [(34)] Fees for special events, new activities, or new facilities are authorized by the Commission. These fee amounts shall be established by the Executive Director or designee.

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 December 10, 1992.

TRD-9216511

Paul M Shinkawa
Director, Legal Services
Texas Parks and Wildlife
Department

Earliest possible date of adoption: January 18, 1993

For further information, please call: 1 (800) 792-1112, ext. 4433 or (512) 389-4433

State Park Rules

• 31 TAC §59.133

The Texas Parks and Wildlife Department proposes an amendment to §59. 133, concerning Closing Hours and Overnight Use policies set by the Commission This amendment is proposed to maintain consistency with other proposed changes

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

Mr Dickinson 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 park fees more consistent with services provided There will be no effect on small businesses

The anticipated economic impact to park visitors with the section as proposed will be the payment of the fee indicated

The department has filed a local employment impact statement with the Texas Employment Commission in compliance with the Administrative Procedure and Texas Register Act, §4A and has not yet received a response.

Comments on the proposal may be submitted to Jim Dickinson, Deputy Executive Director, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4815.

The amendment is proposed under the Texas Parks and Wildlife Code, §13. 101, which provides the Texas Parks and Wildlife Commission with the authority to promulgate regulations governing parks and other recreational areas.

§59.133. Closing Hours and Overnight Use.

(a) (No change.)

(b) Except for persons duly authorized to use camping, trailer space, shelter, cabin or lodge facilities, or boat ramp, or for persons who have paid the overnight activity use fee, it is an offense for a person to enter into or remain within a state park between the closing hour and the opening hour.

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 December 10, 1992.

TRD-9216510

Paul M Shinkawa
Director, Legal Services
Texas Parks and Wildlife
Department

Earliest Possible date of adoption: January 18, 1993

For further information, please call: 1-800-792-1112, ext. 4433, (512) 389-4433

Chapter 69. Resource Protection

Memorandum of Understanding

• 31 TAC §69.71

The Texas Parks and Wildlife Department proposes to amend regulations for Resource Protection under 31 Texas Administrative Code, Chapter 69, by adding new §69.71, concerning a Memorandum of Understanding with the Texas Department of Transportation (TxDOT). This Memorandum of Understanding was originally published as Exhibit A in the June 5, 1992, issue of the *Texas Register* (17 TexReg 4082). It provides for Texas Parks and Wildlife Department (TPWD) review of projects proposed by TxDOT which have the potential to affect natural resources within the jurisdiction of TPWD and concerns the development of a system by which information developed by TxDOT and TPWD may be exchanged to their mutual benefit. On June 25, 1992, TxDOT and TPWD conducted a joint public hearing to seek comments regarding the proposed memorandum of understanding between TxDOT and TPWD. A summary and discussion of these comments were published in the November 10, 1992, issue of the *Texas Register* (17 TexReg 7911). The MOU was revised by mutual agreement by TxDOT and TPWD. This revised MOU was adopted by TxDOT on October 28, 1992, appears as Exhibit A-22 in the November 10, 1992, issue of the *Texas Register* (17 TexReg 7914), and is proposed for adoption by TPWD.

Robin Riechers, staff economist has determined that for the first five-year period the section is in effect there will be fiscal implications as a result of enforcing or administering the proposed section. TPWD is unable to assign an exact cost to the state that will be associated with the increased coordination effort between TPWD and TxDOT. It is not possible to estimate the cost of additional environmental mitigation and/or enhancement resulting from the proposed section since the extent of mitigation and/or enhancement is related to the scope and extent of specific TxDOT activities or projects and the anticipated associated environmental impacts. There will be no effect on local government

Mr. Riechers 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 the increased coordination and communication between TxDOT and TPWD resulting from

implementation of the memorandum of understanding which will benefit the public by ensuring that the natural environment is preserved to the fullest extent possible and enhanced when practicable. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Mr. Riechers has determined that there will be no significant impact on local economies or overall employment as a result of administering the proposed section. The Department has not filed a local employment impact statement with the Texas Employment Commission as this agency has determined that the rules as proposed will have no local employment impact

Written comments on the proposal may be submitted to Roy Frye, Resource Protection Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4579 or 1 (800) 792-1112, extension 4579.

Texas Civil Statutes, Article 6673g, enacted by Senate Bill 352, 72nd Legislature, 1991, requires the TxDOT to adopt a memorandum of understanding with each state agency that has responsibilities for the protection of the natural environment or for the preservation of historical or archeological resources. Article 6673g also requires the TxDOT and each of the resource agencies to adopt the memoranda and all revisions by rule. This new section is proposed pursuant to that statute in order to meet this legislative intent and to ensure that natural resources are given full consideration in highway planning, design, construction, and subsequent operation and maintenance

§69.71 Review of Fish and Wildlife Impacts of Texas Department of Transportation Activities. Texas Parks and Wildlife Department adopts by reference the Memorandum of Understanding between the Texas Department of Transportation (TxDOT) and the Texas Parks and Wildlife Department as adopted by TxDOT on October 28, 1992, and published in the November 10, 1992, edition of the *Texas Register* (17 TexReg 7914) (Exhibit A-22). The referenced Memorandum of Understanding provides for department review of TxDOT projects and provides for development of a mechanism for the sharing of information.

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 December 10, 1992.

TRD-9216491

Paul M. Shinkawa
Director, Legal Services
Texas Parks and Wildlife
Department

Earliest possible date of adoption: January 18, 1993

For further information, please call 1-(800)-

792-1112, ext. 4433 or (512) 389-4433

Part IX. Texas Water Commission

Chapter 297. Water Rights, Substantive

Subchapter C. Types of Uses

• 31 TAC §297.29

The Texas Water Commission proposes new §297.29, concerning permit exemption to use state water for emergency use. Without obtaining a permit from the commission, county and rural community fire departments and other emergency service providers may divert and use state water from streams and reservoirs, including exempt domestic and livestock reservoirs for emergency purposes. Emergency purposes under this rule include use of water to fight fires, manage chemical spills, and as needed to deal with emergency public welfare concerns

Mr. Stephen Mmick, division of budget and planning, has determined that for the first-five year period the section is in effect there will be fiscal implications as a result of enforcement or administration of the section. This section will exempt certain uses of state water from the requirement that such use be authorized by a formal permit. The effect on state government will be a potential decrease in revenue from application fees that would otherwise be paid in conjunction with filing an application for a water use permit. The fee for an application is \$100 plus the cost of public notice and \$1.00 per acre foot of water requested. The loss of revenue is anticipated to be at least \$125,000 in fiscal year 1993, \$250,000 in fiscal years 1994 and 1995, and \$125,000 in fiscal years 1996 and 1997. This assumes that an average of 2,000 applications per year would otherwise be filed in order to permit the number of installations anticipated over this period. The actual impact cannot be determined and would vary considerably depending on the number of permits sought and the application fee to be assessed in any specific case. The proposed permit exemption will result in the avoidance of considerable increases in operating and administrative costs associated with processing the same number of permit applications. The actual costs of processing prospective applications cannot be determined exactly; however, the cost of processing the average water use application has been estimated to be approximately \$2,000. The number of potential applications anticipated without the proposed exemption would represent a 200% in the average number of applications processed in a year with current staff resources. It is expected that the costs avoided will significantly exceed the amount of revenue to be generated in application fees and would represent a net benefit to state government. Local governments will benefit by avoiding administrative costs of application for permit. At a minimum, these costs would be the application fee of at least \$100 plus costs of public notice for each application. Other costs of preparation of an application would vary on a case-by-case basis.

Mr. Minick also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of the section will be improvements in the administration and regulation of the uses of surface water, protection of public safety, and property from damage and destruction by fire and reduced exposure in rural areas of the state to financial losses from fire. There will be no effect on small businesses. There are no costs anticipated to persons required to comply with this section as proposed.

Comments on the proposal may be submitted to Larry Persky, Staff Attorney, Legal Division, Texas Water Commission, P.O. Box 13087, Austin, Texas (512) 908-2051.

The new section is proposed under the Texas Water Code, §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve all general policy of the commission.

§297.29. *Permit Exemption to Use State Water for Emergency Use.* Without obtaining a permit from the commission, county and rural community fire departments and other emergency service providers may divert and use state water from streams and reservoirs, including exempt domestic and livestock reservoirs for emergency purposes. Emergency purposes under this rule include use of water to fight fires, manage chemical spills, and as needed to deal with emergency public welfare concerns. Emergency purposes does not include domestic, livestock, or other purposes defined by §297.1 of this title (relating to Definitions). Rural emergency service providers (entities) may also establish "Dry Hydrant" installations in streams and reservoirs, including exempt reservoirs. Dry hydrant installations shall be exempt from permitting requirements provided that:

(1) hydrant locations are identified and documented by the installing entities and the entities file these identification codes and location descriptions with the executive director within 120 days after completion of an installation;

(2) facilities installed before the adoption of this rule are documented within six months after the rule is adopted;

(3) ingress and egress authorizations are obtained from private property owners and/or public entities on whose property the installations are located;

(4) installations conform to design and installation requirements and guidelines recommended by the USDA Soil Conservation Service; and

(5) diversions from dry hydrant installations are reported to the executive director by the using entities within 60 days of use. Pump testing of facilities is not required to be reported.

(A) Local offices of the USDA Soil Conservation Service can provide technical assistance and recommendations for installation of dry hydrant facilities.

(B) Hydrant facilities which do not meet the minimum requirements must be authorized by Water Code, §11.121 permits granted by the commission.

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

Issued in Austin, Texas, on December 14, 1992.

TRD-9216586

Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption. January 18, 1993

For further information, please call: (512) 908-2061

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Chapter 335. Industrial Solid
Waste and Municipal
Hazardous Waste

Subchapter A. Industrial Solid
Waste and Municipal Haz-
ardous Waste in General

• 31 TAC §§335.1, 335.5, 335.6,
335.8

The Texas Water Commission (TWC) proposes amendments to §§335.1, 335.5, 335.6, and 335.8, Subchapter A, concerning waste and municipal hazardous waste management in general and proposes new §§335.551-335.569, Subchapter S, concerning risk reduction standards. These proposed amendments would modify the closure and remediation performance requirements for industrial solid waste and municipal hazardous waste facilities as well as for other areas that contain discharges of industrial solid waste, municipal hazardous waste, or other contaminants.

The commission has developed these proposed rules to require closures, corrective actions, and remediations to provide risk reduction to levels that are protective of human health and the environment through the use of remedies that are permanent or have a high degree of long-term effectiveness. The TWC is proposing in these rules to establish three closure/remediation performance standards which persons may use to satisfy their cleanup responsibilities at contaminated facilities and areas. Each of the three closure/remediation performance standards are designed to be protective of human health and the environment when combined with the post-closure care and deed recordation requirements for that performance standard. While conformance with any of these stan-

dards would result in a high level of risk reduction with an appreciable degree of long-term effectiveness, the residual threat of possible future endangerment of human health or the environment would vary depending upon the performance standard achieved. As a result, varying degrees of post-closure care and deed recordation requirements are coupled with each closure/remediation standard so that the combined requirements will provide long-term protection for human health and the environment.

These proposed rules are intended to specify a consistent risk management policy which would be uniformly applied across hazardous/industrial solid waste, Superfund, and spill programs to define what minimum cleanup actions are necessary to protect public health and the environment. While the nature of the various programs requires certain administrative and procedural differences, minimum substantive cleanup requirements that apply across programs are necessary to avoid a fragmented system without an underlying consistent approach for managing public health and environmental risks. The coherent program described in these rules would assist the TWC in effectively pursuing the cleanup of industrial/hazardous solid waste units, superfund sites, and spills of hazardous substances.

Under the present circumstances there are few promulgated standards that are available for use as cleanup levels. This is a significant impediment to the prompt remediation of contaminated sites. In the absence of readily available, previously agreed upon cleanup standards, the remediation levels for each site must be independently determined using quantitative risk assessment procedures. Without carefully prescribed procedures, this process can be fraught with disagreements, time delays, and unjustifiable differences among sites. These draft rules propose both generic cleanup levels that can be used immediately in certain circumstances as well as standardized risk assessment procedures that could be used for the development of site-specific cleanup levels. The speed of the cleanup process should be enhanced by this standardization of cleanup level determinations.

With respect to Subchapter A, this proposal would substantially amend §335.8 to provide three closure/remediation performance standards which are referred to as "Risk Reduction Standards 1, 2, and 3". The proposed amendment to §335.8 would further place a continuing obligation on persons who have stored, processed, or disposed of industrial solid waste or municipal hazardous waste, or have allowed the discharge of industrial solid waste, municipal hazardous waste, or other contaminant to perform closure or remediation activities that achieve one or more of the performance standards.

Additionally, the proposed amendment to §335.8 relating to Risk Reduction Standard Number 1 (i.e., closure/remediation to background) would require a person to remove and/or decontaminate all waste, waste residues, leachate, and contaminated media to background levels. Risk Reduction Standard Number 2 (i.e., closure/remediation to health-based standards and criteria) would

require a person to remove and/or decontaminate all material such that any substantial present or future threat to human health and the environment is eliminated. Risk Reduction Standard Number 3 (i.e., closure/remediation with controls) would require all materials to be removed, decontaminated, and/or controlled such that any substantial present or future threat to human health and the environment is eliminated or reduced to the maximum extent practicable.

To implement these changes, the TWC is also proposing to amend §335.1 to include those definitions necessary to describe the planned modifications to Subchapter A. In addition, §335.5 would be amended to clarify that deed recordation is required for landfills in advance of initiating waste disposal. Additionally, §335.6 would be amended to delete notification requirements for closures which would be described along with notification requirements for remediations in the amended §335.8.

The TWC also proposes new Subchapter S that would sequentially describe in greater detail each of the three closure/remediation risk reduction standards that are proposed in §335.8. The definitions necessary to define the requirements of proposed Subchapter S are presented in §335.552. Of particular importance, "long-term effectiveness" means the ability of a remedial or corrective action to maintain over time the required level of protection of human health and the environment. "Permanent" means the property of achieving the maximum degree of long-term effectiveness and of enduring indefinitely without posing the threat of any future release that would increase the risk above levels established for the facility or area. The remainder of the proposed new subchapter describes the required information, methods to determine cleanup levels, as well as post-closure care and deed recordation requirements that are associated with each of the closure/remediation performance standards.

These rules would require responsible persons to close/remediate a facility or area so as to meet one or more of the performance standards. Unless another regulation, order, or permit of the commission specified a different approach, the actual performance standard selected for a specific site would be left to the discretion of the person responsible for taking the action. These rules, however, provide significant incentives for a responsible person to achieve permanence or a high degree of long-term effectiveness so as to avoid the more burdensome post-closure care and deed recordation responsibilities that are to be imposed on remedies with a lesser degree of long-term effectiveness.

To achieve Risk Reduction Standard 1, all waste, waste residues, leachate, and contaminated media must be removed and/or decontaminated to levels representative of background conditions unaffected by waste management or industrial activities. Through removal, the waste materials and contaminated media would be transported from the facility for off-site treatment and/or disposal. Through decontamination, the contaminated materials would be treated to destroy or eliminate their hazardous properties. Both removal and decontamination are irreversible pro-

cesses that result in permanent risk reduction at a site.

Closure or remediation to achieve the first standard is highly desirable since it represents a permanent remedy with a great degree of risk reduction. Conformance to this standard would result in a property being restored to background conditions via processes that will remain protective over time. These rules encourage responsible persons to pursue closure/remediation in accordance with this highly protective standard by removing any requirement for post-closure care or deed recordation.

Closure/remediation to achieve Risk Reduction Standard 2 provides a permanent remedy with a high degree of risk reduction, although somewhat less than the first standard, and is therefore also favored. The second standard requires that all waste, waste residues, leachate, and contaminated media must be removed and/or decontaminated to levels such that any substantial present or future threats to human health or the environment are eliminated. This standard requires the use of irreversible processes to restore a site to highly protective levels. These protective levels are derived either by conservative quantitative health-based risk assessment procedures or by directly using other appropriate promulgated standards. This standard would establish separate levels for residential and nonresidential use of contaminated properties. Requirements for using the nonresidential option are described in a later section of this preamble. To encourage closures/remediations under this standard, these rules would release the responsible person from all post-closure care responsibilities, such as ground-water monitoring. These rules would, however, impose a deed certification requirement on the responsible person so that future prospective owners would be informed of any residual levels of contaminants remaining on the property. For a site which had been restored to nonresidential levels, the responsible person or any future owner would have the continuing obligation to restore the site to residential levels prior to allowing the site to be used for residential purposes.

Actions completed pursuant to Risk Reduction Standard 3 would have a higher degree of residual risk and would therefore require more extensive post-closure care to remain protective over time. The third standard requires that all contaminated materials must be removed, decontaminated, and/or controlled so that any substantial present or future threat is eliminated or reduced to the maximum extent practicable.

The third performance standard provides flexibility in those instances where closure or remediation strictly by removal or decontamination would not be feasible. The third performance standard allows the use of measures to control the contaminated materials or the property where the contaminated materials are located. Such measures may consist of engineering controls such as construction of a fence, placement of a cap, installation of a slurry wall, or stabilization/solidification/fixation of the waste or waste residues. These measures may also involve institutional controls such as deed restrictions.

Under the third standard, the responsible person would use removal and decontamination processes where feasible to remove the principal threats at a site. Where decontamination or removal is not appropriate, then treatment methods that significantly and irreversibly reduce the mobility, toxicity, and/or volume of the waste and waste residues would be used to address the principal threats at a site. Treatment that does not achieve the standard of eliminating substantial present or future threats is considered to be a control measure rather than decontamination. Treatment could be used in combination with other control measures such as capping to reduce present and future threats from the site.

Among other requirements, proposed §335.561 would require remedies conforming to the third standard to be permanent or, if that is not practicable, achieve the highest degree of long-term effectiveness possible. Thus, the responsible person would have the burden of being able to demonstrate that the particular mix of removal, decontamination, and/or control that he wishes to use is the optimal blend to eliminate or abate present and future threats to human health and the environment to the maximum extent practicable. The responsible person would also need to demonstrate that he has selected the control measure(s) which most effectively abates present and future threats from the site. Institutional controls are most effective as a supplement to engineering controls. Institutional controls should not substitute for active response measures (i.e., removal, decontamination, and/or engineering controls) as a sole remedy unless such active measures are determined to not be practicable.

Due to the more reversible nature of control measures, these proposed rules require post-closure care for those closures or remediations under the third standard which involve either engineering or institutional controls. The type, extent, and duration of these measures would be determined during the remedy evaluation process and would be dependent upon the permanence or degree of long-term effectiveness afforded by the selected remedy. The responsible person would also be required to file a deed recordation which states that continued post-closure care or institutional control measures are required to protect human health and the environment.

In summary, these rules are based upon the risk management strategy of requiring risk reduction to levels that are protective of human health and the environment through the use of remedies that are permanent, or where that is not feasible, have a high degree of long-term effectiveness. These rules would establish three performance standards that responsible persons could use to close/remediate contaminated facilities or areas. Each of these closure/remediation performance standards is protective of human health and the environment when combined with its associated post-closure care and deed recordation requirements. And finally, these rules are structured to provide significant incentives for responsible persons to close/remediate to achieve permanence or a high degree of long-term effectiveness so as to avoid more burdensome post-closure care requirements.

Applicability. These proposed rules seek to provide greater consistency in both the extent and types of closures and remediations that are performed in response to the various contaminant cleanup programs managed by this agency. Accordingly, the proposed rules would have broad applicability. Revised subsection 335 8(a) (pertaining to Applicability) describes the activities to which and the persons to whom these rules apply.

These proposed rules would supplement but not replace any requirements for closure or remediation that are present in the regulations for the various programs subject to these rules. These proposed rules would set consistent standards for the minimum level of cleanup and required analyses that will be required by the various programs subject to these rules. In instances where the regulations for a specific program have other more stringent or supplemental requirements pertaining to closure or remediation, persons shall comply with those more stringent requirements in addition to the requirements of these proposed regulations.

The proposed amendments to §335 8 and of new Subchapter S would apply to persons who undertake the closure of facilities used for the storage, treatment, or disposal of industrial solid waste or municipal hazardous waste. These regulations would also apply to persons who undertake the remediation of discharges or spills from such facilities, either as a part of closure or at any time before or after closure.

Permitted facilities used for the storage, processing, or disposal of industrial solid waste (including industrial hazardous waste) or municipal hazardous waste must be closed in accordance with the closing provisions of the permit unless specifically modified by other order of the commission. Once these proposed regulations are adopted, the TWC will use them along with the program specific requirements to develop the closure provisions to be placed into new and amended permits for industrial solid waste and municipal hazardous waste facilities. The TWC would also use these regulations to determine appropriate remediations pursuant to the corrective action program for solid waste management units (SWMUs) at permitted hazardous waste management facilities. If permits issued prior to the adoption of these regulations allow a closure or remediation which would provide markedly less long-term protection for human health and the environment than is provided for by these rules, the TWC may choose to require conformance to these rules through the issuance of an order or by amendment of the permit.

Non-permitted industrial solid waste activities would also be subject to these proposed rules. These regulations would apply in general to persons conducting closures or remediations at nonhazardous industrial solid waste units. Additionally, these regulations would apply to owners and operators of hazardous waste storage, processing, or disposal facilities who are exempt from a permit, or are operating under interim status, and are conducting closure or remediation activities.

Even though the closure/remediation performance standards would be contained in

Subchapter A (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General), the requirements of §335 8 (relating to Closure and Remediation) and of Subchapter S (relating to Risk Reduction Standards) would apply to a substantially broader array of materials than just industrial solid waste and municipal hazardous waste. Specifically, according to the proposed language of §335 8(b), these regulations would also apply to persons who have allowed the discharge of other "contaminants" into or adjacent to any water in the State. A definition of the term "contaminant" is proposed to be added to §335 1 to include not only solid waste materials but also pollutants and hazardous substances as well as any other substance which when discharged can create a present or future threat to human health or the environment. As a result, these proposed regulations would apply not only to industrial solid waste and municipal hazardous waste facilities and to discharges from those facilities, but also to areas of discharge of other contaminants. However, discharges or spills from storage tanks that are already regulated under Chapter 334 (relating to Underground Storage Tanks) are specifically excluded from coverage by these proposed rules.

The remediation of spills and requirements for immediate response actions will continue to be regulated pursuant to the Texas Water Code, §26 039 and §26 261 and the administrative and procedural requirements of the commission to carry out the Texas Hazardous Substance Spill Prevention and Control Act. Spills are normally removed to levels representative of background conditions. These proposed rules would define the minimum level of remediation and appropriate additional controls such as post-closure care and deed recordation when a response under the spill program does not result in complete removal or decontamination.

The State Superfund Program will continue to be performed in accordance with Subchapter K (relating to Hazardous Substance Facilities Assessment and Remediation) of Chapter 335 of the TWC's rules. However, in order to develop a uniform and consistent approach for contaminated sites, the portions of the proposed rules which describe the required level of remediation would also apply to State Superfund sites. As a result, remedial actions at State Superfund sites could be performed to be consistent with the substantive requirements of any of the three risk reduction standards provided in proposed new Subchapter S. Specific sections of this proposed rulemaking such as §335 8(c) (relating to Closure and Remediation Notification and Initiation Requirements), §335 8(d) (relating to Demonstration of Conformance With Risk Reduction Standards), §335.553 (relating to Required Information), and §335.562 (relating to Remedy Evaluation Factors) which describe administrative, procedural, or informational requirements would not apply to the State Superfund Program. Potentially responsible parties would be required to submit information and to evaluate remedies in accordance with the administrative requirements of Subchapter K even if Subchapter S would require less information or allow abbreviated procedures. Only the substantive requirements of the proposed rules which

describe the required level of remediation or cleanup would apply to the State Superfund Program. The remedy selection criteria for Risk Reduction Standard 3 specified in §335 561 are substantive requirements and would apply to the State Superfund Program.

Description of Current Closure and Remediation Program. The TWC has incorporated closure performance standards for hazardous waste landfills, surface impoundments, and waste piles as provided by federal regulations contained in 40 Code of Federal Regulations, Parts 264 and 265 into §335 112(a)(5) and §335 152(a)(5) of the TWC's rules. The TWC has followed the closure interpretation set forth in the preamble to the July 26, 1982 RCRA codification rule, published at 47 FedReg 32274. This interpretation requires that where an owner/operator cannot demonstrate that all hazardous waste and waste constituents have been removed or decontaminated to background conditions, the unit must be closed in-place as a hazardous waste landfill, capped, and must be monitored for 30 years under a post-closure care plan and/or permit.

The commission is proposing to adopt rules to be consistent with the modified closure-by-removal approach discussed by EPA in the March 19, 1987, preamble to a final rule on interim status closure requirements for owners and operators of hazardous waste treatment, storage and disposal facilities published in 52 FedReg 8704 *et seq.* That preamble described the amount of removal or decontamination that obviates the need for post-closure care for both permitted and interim status facilities. EPA recognized that at certain sites limited quantities of hazardous waste constituents might remain in the subsoil and yet present only insignificant risks to human health and the environment. Thus, EPA stated that owners and operators would be required to remove all waste and contaminated liners and may demonstrate that any hazardous waste constituents left in the subsoils will not cause "unacceptable risks to human health or the environment." 52 FedReg 8706 (March 19, 1987). The TWC incorporated the EPA rule by reference in the *Texas Register* (16 TexReg 6937) on November 29, 1991, with an effective date of December 13, 1991, but has delayed implementation of that approach pending final promulgation of today's proposed rules. The proposed rules would be consistent with EPA's approach for hazardous waste closures and would define by Risk Reduction Standard 2 the level of contaminants that could remain in environmental media and not trigger post-closure care.

For spills of hazardous substances addressed under the Texas Water Code, §26 261, the current practice is to require all contaminated media to be cleaned up to background levels or below analytical detection limits. There are also a substantial number of industrial solid waste sites not subject to the hazardous waste regulations which have released or have the potential to release waste constituents to the waters of the State. Since acceptable levels of cleanup for these sites are not defined in State regulations, a wide variety of cleanup objectives have been used. And finally, the State and Federal

Superfund programs have made extensive use of quantitative health-based risk assessment procedures to determine hazardous substance remediation levels that are protective of human health and the environment. A quantitative risk-based approach has also been adopted in certain recent solid waste enforcement activities.

Proposed Definitions. Numerous definitions are being proposed in these rules to help define the required level of performance for the three risk reduction standards. The proposed amendments to §335.1 would provide definitions for "closure", "contaminant", "contaminated medium/media", "control", "decontaminate", "remediation", "remove", and "treatment". In addition, new §335.552 would define those terms necessary to implement proposed Subchapter S. These terms include "carcinogen", "carcinogen classification", "long-term effectiveness", "non-residential property", "permanence/permanent/permanently", "practical quantitation limit/PQL", "residential property", and "systemic toxicant".

Notification, Initiation and Informational Requirements. These risk reduction rules have been designed with the goal of reducing wherever possible the paperwork burden on both regulated parties and the TWC and to remove impediments which would preclude the voluntary and timely implementation of remedial measures. At the same time, the TWC recognizes its responsibility to provide a sufficient degree of review and oversight to ensure that these rules will be implemented in a manner which will be protective of human health and the environment. We have sought in these proposed rules to achieve an appropriate balance between these two objectives.

Proposed §335.8(c)(1) would require any person who intends to perform any activity of closure or remediation to notify the executive director in writing prior to conducting the activity. Such notification would state their intention to perform closure or remediation activities, the risk reduction standard(s) to be attained, and the estimated time to complete the action.

After the initial notification, these proposed rules would regulate actions performed to achieve Risk Reduction Standards 1 and 2 in a different fashion from closures/remediations to achieve Risk Reduction Standard 3. These standards would be distinguished both with regard to whether pre-approval of plans is required and also with regard to the type of information which must be submitted.

Proposed amendments to §335.8(c)(2) would provide that both standards 1 and 2 would be self-implementing by the responsible person, unless other TWC regulations, such as Subchapter K pertaining to the State Superfund program, require prior approval by the commission or an alternative process. Thus, after the initial notification, a person could perform the necessary investigation work and the associated removal or decontamination to achieve Risk Reduction Standard 1 or 2 without requesting and receiving the TWC's prior approval. Persons closing or performing a response action pursuant to standards 1 or 2 may, if they desire, submit the information specified in proposed

§335.553(a) (relating to Required Information) to secure the executive director's approval prior to proceeding.

Upon completion of an action to achieve Risk Reduction Standard 1 or 2, the person would be required in response to proposed §335.8(d) to provide the commission with a final report which verifies that either standard 1 or 2 had been achieved. Proposed §335.553(a) (relating to Required Information) specifies the type of information that must be contained in the report. This information includes, but is not limited to: descriptions of the procedures and conclusions of any investigation to characterize the nature, extent, direction, rate of movement, volume, and composition and concentration of contaminants in environmental media; bases for selecting environmental media of concern, documentation supporting selection of residential and non-residential exposure factors; descriptions of removal or decontamination procedures performed in closure or remediation, summaries of sampling methodology and analytical results which demonstrate that contaminants have been removed or decontaminated to acceptable levels, and documentation of compliance with the post-closure care and deed recordation requirements.

In contrast to this program, the proposed amendments to §335.8(c)(2) would provide that any person who intends to attain Risk Reduction Standard 3 must submit a report containing the required information for the review and approval of the executive director prior to beginning the closure or remediation activities. A person must also submit a similar report prior to continuing a remedial action when he determines that standard 1 or 2 has not been achieved in a self-implemented action.

The information that must be submitted prior to beginning the closure/remediation to achieve Risk Reduction Standard 3 is described in paragraphs (1) through (3) of §335.553(b) (relating to Required Information). This information could be combined as a single report or submitted as separate items. In addition, if desired, more than one contaminated area or unit could be addressed in a report. Proposed §335.553(b)(1) would require the person to prepare a remedial investigation report. The site information requirements for this report are similar to those described for standards 1 and 2 and information obtained from attempts to attain these standards may be submitted. The person would also be required to prepare and submit a baseline risk assessment report in response to §335.553(b)(2). This report would describe the potential adverse effects under both current and future land use conditions caused by the release of contaminants in the absence of any actions to control or mitigate the release. Appropriate exposure assumptions based upon future land use conditions are discussed in a later section of this preamble. And finally, §335.553(b)(3) of these proposed rules would require a person to prepare a corrective measure study which recommends the remedy which best achieves the requirements for a standard 3 remedy. The remedy selection process for Risk Reduction Standard 3 is discussed more extensively in the later section of this preamble.

pertaining to that standard. Once the reports described previously have been approved by the executive director and the person has completed the closure or remediation, the person would be required by proposed §335.8(d) and §335.553(b)(4) to submit documentation which demonstrates that the remedy has been completed in accordance with the previously approved plan.

A corrective action or closure under standard 3 would involve a site-specific evaluation of risk with possible deviations from the standardized exposure conditions of standard 2 and would likely use engineering and/or institutional controls to provide the required level of protection for human health and the environment. In view of the significantly more complex regulatory judgments involved with Risk Reduction Standard 3, these proposed rules would require a person to perform a site investigation, prepare a baseline risk assessment report, prepare a corrective measure study which demonstrates that the proposed remedy best meets the remedy selection criteria, and to secure the approval of the executive director prior to implementing the remedy. Standard 3 remedies, as opposed to actions under standards 1 or 2, may involve significant physical containment structures such as caps or slurry walls and it is required that the responsible person secure the approval of the executive director prior to construction activities.

Demonstration of Attainment of Cleanup Levels. The preliminary cleanup or remediation levels for constituents are determined using different criteria for each of the proposed risk reduction standards. The criteria for each of the risk reduction standards will be discussed in subsequent sections of this preamble. Once the preliminary levels have been established, however, the three standards would use some common processes for demonstrating that the final cleanup levels have been attained. This section of the preamble discusses the common processes used by each of the standards. These requirements supplement those specified in §335.553 (relating to Required Information) and must be satisfied by the report submitted in response to §335.8(d) once the remedial action or closure has been completed.

These proposed rules identify two circumstances where the preliminary cleanup levels, which result from the process prescribed for a particular risk reduction standard, could be increased to arrive at the final numeric value to be used to determine conformance with that standard. These circumstances involve consideration of the practical quantitation limit and background concentrations which are discussed following.

"Practical quantitation limit (PQL)" is proposed in the new §335.552 to mean the lowest concentration of an analyte which can be reliably quantified within specified limits of precision and accuracy during routine laboratory operating conditions. The PQL minimizes to the extent possible the effects of instrument and operator variability and the influences of the sample matrix and other contaminants or substances upon the quantitation of the analyte. "Specified limits of precision and accuracy" are the criteria which have been included in applicable regulations

or which are listed in the quality control sections of the analytical method. The proposed definition indicates that the PQL may be directly obtained or derived from the following sources and in the following order of preference: federal regulations; EPA guidance documents; calculation from interlaboratory studies; and experimentally determined analytical methods not available from other existing sources.

"Background level" is also proposed to be defined in new §335.552 to mean the concentration of a contaminant which exists in an environmental medium in the vicinity of a facility or area but which is not attributable to any discharge from the facility or area or other waste management or industrial activity. Background is discussed more extensively in the subsequent section of this preamble pertaining to Risk Reduction Standard 1.

For Risk Reduction Standard 1, when the responsible person can demonstrate that the PQL is greater than the background concentration then the PQL would be used as the final numeric value to determine conformance with that standard. For Risk Reduction Standards 2 and 3, where the responsible person can demonstrate that the PQL and/or the background concentration exceeds the preliminary cleanup level then the higher of the PQL or background concentration would serve as the final numeric cleanup value.

The commission has determined that specifying final cleanup levels that are below the PQL is not a workable process since reliable methods will generally not be available to quantify an analyte at those levels. The commission does, however, retain the flexibility to require special analytical services in those instances where quantitation to lower levels is possible. Likewise, the commission has determined that specifying final cleanup levels for a contaminated area that are lower than background levels on surrounding property that is unaffected by the site or waste management activities would not be a wise use of resources. Such a requirement would provide very little, if any, additional protection for human health or the environment in exchange for what could be substantial additional costs.

Each of the risk reduction standards requires the responsible person to collect and analyze a sufficient number of samples from environmental media at a site to demonstrate that the final numeric cleanup levels have been attained. The necessary number of samples for any particular medium will be dependent upon the distribution, composition, and heterogeneity of the contaminants and environmental medium. The proposed rules would require a responsible person to make this demonstration based on a sampling and analysis plan which uses techniques described in SW 846, *Test Methods for Evaluating Solid Waste*, U.S. EPA, or other available guidance acceptable to the commission.

The actual comparison of sample analytical values to the final numeric cleanup levels may be performed in either of two fashions. When less than 10 analyses are performed for a medium, and as an optional method where more analyses are performed, a direct comparison will be made between the results

of individual samples of the medium of concern to the cleanup level. For this approach, since exposure is presumed to be possible at any point within the contaminated facility or area, the cleanup levels must be attained at all sampled points within the medium of concern. For a data set of 10 or more samples from an environmental medium, a statistical approach may be used. This analysis uses the 95% tolerance limit of the mean concentration of the contaminant as determined by the following expression: Cleanup Level where x is the mean concentration, S is the standard deviation and K is based upon the number of samples and is obtained from Table 2 of the proposed new Subchapter S. The responsible person must be able to demonstrate to the satisfaction of the commission under this approach that the number and location of samples for each medium constitutes a representative and unbiased population.

Risk Reduction Standard One. Risk Reduction Standard 1 as expressed in proposed §335.8(b)(3)(A) would require a responsible person to perform closure or remediation activities at a facility or area of discharge by removing and/or decontaminating all waste, waste residues, leachate, and contaminated media to background levels unaffected by waste management activities. Requirements for conformance with this standard are presented in proposed new §335.554 (relating to Attainment of Risk Reduction Standard Number 1) which has been partially discussed previously in this preamble.

The fundamental requirement for compliance with the first standard is that wastes and contaminated media must be removed and/or decontaminated to background levels. A special circumstance, where a higher contaminant level may be established based upon consideration of practical quantitation limits, has been previously discussed. Background level would be defined to mean the concentration of a contaminant which exists in an environmental medium in the vicinity of a facility or area but which is not attributable to any discharge from the facility or area or other waste management activity or from releases incidental to industrial activity.

Samples, to determine "background levels, would be collected at or near the waste site or area of discharge but in locations that are not influenced by site contamination. Samples would be collected in each medium of concern from areas that could not have received releases from the site but that do have the same basic characteristics as the contaminated media at the site.

Such background sampling should be adequate to distinguish site-related contamination from naturally occurring and other non-site-related levels of chemicals. Background levels as used in these proposed rules refers to naturally occurring ambient concentrations of chemicals (such as aluminum and magnesium) present in the environment in the vicinity of a site that have not been influenced by humans. Background levels as proposed would also include certain anthropogenic levels. Anthropogenic refers to concentrations of chemicals that are present in the environment due to man-made sources. Background levels as proposed would include anthropogenic

levels from non-site sources that are not of a waste management or industrial nature. For example, residues resulting from the area-wide use of automobiles or from the agricultural use of pesticides in accordance with labeling requirements could be considered a part of background levels. Contaminants in environmental media which result from waste management or industrial activities on neighboring properties would not be considered as part of background for a site.

Closure or remediation to achieve Risk Reduction Standard 1 would use the irreversible processes of removal and/or decontamination to restore a property to background conditions. Proposed §335.554(f) encourages responsible persons to pursue closure/remediation in accordance with this highly protective standard by removing any requirement for post-closure care or deed recordation.

Risk Reduction Standard Two. Risk Reduction Standard 2, as proposed in §335.8(b)(3)(B), requires a person to perform closure or remediation activities at a facility or area of discharge by removing and/or decontaminating all waste, waste residues, leachate, and contaminated media to standards and criteria such that any substantial present or future threat to human health or the environment is eliminated. The commission has chosen to develop standard 2 in a manner which sets forth both the procedures for deriving acceptable cleanup levels and which establishes minimum cleanup levels for a number of common environmental contaminants. The general criteria for performance with this standard are proposed in §335.555 (relating to Attainment of Standard 2), and notification and informational requirements were previously discussed. Detailed procedures are proposed in §§335.556-335.660.

Attainment of Risk Reduction Standard Two. Conformance with Risk Reduction Standard Number 2 is achieved when the responsible person completes closure or remediation activities by removing and/or decontaminating all waste, waste residues, leachate, and contaminated media to the conditions specified in this section. As proposed in §335.555(a)-(f), this standard requires that the following conditions be met: all wastes and waste residues must be removed from the unit; all contaminated operating components such as liners, leachate collection systems, piping or tanks must be removed or must be decontaminated; all contaminated media, including soil, ground water, and surface water, must be removed or decontaminated to the levels specified in §§335.556-335.559; the area must be deed certified; and the responsible person must submit a report to the executive director which describes these activities. These criteria are described more fully in the four sections which follow.

First, as proposed in §335.555(b), this standard would not be achieved until all wastes and waste residues have been removed from the unit. Wastes remaining in place within the unit would not conform to the requirements for Standard 2; rather, these types of closures are addressed by Standard 3.

Second, contaminated environmental media may be decontaminated through various

treatment processes. These processes may include techniques such as bioremediation, thermal treatment, chemical treatment, or some other process which irreversibly changes or stabilizes the contaminants in soil or ground water. Subsection 335.555(c) specifies that a person using a treatment process as a form of decontamination must demonstrate that the treatment process permanently alters all contaminants left in place or all contaminants returned to the unit to levels that satisfy Risk Reduction Standard Number 2, and that any residues resulting from the treatment process do not pose a threat for any future release of contaminants in excess of soil or ground-water cleanup levels. Treatment processes employing irreversible chemical or biological reactions should generally satisfy this requirement. Physical processes such as mechanical mixing of contaminants with absorbents will not satisfy the test of permanence because of the reversibility of the process.

Third, §335.555(d) specifies that concentrations of contaminants in soil and ground water (i.e., environmental media of concern) shall not exceed the cleanup levels represented by health-based standards and criteria, the cleanup levels, which are defined further in §335.556 (relating to Determination of Cleanup Levels), §335.558 (relating to Medium Specific Concentrations), and §335.559 (relating to Medium Specific Requirements and Adjustments). The cleanup levels of Standard 2 meet the risk management objectives discussed previously, and their development is described in detail in following sections of this preamble. The cleanup levels developed pursuant to Standard 2 apply to all environmental media of concern at a facility, which includes all identified contaminated media, unless the person can demonstrate that certain contaminated media can be eliminated from further consideration in the closure or remediation because contaminant concentrations already satisfy the requirements of this standard.

When acceptable cleanup levels are determined for facilities conducting closures and cleanups under this standard, potential cross-media contamination (i.e., leaching of contaminants from soil to ground water or surface water) must be considered. As described in proposed §335.558 (relating to Medium Specific Concentrations), cross-contamination of air from contaminated soil is already considered and included in the MSC equations when soil cleanup levels are derived for Standard 2. We anticipate that ground-water protection will be the driving force for determining the acceptable cleanup levels for many closures and remediations which are conducted under this risk reduction standard.

Additionally, this subsection sets out requirements, in a manner similar to Risk Reduction Standard Number 1, to demonstrate attainment of the cleanup levels. The roles of background, PQLs, sampling and analysis programs, and statistics in demonstrating attainment of the standard have been discussed previously.

And fourth, in order to complete a closure or remediation under this section, a person has two more requirements to fulfill. Proposed

§335.555(e) requires the person to carry out the deed certification requirements of §335.560 (relating to Post Closure Care and Deed Certification for Risk Reduction Standard Number 2). The specifics of deed certification will be discussed in more detail following. Lastly, §335.555(f) specifies that the person must submit a report to the executive director which documents compliance with this standard. The contents of the report are proposed in §335.553(a) (relating to Required Information) and have been described previously. The executive director may require submittal of additional information prior to accepting the report in order to ensure that all appropriate issues regarding protection of human health and the environment have been addressed.

Determination of Risk Reduction Standard Two Cleanup Levels. Proposed §335.556 (relating to Determination of Cleanup Levels for Risk Reduction Standard Number 2) sets forth the series of steps for determining cleanup levels for contaminants in ground water and soil. The overall approach for deriving cleanup levels is described in the five paragraphs which follow, and more specific steps are discussed under the discussion for Medium Specific Concentrations and Medium Specific Requirements and Adjustments.

First, for contaminants in ground water, the cleanup levels are the Maximum Contaminant Levels (MCLs), when these standards are available. The MCLs are the federal health-based standards for drinking water promulgated through the Safe Drinking Water Act, and are considered to be protective of human health and the environment. For contaminants in soils, there are no available standards which can be employed as cleanup levels.

Second, procedures are proposed in §§335.556-335.559 which enable the user to determine cleanup levels for contaminants in ground water and in soil when there are no promulgated standards or other health-based criteria. These procedures are based on a risk assessment approach, and follow the guidelines set forth by the U.S. EPA in OSWER Directive 9285.7-01B entitled *Human Health Evaluation Manual, Part B: "Development of Risk-based Preliminary Remediation Goals."* In general, these procedures have been employed to calculate acceptable cleanup criteria for Standard 2 which are chemical-specific and based upon the known toxicological effects of the chemical, and the reasonable maximum human exposure to the chemical in different exposure pathways and under conditions of residential and nonresidential land use. The steps in our initial risk assessment calculations are proposed in §335.558 (relating to Medium Specific Concentrations for Risk Reduction Standard Number 2). Additional considerations which adjust the calculated levels are proposed in §335.559 (relating to Medium Specific Requirements and Adjustments for Risk Reduction Standard Number 2). The commission feels that the procedures set forth in these rules lead to the development of cleanup levels which are protective of the public health and the water resources of the state.

Third, one consideration in the determination of cleanup levels is the potential exposure of

human receptors to the contamination. In the case of Standard 2, the exposure factors in the MSC calculations have been set at conservative (i.e., protective) levels for all of the pathways considered when cleanup levels are calculated. These standard exposure factors are contained in Table I of proposed Subchapter S. Section 335.566(b) would require responsible persons to address all potential exposure pathways by which human populations or environmental receptors are likely to be exposed to contaminants from a unit or area of discharge. The calculated health-based cleanup levels for Standard 2 consider the following human exposure pathways: ingestion of drinking water; ingestion of soil; inhalation of soil particulates (dust); and inhalation of vapors from contaminated soil. The TWC believes this approach addresses the major human exposure pathways likely to be encountered at facilities, but also recognizes that site-specific situations might require the examination of more pathways of exposure. When additional exposure pathways are applicable to the site (i.e., dermal absorption of contaminants or ingestion of contaminated fish), the person shall develop numeric criteria to serve in place of, or in addition to, cleanup levels of this section.

Fourth, the TWC also recognizes that site specific situations might require consideration of the pathways of exposure for environmental receptors. In cases where environmental receptors are considered, these studies will be site-specific since no standardized methods have been developed for ecological risk assessments as has been done for human health risk assessment. Therefore, persons, including the agency, will rely upon available guidance to address such situations. The agency will rely upon guidance such as U.S. EPA manuals entitled *Environmental Evaluation Manual (EPA/540-1089/001)* and *Ecological Assessments of Hazardous Waste Sites: A Field Guide and Laboratory Reference Document (EPA/600/3-89/013)* in the development of cleanup standards in an ecological risk assessment.

And fifth, as stated in §335.556(e), these rules propose procedures for determining soil-to-ground water cross-media protection values. These ground-water protection values for soil, discussed in more detail following, are derived from the ground-water cleanup level (Ground-Water Medium Specific Concentration), and consider the dilution of contaminants in soil prior to any impacts the contamination may have on ground-water. The commission feels that ground-water protection may be the critical factor for setting cleanup levels in many of the closures and remediations which are conducted pursuant to Standard 2.

Risk Reduction Standard Two Criteria for Selection of Non-Residential Soil Requirements. Standard 2 allows cleanup levels for soils to be based on potential exposure under residential or non-residential land use conditions. The current land use must meet the definition of "nonresidential" proposed in §335.552 (relating to Definitions) in order to employ this option. Proposed §335.557 (relating to Criteria for Selection of Non-Residential Soil Requirements for Risk Reduction Standard Number 2) describes the three conditions un-

der which a facility may be considered non-residential property. If one or more of these conditions is met, the person may utilize the commercial/industrial exposure factors of Table 1 of proposed Subchapter S to calculate soil cleanup levels according to §335.559(f).

Non-residential property is defined in §335.552 (relating to Definitions) in a straightforward manner which differentiates commercial and industrial land use from all other land use categories. This classification is accomplished by means of Standard Industrial Classification major group numbers which are explained in the federal Office of Management and Budget document entitled "Standard Industrial Classification Manual." Facilities that have applied for a hazardous waste permit have already determined this information as part of the application process. Residential property is defined to be all other property that does not meet the definition of non-residential property. Portions of non-residential property that are used in part for residential purposes, such as on-site day care centers, are considered to be residential property. This is intended to protect sensitive subgroups of the population.

Risk Reduction Standard Number 2 presumes future land use will be unrestricted under the residential land use scenario. In contrast, use of the non-residential soil requirement option assumes future land use will be appropriate for industrial or commercial applications where exposure will be limited to the typical eight-hour work day. Use of this nonresidential option to depart from the standard residential exposure factors when setting cleanup levels incurs additional obligations on the responsible person and/or the property owner. Proposed §335.560(c)(3) would obligate the responsible person and property owner to notify the agency if the property use changes to residential at some time in the future. Under the continuing obligations of §335.8(b), the person or property owner may be required to carry out additional cleanup actions as necessary to protect human health and the environment.

Risk Reduction Standard Two Medium Specific Concentrations (MSCs). Proposed §335.558(a)-(e) (relating to Medium Specific Concentrations for Risk Reduction Standard Number 2) and §335.559(f) (relating to Medium Specific Requirements and Adjustments for Risk Reduction Standard Number 2) set forth the procedures, including formulas, for calculation of initial cleanup levels or MSCs in Standard 2 when other standards are not available for setting the cleanup level. Each contaminant has five MSCs which are based on the following factors: the environmental medium which is contaminated; the potential exposure of the public to the contamination remaining in place under different land use scenarios; and the protection of other environmental media. As a result, an MSC is not a standard per se, but the initial cleanup level for a contaminated medium which will likely be modified in many instances as described in proposed §335.559. When more than one MSC or value can be determined for a medium, the most protective value will become the cleanup level. The following discussion of MSCs is divided into four topics.

First, the types of MSCs are discussed. The abbreviations used in the following sections for the types of Medium Specific Concentrations are the same abbreviations used in the column headings for Appendix II of proposed Subchapter S.

Ground-water MSCs. For contaminants in ground-water, the "Ground-water MSCs" (GW-MSCs) of Standard 2 are set at either the Maximum Contaminant Level (MCL) or the levels calculated using Equations 1 or 3 in proposed §§335.558(b)(1) and (c)(1). The appropriate formula is dependent upon the toxicological effect of the contaminant. All of the GW-MSCs of Standard 2 are based on residential use of the ground water. Calculations of GW-MSCs based on industrial use, and the consideration of fate and transport of contaminants in the ground-water is not allowed under Standard 2. The commission has taken this conservative approach with Standard 2 to ensure protection of the public health.

Soil MSCs Based on Human Exposure Pathways. Soil MSCs are calculated considering human exposure to the contaminants remaining in the environment after closure of the unit or remediation of the area of discharge. In all cases these "Soil/Air-Ingestion MSCs" (SAI-MSCs) of Standard 2 are calculated using Equations 2 or 4 in proposed §§335.558(b)(2) and (c)(2) or Equations 5 and 6 in §335.559(f)(1). As discussed in the paragraphs which follow, the appropriate formula is dependent upon the toxicological effect of the contaminant.

The SAI-MSCs are chemical-specific, and the calculated MSC considers the following human exposure pathways to soil: incidental ingestion of contaminated soil; incidental inhalation of contaminated dust; and, when appropriate, the inhalation of volatile contaminants. The SAI-MSC can be calculated based on residential or nonresidential land use. The appropriate exposure factors for these land use scenarios are contained in Table 1 of proposed Subchapter S, and are already included in the simplified equations.

In all cases, the residential or industrial SAI-MSC should be viewed as the upper acceptable limit for levels of the contaminant in the soil. The commission predicts that, in many cases, the cleanup level for soil will be adjusted to a lower level for protection of ground-water and surface water resources as described following.

Soil MSCs based on Ground-water Protection. Cross-media (i.e., soil to ground water) contamination is an important factor in the development of soil cleanup levels. In order to address the concern that contamination left in place may meet the SAI-MSC, but leach constituents in excess of the GW-MSC, the commission is proposing "Ground-water Protection MSCs" (GWP-MSCs) for contaminated soil under Standard 2 in §335.559(e) and (f)(2) (relating to Medium Specific Requirements and Adjustments for Risk Reduction Standards Number 2). These concentrations, which are derived from the GW-MSC, represent the contaminant level in soil where the potential for cross-media contamination of ground water is not considered to be significant. Soils which meet the GWP-MSC do not require a leachability test and

soils with contaminants exceeding the GWP-MSC may be demonstrated to be in compliance with this standard via a leach test; however, the upper concentration limit for the contaminant in soil would be the SAI-MSC.

Second, proposed §335.552 (relating to Definitions) provides definitions for the terms "carcinogens" and "carcinogen classification". With regard to Standard 2, those contaminants which are classified as "A", "B", or "C" according to the U.S. EPA "Weight of Evidence System for Carcinogenicity" are considered to be known or suspected carcinogens. The MSCs for these contaminants are calculated using equations 1, 2, and 5 which are proposed in §335.558(b) and §335.559(f)(1). These MSC equations, which are presented in reduced form in the proposed rule text, and in their entirety in Appendix I of proposed Subchapter S, were obtained from the EPA document OSWER Directive 9285.7-01B, entitled "Risk Assessment Guidance for Superfund, Human Health Evaluation Manual, Part B: Development of Preliminary Remediation Goals".

In order to develop MSCs that could be applied to all sites in the state, the commission has taken a conservative approach in the development of MSCs for known or suspected carcinogens under Standard 2. For example, Equations 1-6 contain the default exposure values in Table 1 of proposed Subchapter S. These exposure factors for daily intakes of drinking water, inhalation of air, and ingestion of soil represent a reasonable maximum exposure to different media, and are considered to be protective of the public health. In addition, when the MSCs were calculated for Standard 2, the acceptable risk for Class A and B carcinogens was set at an upperbound excess lifetime cancer risk of one excess cancer case in a population of 1,000,000. The acceptable risk for Class C carcinogens was set at an upperbound excess lifetime cancer risk of one excess cancer case in a population of one 100,000. These risk levels are an upperbound estimate, meaning that the excess risk in the population should not exceed, and is probably less, than the risk that is calculated. This risk level is considered to be protective of the public health, and the approach is consistent with U.S. EPA's policy on risk which is stated in the National Contingency Plan (FR 55:8866-8865).

Third, proposed §335.551 also defines "systemic toxicant". With regard to Standard 2, those contaminants which are classified as "D" or "E" according to the U.S. EPA "Weight of Evidence System for Carcinogenicity", or are not classified as to carcinogenicity (i.e., "NA") are considered noncarcinogens, or systemic toxicants. The MSCs for these contaminants are calculated using equations 3, 4, and 6 which are proposed in §335.558(c) and §335.559(f). These MSC equations, which are presented in reduced form in the proposed rule text, and in their entirety in Appendix I of proposed Subchapter S, were obtained from the EPA document OSWER Directive 9285.7-01B, entitled "Risk Assessment Guidance for Superfund, Human Health Evaluation Manual, Part B: Development of Preliminary Remediation Goals".

As with MSCs for carcinogens, the commission has taken a conservative approach in the development of MSCs for systemic toxicants under Standard 2. For example, the formulas were substituted with the default exposure values in Table 1 of the rules. These exposure factors for daily intakes of drinking water, inhalation of air, and ingestion of soil represent a reasonable maximum exposure to different media, and are considered to be protective of the public health. In addition, when the MSCs were calculated, an acceptable hazard index of one was used for systemic toxicants. When the hazard index is set at 1, the upperbound estimate of the daily dose a person would receive is no greater than the reference dose. The reference dose is the dose the population (including sensitive subgroups) could be exposed to on a daily basis without appreciable risk of deleterious effects during a lifetime. These levels are considered to be protective of public health.

And fourth, in order to facilitate the application of Standard 2 to closures and remediations, the commission has calculated MSCs for 154 contaminants commonly found in the environment and listed them in Appendix II (§335.568) of proposed Subchapter S. The number of compounds which could be included in this Appendix is quite extensive. Contaminants were chosen for Appendix II based upon the existence of promulgated standards and the availability of toxicity information. The volatilization factors and the toxicity factors (i.e., the oral and inhalation slope factors and reference doses) used in the MSC calculations are included as Tables A and B, respectively, in this preamble. Proposed §335.558(e) provides that the commission will revise Appendix II on an annual basis to include newly promulgated standards and new toxicity information.

Risk Reduction Standard Two Medium Specific Requirements and Adjustments. Proposed §335.559 (relating to Medium Specific Requirements and Adjustments for Risk Reduction Standard Number 2) describes the modifications that can be imposed upon the MSCs. For soils, these adjustments can define a cleanup level for the contaminant which is below the SAI-MSC of Appendix II, or, in other cases, allow the upward adjustment of the SAI-MSC based on non-residential land use. For cleanup of ground water, the adjustments are based on the usability of the aquifer. These adjustments to the MSCs are discussed in the following four sections.

First, the commission's concern regarding the potential for cross-media contamination has been stated in this preamble. This concern has led to the development of ground-water protection cleanup levels (GWP-MSCs) which apply to contaminated soils and are meant to protect ground water and surface water resources. This concern for cross-media contamination has also led to the consideration of the air inhalation pathway when the SAI-MSCs are calculated.

Releases to surface water and air are addressed by other regulatory programs, including the Clean Water Act and the Clean Air Act, and proposed §335.559(b) and (c) call for compliance with those programs in addition to the other requirements of §335.559. Numeric criteria developed by those pro-

grams could be applicable as action levels for surface water and air, and used for triggering corrective action.

Cross-Media Contamination of Surface Water. Facilities meeting Standard 2 would not generate contaminated runoff when closure or remediation is completed, and proposed §335.559(b) requires that any discharges to surface water must meet the Texas Surface Water Quality Standards and that any such discharges are subject to permitting requirements. Any releases to surface water which occur while remediation or closure is underway could potentially be violations of §335.4 (relating to General Prohibitions). As a result, the responsible person should take actions as necessary to prevent runoff. Of course, a facility needing to discharge treated water as a part of the closure or remediation would have to attain the necessary authorizations.

Cross Media Contamination of Air. Facilities meeting Standard 2 would not generate emissions which exceed Texas Air Quality Standards when closure or remediation is completed. Proposed §335.559(c), pertaining to air, identifies for use as action levels applicable federal standards as adopted by Texas statute. Any releases to air which occur while remediation or closure is underway could potentially be violations of Texas' Clean Air Act. As a result, the responsible person should take actions as necessary to prevent emissions. Of course, a facility needing to discharge to the air as a part of the closure or remediation would have to attain the necessary authorizations.

Cross-media contamination of air from soil contaminated with volatile organics is of concern to the commission. An examination of the individual SAI-MSCs in Appendix II of proposed Subchapter S shows that many of the MSCs for volatile organic compounds exceed 1,000 parts per million (ppm). Since Standard 2 MSCs apply uniformly to facilities statewide, the commission was concerned about the potential for vapor accumulation and felt that there should be an upper limit on the total volatile organics in soil. Accordingly, proposed §335.559(d) limits the maximum total volatile organics in soils to 1,000 ppm. An additional concern is the potential for nuisance odors. Proposed §335.559(h) requires that contaminants may not remain in environmental media at levels which result in odor problems.

Cross-Media Contamination of Ground Water. Proposed §335.559(e) (relating to Residential Soil Requirements) provides the cleanup levels that residential soils shall meet in order to provide protection for ground water (i.e., the Soil-to-Ground Water Cross-Media Protection Concentration (GWP-MSC)). This subsection further specifies that such levels shall be met throughout the soil column. This is to ensure that unrestricted future residential use, as might occur with excavations or installing household water wells, does not result in exposure to soils in excess of safe levels. The soil cleanup level is the lower of the SAI-MSC and the GWP-MSC which are listed in Appendix II of proposed Subchapter S.

The GWP-MSC is determined by multiplying the MCL, if one has been promulgated, or the

MSC for ground water (GW-MSC) by 100 and converting the units from milligrams per liter (mg/L) to milligrams per kilogram (mg/kg). This approach is based upon the EPA's dilution attenuation factor (DAF) which was developed for the Toxicity Characteristic (TC) Rule (Federal Register Volume 55, Number 61, March 29, 1990, pages 11798-11877). Essentially, EPA modelled the fate and transport characteristics of certain contaminants and determined that leachate was sufficiently attenuated (by a factor of about 100) anywhere within a contaminant plume emanating from a landfill used for the disposal of solid waste. The commission feels this approach can be applied to derive cleanup levels (i.e., GWP-MSCs) for Standard 2 sites which are sufficiently protective of ground water.

Soils which contain a lower concentration of contaminants than the GWP-MSC would comply with the ground-water protection aspect of Standard 2. Persons can perform specialized analyses using EPA's Synthetic Precipitation Leaching Procedure (U.S. EPA Method 1312) on contaminated soil samples from the facility which have contaminants with concentrations exceeding the GWP-MSC. This affords a person the opportunity to demonstrate that actual site conditions prevent contaminants in soil from leaching to ground water in excess of ground-water MSCs (GW-MSCs). Persons can propose other test methods that more accurately simulate conditions at the site. This option will likely require more time and expense than using the default approach but the tradeoff is that greater concentrations of contaminants, up to the residential SAI-MSCs, could remain in place at demonstrated safe levels.

Second, proposed §335.559(f) (relating to Non-Residential Soil Requirements) specifies the adjustments that can be made for non-residential soils. For non-residential facilities (i.e., facilities that satisfy one of the criteria of §335.557), the requirement to meet the SAI-MSC standard throughout the soil column is modified. For non-residential sites, the soil column is divided into near-surface (i.e., within two feet of the land surface) and sub-surface soils (i.e., greater than two feet in depth from the land surface). The near surface soils must meet the lower of the soil MSC (industrial SAI-MSCs) or the soil-to-ground water cross-media protection concentration (industrial GWP-MSCs). Subsurface soils must satisfy only the industrial GWP-MSCs and there is no upper limit on the level of contaminants which remain in the soil, with the exception of the 1,000 ppm limit on total volatile organic compounds proposed in subsection §335.559(d). Placing clean soils atop contaminated soils is not an acceptable way to achieve the near-surface soil requirements unless specific approval is obtained from the executive director for such limited situations as recontouring of a tract of land for construction purposes or backfilling an excavation resulting from removal of contaminated soil. Such a soil layer would not serve as an engineered cap.

The non-residential soil MSC (industrial SAI-MSC) and the soil-to-ground water cross-media protection concentration (industrial GWP-MSC) are based on the commercial/industrial exposure factors of Table 1 of pro-

posed Subchapter S. If an MCL for ground water has been promulgated for the constituent, then the industrial GWP-MS-C is identical to the residential GWP-MS-C. If there is no MCL, then the industrial GWP-MS-C is determined by adjusting the residential GWP-MS-C with a "multiplication factor" of 3.36 for carcinogens and 2.8 for systemic toxicants. These increased concentrations result when the non-residential exposure factors for ingestion of the different contaminated media, exposure frequency and exposure duration listed in Table 1 of proposed Subchapter S are substituted into the MS-C equations. The "multiplication factor" represents a "short cut method" of converting the residential GWP-MS-Cs to industrial GWP-MS-Cs.

The non-residential soil-to-ground water cross-media protection concentration is determined in a manner similar to the procedures for the residential scenario discussed in that a person has the option of using a default value or of performing a leachate test on site-specific soil samples. This adjustment is made to soil concentrations, not to ground water. Hence, attainment of Risk Reduction Standard Number 2 for a non-residential property still requires that the ground-water standards be set at the residential exposure rates. This action is necessary to protect potential receptors because ground water, like air, is a mobile medium. In the absence of controls, a plume of contamination could migrate from non-residential property to adjacent residential property.

Third, proposed §335.559(g) (relating to Ground Water) specifies that the level of protection for ground water will be set using residential exposure rates for water ingestion. Paragraph (1) provides an adjustment for ground water that is not potentially drinkable as determined by the total dissolved solids content. The cleanup level may be increased by a factor of 100 times the water MS-C (GW-MS-C) if the naturally occurring total dissolved solids content is greater than 10,000 milligrams/liter. The water MS-C, which also forms the basis for the soil-to-ground water cross-media protection concentration (GWP-MS-C), remains unchanged by this adjustment. Paragraph (2) states that if a person uses this adjustment, the executive director can require evaluations of additional exposure pathways or environmental receptors. It is likely that facilities using this adjustment will be located near saline surface water bodies as in the coastal areas of the state.

And fourth, proposed §335.559(h) states that contaminants that don't present a human health concern but have other adverse impacts including adverse effects on environmental receptors, environmental quality, public health and safety, or contaminants which present objectionable characteristics, are subject to further evaluation when MS-Cs are established. This evaluation could be by comparison of the contaminant levels to other scientifically valid published criteria.

Risk Reduction Standard Two Post Closure Care and Deed Certification. Proposed §335.560 (relating to Post Closure Care and Deed Certification) specifies that, upon satisfactorily attaining Risk Reduction Standard Number 2, the responsible person is released

from post closure care responsibilities for the property, but he must place a certification in the county deed records which describes the cleanup actions which have taken place on the property. The required information for the deed certification is specified in paragraphs (1)-(4) of proposed §335.560(c) and an example format is provided in Appendix III (§335.569) of proposed Subchapter S.

The deed certification requirements of this rule differ from the deed recordation of §335.5. First, it is a certification by the responsible person or property owner that the property has been cleaned to levels protective of human health and that the environment and the property is suitable for residential or commercial/industrial use. This proposed rule provides protection for future owners of the property since facilities utilizing the non-residential soil MS-Cs must provide notice to the commission if the owner intends to change the facility from nonresidential to residential use. In addition, the deed certification notifies future property owners of the continuing obligation to notify the agency if the owner intends to change the facility to residential land use. The notice shall indicate that the owner has undertaken actions as necessary to protect human health and the environment and has examined any substantial changes in exposure conditions which will result when the land use is changed. Future changes from non-residential to residential land use will be considered a substantial change in exposure conditions. Proposed §335.551(b) (relating to Scope) provides that when the person evaluates the need for additional actions as a result of changes in exposure conditions, the then-prevailing criteria of Subchapter S will be used. Lastly, the notice will indicate that additional information concerning the cleanup action is available for inspection upon request at the agency, and that the agency continues to have the jurisdiction to review the establishment of the final cleanup criteria.

Risk Reduction Standard Three. Risk Reduction Standard 3 as proposed at §335.8(d) would require a responsible person to remove, decontaminate, and/or control all waste, waste residues, leachate, and contaminated media to levels and in a manner such that any substantial present or future threat to human health or the environment is eliminated or reduced to the maximum extent practicable. The requirements for conforming to this standard are proposed in §335.553(b) and §§335.561-335.566 and are described following.

Risk Reduction Standard Three Corrective Measure Study. For closures/remediations under the third standard, proposed §335.553(b)(3) would require the person to evaluate the relative abilities and effectiveness of potential remedies to achieve the requirements for remedies described in §335.561 (relating to Attainment of Risk Reduction Standard 3) when considering the evaluation factors described in §335.562 (relating to Remedy Evaluation Factors). The proposed rule would require the responsible person to use this information regarding the relative abilities of various remedies to prepare a corrective measure study which recommends the remedy which best achieves

the requirements for remedies described in §335.561.

These rules are proposing a somewhat different approach from what is typically used in feasibility studies. The responsible person is required to "evaluate the relative abilities and effectiveness of potential remedies", however, unless additional information is requested by the executive director, he would only have to describe in the corrective measure study how the recommended remedy best achieves the requirements for standard 3 remedies. In other words, the person would be required to consider and evaluate a range of alternatives but would only have to report on the remedy which he believes best meets the remedy requirements. This approach is being suggested to reduce the paperwork burden of persons and of the commission in complying with these rules. However, this approach would in no way reduce a responsible person's duty to propose a high quality remedy which best meets the remedy evaluation factors. Section 335.553 makes it clear that the executive director may upon review of the corrective measure study require the person to further evaluate the proposed remedy or to evaluate one or more additional remedies.

Attainment of Risk Reduction Standard Three. The process for demonstrating attainment of the third standard is substantially more complex than for either of the first two standards. For standards one and two, the responsible person must only demonstrate that all contaminated materials have been removed and/or decontaminated to background levels or to health-based levels, respectively. The third standard requires more regulatory judgment to determine both the required level of remediation and the best method to achieve that level of cleanup.

Proposed §335.561 presents three requirements that a remedy must satisfy in order to attain the third standard. Each of these requirements is described sequentially in the following paragraphs. Proposed §335.562 which is discussed following identifies the evaluation factors that a person must consider when proposing a remedy to meet the remedy requirements. Compliance with the third standard is attained when, in the evaluation of the executive director, the person recommends the remedy which best achieves the three remedy requirements of §335.561 taking into consideration the evaluation factors of §335.562 and then, following approval, subsequently completes that remedy.

The first requirement for a standard three remedy is that it must be permanent, or if that is not practicable, it must achieve the highest degree of long-term effectiveness possible. Long-term effectiveness means the ability of a remedial or corrective action to maintain over time the required level of protection of human health and the environment. And a permanent remedy would have the property of enduring indefinitely without posing the threat of any future release that would increase the risk above levels established for the facility or area. Thus, in those instances where it is not practicable to achieve a permanent remedy through the use of decontamination and/or removal, the third standard would allow the responsible person to use control measures to provide the required level

of protection. The responsible person would have the burden of being able to demonstrate that the particular mix of removal, decontamination, and/or control that he wishes to use provides the highest degree of long-term effectiveness that is feasible at a site. Control measures would be evaluated in terms of the long-term effectiveness that they provide.

Treatment normally provides the highest degree of long-term effectiveness of any engineering control and would as a result generally be favored over containment methods such as capping or slurry walls without associated treatment. Proposed §335.562(d) would require the responsible person to evaluate the degree to which treatment could be used to permanently and significantly reduce the toxicity, mobility, or volume of contaminants at a site. Note that this remedy selection criterion is expressed in terms of the maximum degree of long-term effectiveness rather than the maximum degree of treatment. Treatment is not viewed as an end in itself but rather as the most effective means (other than removal or decontamination) to achieve a high degree of long-term effectiveness.

The commission would expect the responsible person to use treatment to address the principal threats to human health and the environment at a site. Other engineering controls, such as containment methods, would be used for waste or contaminated media that pose a relatively low long-term threat or where treatment is impracticable or ineffective. The commission would expect some sites to require a combination of treatment and other engineering controls to provide protection of human health and the environment. Institutional controls would be viewed as a supplement to engineering controls and would not be used to serve as a sole response unless active response measures are clearly not practicable.

The second requirement for a standard three remedy is that it must be cost-effective. The text of the proposed rule describes a cost-effective remedy as one that achieves the best balance between long-term effectiveness and cost for alternative remedies which meet the cleanup objectives for a facility. Unless the executive director requests additional information, the person would only describe in the corrective measure study that remedy which he believes best meets the remedy selection criteria. The rule requires the person's selection to be based upon an evaluation of the relative abilities and effectiveness of potential remedies to achieve the remedy requirements. This consideration of a range of alternatives would not need to be included in the corrective measure study unless requested by the executive director. The commission does not expect to request such information in those instances where the person proposes a high quality remedy with a high degree of long-term effectiveness.

Proposed §335.553 states that the executive director may upon review of the corrective measure study require the person to further evaluate the proposed remedy or to evaluate one or more additional remedies. When necessary, the commission may require a more extensive cost-effectiveness evaluation as

part of this additional information. This evaluation would consist of a range of alternatives which vary in degree of long-term effectiveness but which will all achieve the site remediation objectives. The alternative which achieves the site remediation objectives at the lowest cost would be identified and represents the bottom value for the cost-effectiveness evaluation. The cost of the permanent remedy would also be determined and would represent the ceiling for the cost-effectiveness evaluation. The total cost for the other alternatives would be determined and all alternatives would be ranked according to the degree of long-term effectiveness they provide. The remedy that provides the best balance between long-term effectiveness and cost would be the most cost-effective.

The third and final requirement for a standard three remedy is that it must achieve the media cleanup requirements that are specified pursuant to §335.563 (relating to Media Cleanup Requirements). These media cleanup requirements are discussed following.

Risk Reduction Standard Three Remedy Evaluation Factors. Proposed §335.562 identifies the evaluation factors that a person must use in considering various alternatives and in proposing the remedy which best meets the requirements for standard three remedies discussed. The person would be required to describe his evaluation of these factors for the proposed remedy in the corrective measure study. When necessary, the executive director will require the person to supplement the corrective measure study with additional details for the proposed remedy or to report on the consideration of these evaluation factors for additional remedies.

Proposed §335.562(b) would require the person to evaluate the remedies, particularly the proposed remedy, for compliance with other environmental laws and regulations. This review should include cleanup requirements, standards of control, and other substantive environmental protection requirements promulgated under other State or Federal laws which are either legally applicable to the site or that address problems or situations that are sufficiently similar to those encountered at the site that their use is well suited to the site. Chemical-specific concentration values from other programs would be evaluated for relevance and possible use during the establishment of media cleanup values performed in response to §335.563. Location-specific restrictions, such as for floodplains, from other regulations would also be identified and considered for use at the site. Action-specific requirements which relate to the technology or activity which is proposed for use at the site would be identified and considered for use in designing the proposed remedial action.

Section 335.562(c) requires remedies to be evaluated for long-term effectiveness and permanence. Among other requirements, this section requires the person to identify the post-closure care which would be necessary for the proposed remedy to remain protective of human health and the environment over time.

Section 335.562(d) would require the person to evaluate the extent to which treatment could be used to significantly and irreversibly reduce the toxicity, mobility, or volume of contaminants at the site. The important part of the evaluation is not the extent to which treatment is proposed to be used, but rather the degree to which that treatment significantly and irreversibly reduces risk at the site.

The person would also need to evaluate remedies for short-term effectiveness and implementability in response to §335.562(e) and (f), respectively. And finally, §335.562(g) would require the person to evaluate the cost of remedies. Cost information for a remedy would include capital costs to implement the remedy, annual operation and maintenance costs, and net present value of capital and operation and maintenance costs.

Risk Reduction Standard Three Media Cleanup Requirements. The media cleanup requirements for standard three remedies are defined in proposed §335.563. Proposed §335.563(a) would require persons to develop media cleanup levels in accordance with the conditions described in subsections (b)-(j) and then to propose them in the corrective measure study. These are discussed in the following six sections.

First, proposed §335.563(b)-(e) define the general requirements which would apply equally to the determination of cleanup levels for all media. Cleanup levels would be derived in response to these requirements using quantitative human health-based risk assessment procedures whenever the media-specific requirements of §335.563(f)-(i) do not identify an applicable standard or rule or specify an alternative procedure. In addition, §335.563(j), which is more fully discussed later, describes adjustments that may need to be made to the cleanup levels developed in response to subsections (a)-(i). Among other requirements, subsection (j) would allow the executive director to establish more stringent cleanup levels if necessary to protect environmental receptors.

Carcinogens. Subsection 335.563(b) specifies that cleanup levels for known or suspected carcinogens will be established at concentrations which represent an excess upperbound lifetime risk of between one in 10,000 and one in 1,000,000. For carcinogens, risks are estimated as the incremental probability of an individual developing cancer over a lifetime as a result of exposure to a potential carcinogen (i.e., incremental or excess individual lifetime cancer risk). Known or suspected carcinogens are those chemicals that are classified as Group A, B, or C pursuant to the U.S. Environmental Protection Agency's Weight of Evidence System for Carcinogenicity. Scientific notation may also be used to express carcinogenic risk levels. Thus, a risk of one in 10,000 may also be written as and a risk of one in 1,000,000 may be written as . Upperbound as used in this requirement means that the TWC is reasonably confident that the "true risk" will not exceed the estimated risk and is likely to be less than predicted. The risk estimate is felt to be an upperbound estimate because the slope factor used to report the toxicity for carcinogens is generally an upper 95th percentile confidence limit of probability of re-

sponse based on experimental animal data used in the multistage model.

Subsection 335.563(b) further states that the executive director will use one in 1,000,000 as a goal in establishing media cleanup level concentrations. This means that a cumulative risk level of will be used as the starting point (or initial protectiveness goal) for determining media cleanup levels that remedies will attain. The use of as the starting point for a cumulative risk level expresses the TWC's preference for media cleanup levels that result in risks at the more protective end of the risk range. This preference, however, does not reflect a rigid requirement when other factors, identified in the proposed rules and discussed following, point to a different level of protection. Subsection 335.563(b) concludes by specifying that in no case shall the cumulative excess risk to exposed populations (including sensitive subgroups) be greater than one in 10,000.

The remediation goals (i.e., cleanup levels) for a medium will typically be established by means of a two-step approach. A preliminary remediation goal for a potential carcinogen would be calculated to correspond to a incremental risk of an individual developing cancer over a lifetime as a result of exposure to the potential carcinogen from all significant exposure pathways for a given medium. For example, the preliminary cleanup concentration for a specific potential carcinogen in soil could be calculated by setting the sum of the risk from ingestion of soil, inhalation of volatiles from soil, and inhalation of particulates from soil equal to , provided these exposure pathways would all be significant at a given site. The TWC plans to use the procedures outlined in EPA OSWER Directive 9285.7-01B entitled *Human Health Evaluation Manual, Part B: "Development of Risk-based Preliminary Remediation Goals"*, or other guidance to be developed by the commission, to evaluate the initial cleanup levels proposed for carcinogens in the media at a site.

The second step in the determination of media cleanup levels involves the consideration of the site-specific and technical feasibility issues identified in §335.563(d). Such factors, which are discussed later, will enter into the determination of where within the risk range of to the cleanup level for a potential carcinogen would be established. Consideration of such factors may also indicate the need to establish a risk goal for an individual carcinogen that is less than in order to achieve the overall cumulative risk goal (i.e.,). Thus, the preliminary remediation goal based upon a risk level represents a "sticky point" from which departure in the direction of increased or decreased risk would be allowed provided that action could be justified based upon the issues presented in §335.563(d).

Systemic Toxicants. The general media cleanup requirements for systemic toxicants (i.e., noncarcinogens) are presented in §335.563(c). Preliminary remediation goals for noncarcinogens will be calculated based upon these requirements and, similar to the case for carcinogens, these preliminary values may be modified based upon the site-specific and technical feasibility issues identified in §335.563(d). The basic requirement for noncarcinogens is that the media cleanup

levels be set at concentrations to which the human population (including sensitive subgroups) could be exposed on a daily basis without appreciable risk of deleterious effect during a lifetime. Two conditions must be satisfied to meet this requirement and are described in the following paragraphs.

The first condition is that the hazard quotient must not exceed one. The hazard quotient is defined as the ratio of a single systemic toxicant exposure level for a specified time period to the reference dose for that systemic toxicant derived from that same time period. The noncancer hazard quotient assumes that there is a level of exposure (i.e., the reference dose) below which it is unlikely for even sensitive populations to experience adverse health effects. If the exposure level exceeds this threshold (i.e., the hazard quotient exceeds unity) there may be concern for potential noncarcinogenic effects. As a rule, the greater the value of the hazard quotient above one, the greater the level of concern. In contrast to the case for carcinogens, hazard quotients must not be interpreted as statistical probabilities. The hazard quotient value of one is used as a protective level to judge when adverse noncarcinogenic effects may begin.

The second condition is that the hazard index shall not exceed one. The hazard index is the sum of the hazard quotients for a single or multiple systemic toxicants which affect the same target organ or act by the same method of toxicity and act through a single or multiple media exposure pathways. This approach assumes that simultaneous subthreshold exposure to a toxicant or several toxicants acting through a single or several exposure pathways could also result in an adverse health effect. It also assumes that the magnitude of the adverse effect will be proportional to the sum of the ratios of the subthreshold exposure to acceptable exposures. This assumption of dose additivity is most properly applied when the compound affects the same target organ or acts by the same method of toxicity.

The preliminary remediation goal for a particular systemic toxicant would be determined by calculating the concentration that corresponds to a hazard index of 1 based upon human exposure to the chemical from all significant exposure pathways in a given medium. As an example, the preliminary cleanup concentration for a particular systemic toxicant in soil could be calculated by setting the sum of the hazard quotients for ingestion of soil, inhalation of volatiles from soil, and inhalation of particulates from soil equal to 1, provided these exposure pathways are all significant at a given site. Similar to the case for carcinogens, the TWC intends to use the procedures described in EPA OSWER Directive 9285.7-01B which is entitled *Human Health Evaluation Manual, Part B: "Development of Risk-based Preliminary Remediation Goals"*, or other guidance to be developed by the commission, to review the initial cleanup levels proposed for noncarcinogens in the media at a site.

Modified Media Cleanup Levels. Subsection 335.563(d) states that in establishing media cleanup levels pursuant to §§335.563(b) and (c) the executive director may consider and may direct persons who submit plans or re-

ports to consider a number of additional factors. These factors include: multiple contaminants in a medium; exposure to multiple contaminated media; reasonable expected future exposure conditions at the facility; and the technical limitations, effectiveness, practicability or other relevant features of available remedies. Based upon a consideration of these factors, the preliminary remediation goals may be modified, if warranted, to determine the final media cleanup levels to be achieved by the proposed remedy.

The first two of these factors, that is, multiple contaminants in a medium and exposure to multiple contaminated media, may require the risk goal for an individual carcinogen or noncarcinogen to be lower than the overall cumulative risk goal of or hazard index of 1, respectively. At many sites, it is likely that the potential human health effects of more than one contaminant in a medium must be assessed. Determining remediation levels by considering one chemical in a medium at a time might significantly underestimate the risks associated with simultaneous exposure to several substances. Likewise, at some sites an individual might be exposed to a substance or combination of substances through several media. For example, an individual might be exposed to substance(s) from a site by both consuming contaminated drinking water and by inhaling dust originating from the site. One should not automatically sum risks from all exposure pathways evaluated at a site, however. Cleanup levels are to be based upon an estimate of the reasonable maximum exposure expected to occur under future land use conditions. The reasonable maximum exposure is defined as the highest exposure that is reasonably expected to occur at a site and is estimated for each pathway. The intent of the reasonable maximum exposure is to estimate a conservative exposure case (i.e., well above the average case) that is still within the range of possible exposures. Until such time as additional guidance is developed, the TWC intends to use EPA's *Human Health Evaluation Manual Parts A (EPA/540/1-89/002)* and B (OSWER Directive 9285.7-01B) to review the manner in which the proposed preliminary remediation goal will be modified to reflect these two factors.

The third factor of §335.563(d) would allow the preliminary remediation goal to be modified based upon the reasonable expected exposure conditions at the facility. This is consistent with proposed §335.563(e) which addresses whether the standard exposure factors for residential use or some other exposure conditions will be used to determine media cleanup levels at a site.

And finally, the fourth factor of §335.563(d) would allow the preliminary cleanup levels to be modified based upon technical limitations, effectiveness, practicability, or other relevant features of available remedies. In cases where the remedy which best achieves the requirements for a standard three remedy identified in §335.561 cannot achieve the cumulative risk goal of , a greater risk level could be allowed, as necessary. For carcinogens, the cumulative risk must be within the risk range from to . Institutional controls may be required as part of the remedy for such a site.

Exposure Factors. Proposed §335.563(e) states that in determining media cleanup levels for carcinogens and systemic toxicants pursuant to §§335.563(b) and (c) a person shall use the standard exposure factors for residential use of the facility as set forward in Table 1 of proposed Subchapter S unless the person documents to the satisfaction of the executive director that alternative assumptions regarding future exposure conditions are warranted. The standard exposure factors presented in Table 1 have been developed to be consistent for the most part with EPA's OSWER Directive 9285.6-03 entitled *Human Health Evaluation Manual, Supplemental Guidance: "Standard Default Exposure Factors"*. The proposed rule describes two exceptions where exposure assumptions other than the standard exposure factors for residential use would be allowed.

The first exception presented in §335.563(e)(1) would allow alternative exposure factors for a particular land use to be used provided site-specific data warrant deviation from the standard exposure factors. The standard default values in Table 1 of proposed Subchapter S are being provided to reduce unwarranted variability in the exposure assumptions and to provide a consistent approach to the determination of media cleanup levels. Accordingly, the exposure factors presented in Table 1 are considered most appropriate and must be used unless alternative values based upon site-specific data can be clearly justified. The TWC's intent is to base media cleanup levels upon a reasonable maximum exposure. The standard exposure values have been selected to combine upperbound and mid-range exposure factors so that the resulting estimate of intake is highly protective and reasonable but does not represent the worst possible (and highly unlikely) case.

The second exception presented in §335.563(e)(2) would allow the person to base the media cleanup levels on a land use other than residential provided the person can demonstrate to the satisfaction of the executive director that such land use is a more appropriate assumption. Such demonstration must be based upon consideration of the historical, current, and probable future land use as well as the effectiveness of institutional or legal controls placed on the future use of the land. To adequately support a land use other than residential, the person must demonstrate both that future residential use of the property is unlikely and that effective institutional or legal controls, that are adequate to maintain the alternative land use and prevent residential use, have been or will be placed on the property.

Second, §335.563(f) specifies the manner in which the cleanup levels for the air medium will be determined under the third risk reduction standard. Paragraph (1) of this subsection requires that concentrations of contaminants in air that emanate from a facility, area of soil contamination, or plume of contaminated ground-water shall not exceed the lowest of the values described in three subparagraphs at exposure points located within the contaminated area. Subparagraph (A) of this subsection would require the National Ambient Air Quality Standards

(NAAQS) or National Emission Standards for Hazardous Pollutants (NESHPS) (as found in 40 Code of Federal Regulations, Parts 50 and 61, respectively, and as adopted by the Texas Clean Air Act) to be considered. Subparagraph (B) of this subsection would require concentrations established by Texas Air Control Board rules for particulate matter (31 TAC Chapter 111), sulfur compounds (31 TAC Chapter 112), and beryllium and inorganic fluoride (31 TAC Chapter 113) to be considered. And finally, subparagraph (C) of this subsection would require concentrations that satisfy the media cleanup requirements of §335.563(b)-(e), which have been discussed previously, to be determined. The cleanup level in air for a particular contaminant would be the lowest value determined from the considerations required by the three subparagraphs. Paragraph (2) of this subsection states that the executive director may approve a point of exposure further from the source of the release up to the property boundary provided that it is protective of human health and the environment.

Third, §335.563(g) presents the requirements that are proposed to apply to surface water under the third risk reduction standard. This subsection states that in determining the necessity for remediation at a facility, persons shall utilize Chapter 307 of this title (relating to Texas Surface Water Quality Standards). If such values are not available, then Maximum Contaminant Levels (MCLs) promulgated under the Safe Drinking Water Act are to be used. If neither of these values are available, then values calculated in response to §335.563(b)-(e), discussed previously, and based upon human ingestion of the water or other site-specific pathway would be used. Such numbers can be used to determine whether surface water would be the driving force behind a corrective action and also to determine the required condition of surface water runoff from a site to satisfy the third risk reduction standard. This subsection concludes by stating that any discharge or release into or adjacent to surface water, including storm water runoff, occurring during or after attainment of Risk Reduction Standard 3, shall be compliant with the Texas Surface Water Quality Standards of 31 TAC Chapter 307 and may be subject to the permitting requirements of 31 TAC Chapter 305 of this title (relating to Consolidated Permits) or other authorization from the commission.

Fourth, §335.563(h) specifies the basic considerations for setting ground-water cleanup levels for the third standard which is followed by a series of modifying conditions in paragraphs (1)-(4) of this subsection. The setting of cleanup levels starts with the requirement that contaminants in ground water that is a current or potential source of drinking water shall not exceed Maximum Contaminant Levels (MCLs) promulgated under the Safe Drinking Water Act. If these are not available, the person is directed to use the procedures of subsections (b)-(e) of this section to establish cleanup levels based on human ingestion of drinking water.

Paragraph (1) of this section establishes the criteria for ground water to be considered a current or potential source of drinking water. First, the ground-water must occur in a geo-

logic zone that is sufficiently permeable to transmit water to a pumping well in usable quantities. Second, the quality of the ground water within that zone must be potentially drinkable as determined by its having a background total dissolved solids (TDS) content of less than or equal to 10,000 milligrams per liter (mg/l). The value of 10,000 mg/l was used in the ground-water quality classification established by the Texas Ground Water Protection Committee in 1991 to distinguish which ground water will be considered a potential source of drinking water. Available guidance will be used to make the determination whether a geologic zone is sufficiently permeable to transmit water to a pumping well in usable quantities so as to be considered a potential source of drinking water. The ground-water requirements of this section set specific expectations (i.e., MCLs or health-based levels) for the restoration of contaminated ground-water that is a current or potential human drinking water supply. Moreover, these proposed rules would allow the executive director under §335.563(h)(4), discussed following, to require any alternative measures necessary to protect human health and the environment for ground water which does not have the potential to serve as a drinking water supply.

Paragraph (2) of this section specifies that cleanup levels apply throughout the plume of contaminated ground-water but would allow exceptions to this requirement in three circumstances. The first exception is a hazardous waste management facility with a permit containing alternate concentration limits (ACLs). ACLs are set to account for site-specific facility conditions based on the information requirements of §335.160(b) of this title (relating to Concentration Limits). Second, when the selected remedy calls for wastes to be left in place and where appropriate control measures are installed or operated, the executive director may authorize the zone underlying the area encompassing the original source(s) of release to be excluded from the area where the ground-water cleanup levels must be achieved. This provision recognizes the practical difficulties of achieving ground-water cleanup levels directly beneath containment units, such as landfills, with engineering controls, such as caps or liners, that are intended to prevent the migration of contaminants. In this example, compliance with the standards would be measured by sampling monitoring wells located at the edge of the landfill or other containment unit. And third, when the person satisfactorily documents that a land use other than residential is appropriate and further demonstrates that institutional controls would effectively prevent use of the contaminated ground-water, the executive director may authorize the extent of plume remediation to be determined using the alternate concentration limit approach defined in §335.160(b) of this title (relating to Concentration Limits). This provision would allow the same types of analyses and demonstrations that are available to permitted hazardous waste facilities via §335.160(b) to be extended to other types of facilities or areas. In all three cases, the point of exposure to ground-water could be placed at locations other than directly beneath the containment unit for the purposes of calculat-

ing cleanup levels based upon fate and transport considerations.

Paragraph (3) of this subsection indicates that the executive director may determine that remediation of ground-water to the extent required by §335.563(h)(1) and (2) is not necessary provided the person satisfactorily makes one of two different demonstrations. First, subparagraph (A) would allow the person to demonstrate that the contaminant is present in ground-water that is not a current or potential source of drinking water. Under this option, the person would also need to demonstrate that the contaminated ground-water is not hydraulically connected with or is not likely to migrate to either surface water or ground-water that is a current or potential source of drinking water at a concentration greater than the cleanup levels for these media. Second, subparagraph (B) would allow the person to demonstrate that restoration of the ground-water to levels specified in §335.563(h)(1) and (2) is technically impracticable. The TWC will make use of available guidance to judge whether contaminated ground water is hydraulically connected with or likely to migrate to other ground-water zones or to surface water. We will also use such available guidance to determine whether restoration to MCLs or health-based limits is technically feasible at a particular site.

And finally, paragraph (4) specifies that if the person satisfactorily makes one of the demonstrations discussed for paragraph (3) then the executive director may require any alternative measures or cleanup levels that are necessary to protect human health and the environment. The paragraph concludes by requiring that in all cases, phase-separated non-aqueous liquids shall be removed from ground-water zones to the extent practicable. These types of contaminants pose additional threats to human health and the environment than just through the ingestion pathway. These threats include vapor generation and damage to well casings or other subsurface features such as communication cables. Furthermore, as a result of their mobility and low solubility, they have the potential to contribute to long-term, low level contamination of ground water by dissolved phase constituents. The agency will use available guidance such as EPA OSWER Directive No. 9283.1-06 entitled "Considerations in Ground-Water Remediations at Superfund Sites and RCRA Facilities-Update", or other guidance to be developed by the TWC, to determine the feasible extent of recovery operations for these substances at individual sites.

Fifth, the requirements which would be used to determine acceptable concentrations of contaminants in soil for the third risk reduction standard are presented in proposed §335.563(i) and are described in the following paragraphs.

Paragraph (1) of this subsection specifies that contaminants in soil shall not exceed values calculated pursuant to §335.563(b)-(e) based upon human ingestion of the soils at all points where direct contact exposure to the soils may occur. Under residential land use, human-direct contact exposure will normally be assumed to be possible throughout the entire soil column. In general, worker direct contact

exposure will be assumed to be possible within the upper two feet of soil under commercial/industrial land use; however, such thickness may be increased or decreased based upon site-specific conditions.

Paragraph (2) of this subsection requires that the contaminants in soil shall not exceed values which will allow the air, surface water, and ground-water cleanup levels specified in §335.563(f), (g), and (h), respectively, to be maintained over time taking into account the effects of engineering controls. In other words, the soil must be restored to the extent necessary to prevent the cross-media transfer of contaminants over time which would result in any of the other media exceeding cleanup levels. The effect of engineering controls, such as caps or liner systems, to be constructed as a part of the recommended remedy may be taken into account in this analysis. The point of exposure to be used to evaluate the cross-media transport of contaminants from soil to ground-water would be the ground-water directly underneath the site unless modifications allowable under §335.563(h)(2) (relating to ground-water) are approved. Additional requirements are presented in subparagraphs (A) and (B) of this paragraph which are discussed next.

Subparagraph (A) requires that such cross-media transport determinations must be based on sound scientific principles including fate and transport evaluation of contaminant migration. This subparagraph also requires that the procedures and conclusions be documented to the satisfaction of the executive director. The TWC is not at this time specifying the exact manner in which such evaluations are to be performed other than to require that they are based on "sound scientific principles". The U.S. Environmental Protection Agency is in the process of evaluating a number of fate and transport models that can be used to determine soil cleanup levels based upon predicted cross-media transport to ground water. The soil/air and ingestion standards for Risk Reduction Standard 2, which are presented in Appendix II of the proposed Subchapter S, were based in part on models used to estimate the risks for inhalation of volatiles and particulates from soil. These models are discussed in EPA OSWER Directive 9285.7-01B entitled *Human Health Evaluation Manual, Part B: "Development of Risk-based Preliminary Remediation Goals"* and would generally be suitable for use under the third risk reduction standard.

And finally, subparagraph (B) specifies that the executive director may require the evaluation of additional migration pathways beyond those previously considered in this subsection. Such additional pathways may include, but are not limited to, food chain contamination, impairment of soil for agricultural purposes, phytotoxicity, accumulations of contaminants in sediment of surface water bodies, or other impairments of natural resources, land, or water uses.

Sixth, proposed §335.563(j) discusses adjustments that may be necessary to any of the standard three cleanup levels that have been determined in accordance with the procedures discussed. The adjustments presented in paragraphs (1) through (3) of this subsection

are described in the following paragraphs.

Paragraph (1) states that if either the practical quantitation limit (PQL) or the background concentration for a contaminant is greater than the cleanup level determined by the procedures of §335.563 then the greater of the PQL or background shall become the cleanup level.

Paragraph (2) specifies that other scientifically valid published criteria, such as but not limited to threshold limit values for air and secondary maximum contaminant levels for water shall be used as the cleanup levels for contaminants in either of two circumstances. First, such values shall be used for contaminants for which the procedures of §335.563(b)-(i) are not appropriate, such as mixtures or substances that do not have toxicological data. Second, such values are also to be used for contaminants that do not exceed standards or criteria which are protective of human health but that otherwise adversely impact environmental quality, or the public welfare and safety, or present objectionable characteristics (e.g., taste, odor, etc.), or make a natural resource unfit for use.

The final adjustment discussed in paragraph (3) would allow more stringent cleanup levels to be established if the executive director determines that such lower levels are necessary to protect environmental receptors. Closures and remediations must be protective of both human health and the environment to meet the requirements of Risk Reduction Standard 3. Provision for such an adjustment is necessary since the media cleanup requirements specified in §335.563(b)-(i) are based on human health considerations. The TWC is not at this time specifying the exact manner in which such an evaluation of environmental receptors would be performed but plans to use available guidance in conducting the review of plans or reports. EPA's *Environmental Evaluation Manual* (EPA/540/1-89/001) provides a good discussion of the overall framework for considering environmental effects. In addition, a detailed discussion of environmental evaluation methods may be found in *Ecological Assessments of Hazardous Waste Sites: A Field and Laboratory Reference Document* (EPA/600/3-89/013).

Risk Reduction Standard Three Post Closure Care. The post closure care requirements for standard three remedies are presented in proposed §335.564 and §335.565. Section 335.564 indicates that where the executive director determines that neither engineering nor institutional control measures are required to protect human health and the environment, the person would be released from post closure care responsibilities. The person would, however, be required to deed record the facility or area in accordance with §335.566 which is discussed following. This section is proposed to address those instances where a person is able to demonstrate in the baseline risk assessment or corrective measure study that Risk Reduction Standard 3 may be attained without the use of engineering or institutional controls. For example, persons may be able to demonstrate via §335.563(e)(i) based on site-

specific data that deviation from the standard exposure factors presented in Table 1 of proposed Subchapter S is warranted. Using site-derived exposure factors, the person may be able to demonstrate that the media cleanup requirements for the third standard have been achieved even though the cleanup levels for the second standard, which are based on prescribed exposure values, have not been met. In addition, the person may be able to demonstrate that all remaining contaminants at a site would be less than the standard three cleanup levels after he has completed planned removal and/or decontamination activities. Persons must document and defend their proposal for a standard three remedy which involves no post closure care in the corrective measure study. As provided in §335.553(b)(3), upon review of the corrective measure study, the executive director may require the person to further evaluate the proposed remedy or to evaluate one or more additional remedies.

Section 335.565 specifies that where the executive director determines that either engineering or institutional control measures are required to protect human health and the environment the person would be required to perform post closure care. The person would also be required to deed record the facility in accordance with §335.566. The person would be responsible for carrying out the post closure care requirements as evaluated and approved during the remedy evaluation process described in §335.562. The type, extent, and duration of these post closure care measures would be dependent upon the permanence or degree of long-term effectiveness provided by the selected remedy. This approach is intended to provide persons with a significant incentive to close/remediate to achieve a high degree of long-term effectiveness so as to avoid more burdensome post closure care requirements. For hazardous waste management facilities, the person must also satisfy the applicable interim status or permitting standards.

Risk Reduction Standard Three Deed Recordation. Section 335.566 specifies that upon completion of closure or remediation under Risk Reduction Standard 3 the person must record certain information in the county deed records. The required information is specified in subsections (a)-(e) of the section and an example format is provided in Appendix III (§335.569) of proposed Subchapter S. Subsection (b) requires the person to certify that remediation of the facility or area was carried out in accordance with applicable regulations and appropriate guidance and resulted in a remedy that eliminated or reduced to the maximum extent practicable substantial present and future risk. The certification must also state whether continued post closure care or engineering or institutional control measures are required to protect human health and the environment. Subsection (c) requires that a description of any institutional or legal controls that a person has placed on the future use of the property must also be recorded in the deed. A notice is required to alert future owners of the property of the requirement to notify the agency if the owner intends to change the facility to residential use. The notice shall indicate that the owner has the continuing obligation to undertake

actions as necessary to protect human health and the environment. Subsection (d) requires a metes and bounds description of the area on which the closure or remediation was achieved to be included in the deed record. And finally, subsection (e) requires the deed notice to include a statement that additional information concerning the closure or remediation is available for inspection upon request at the TWC. Such deed notice will also describe the jurisdiction of the TWC to review the remediation of the tract of land.

Norma Nance, director of budget, planning and evaluation, has determined that for the first five-year period the sections are in effect there will be fiscal implications as a result of compliance with or enforcement of the sections. The direct effect on state government will be an increased cost to state government of between \$88,000 and \$161,000 in each of the fiscal years 1993-1997. The actual costs in any year will vary with the complexity of specific closure or remediation projects to be reviewed under these proposed rules and with the performance standard applied. There are no additional costs to local government anticipated.

The costs of closure or remediation under the three performance standards proposed by these sections, all of which are protective of human health and the environment and provide for significant risk reduction, will vary relative to the two existing options, which are cleanup to background levels or closure as a landfill. A facility closing a waste management unit under the first performance standard, proposed as new §335.8(b)(3)(A), would realize little fiscal impact, as this proposal is equivalent to the existing background cleanup option. Under the second performance standard, proposed as new §335.8(b)(3)(B), requiring removal or decontamination such that any substantial present or future threat to human health and the environment is eliminated, significant cost reductions are likely. Based on a national survey, EPA has estimated that cleanups of solid waste management units to background levels could result in mean present value costs of \$281 million per facility or annualized costs (at 3.0% discount rate) of \$19 million. Under this proposed health-based standard for cleanup the costs could be reduced to \$26.9 million per facility (\$1.8 million annualized), or 9.6% of the costs of the existing cleanup to background standard. Cost savings relative to the background cleanup option may be offset by the costs incurred to develop health-based standards where none are available. These costs will vary widely, but may be expected to range between \$10,000-\$100,000 for many facilities. In most cases, these costs will be significantly less than the savings to be realized from the use of the health-based standard.

Under the third performance standard, proposed as new §335.8(b)(3)(C), which will utilize a combination of removal, decontamination, or control measures to achieve health-based values, cost reductions relative to either of the first two performance standards will be likely. However, since this performance standard will achieve a greater degree of long-term effectiveness relative to the existing landfill closure option, there

would likely be an increased cost associated with a closure or remediation effort. Given the highly variable nature of control measures that are available and their related costs, it is not possible to determine with accuracy the potential cost implications for closure or remediation of a facility under this proposed standard. Control costs under this standard will include some components of removal, decontamination, and engineering and/or institutional controls. Post-closure care costs (ground-water monitoring, inspection, maintenance, etc.) will be incurred due to the maintenance of waste or waste constituents in place. EPA has estimated that cleanup under criteria similar to this proposed standard could result in mean present value costs per facility of \$4.8 million and annualized costs of \$300,000, or some 2.0% of the potential costs of the background cleanup option.

The capping and post-closure care costs of the landfill closure option can be taken as the minimal likely expense for a single waste management unit that is closed in place with no removal or decontamination of wastes or residues. This option, which achieves a lower degree of long-term effectiveness than treatment alternatives, has been used for many years as a common alternative when cleanup to background levels is not attempted or achieved. Although it is still available for consideration under the proposed third performance standard, this option will have to be compared to other remedies that employ a combination of removal, decontamination, or control measures to facilitate the selection of the remedy with the greatest degree of permanent risk reduction that is practicable. In general, remedies involving treatment processes tend to be more expensive than containment measures alone. Therefore, it is anticipated that future compliance with the performance standard under proposed §335.8(b)(3)(C) will be more costly than the landfill closure option historically practiced.

The effects of these sections as proposed on small businesses will be similar to the general impacts described. Assuming that the size and/or cleanup cost of a waste management unit may not be directly related to the size of a business concern, either the costs or cost savings may be more significant for a small business. The option to apply health-based standards will presumably have a greater impact on small businesses' ability to fund required cleanups than on larger businesses.

Ms. Nance has also 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: improvements in the protection of the public health and the environment; permanent reduction of risk from closure of waste management facilities; promotion of research efforts in environmental health hazards; an improved regulatory process for closure of waste management facilities and determination of real estate liabilities; and preservation of limited land disposal capacity by not requiring the disposal of large volumes of marginally contaminated materials. Other than the fiscal impacts to regulated entities which have been identified; there are no known costs to persons who are required to comply with the sections as proposed.

Comments on these proposed rules may be submitted to Lydia Gonzales, Senior Attorney, Legal Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087. The deadline for submission of written comments is at 5 p.m. 30 days following the date of this publication. A public meeting for receiving comments has been set for January 7, 1993 at 10 a.m. in room 118 of the Steven F. Austin State Office Building in Austin.

The amendments are proposed under the Texas Water Code, §5.012 and §5.013 (Vernon 1992), which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of this State and to establish and approve all

general policies of the commission. Promulgation of performance standards governing the remediation of spills or other areas with discharges of wastes or contaminants which may cause pollution in waters are necessary to adequately protect the waters of the State.

The amendments are also proposed under the Texas Solid Waste Disposal Act, §361.024, Texas Health and Safety Code, Chapter 361 (Vernon 1992), which provides the Texas Water Commission with the authority 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 industrial solid waste and municipal hazardous waste. Pursuant to the Texas Solid Waste Disposal Act, §361.017, the Texas Water Commission is required to

implement the purposes of the Act through the control of all aspects of industrial solid and municipal hazardous waste management by all practical and economically feasible methods consistent with the powers and duties prescribed under the Act and other existing legislation. Section 361.017 grants to the commission the powers and duties specifically prescribed in the Act as well as all other powers necessary or convenient to carry out its responsibilities.

Tables for Volatilization Factors and Toxicity Values. Preamble Table A-Volatilization Factors and Preamble Table B-Toxicity Information are presented on the following pages to document the data used in the calculation of the example Medium Specific Concentrations presented in Appendix II of proposed Subchapter S.

Table of Coefficients and Factors Used in Calculation of
Volatilization Factors for the Constituents Contained in
Appendix II of Proposed Subchapter S

FORMULA/SOIL TO AIR VOLATILIZATION FACTOR:

$$VF(m^3/kg) = \frac{(LS \times V \times DH)}{A} \times \frac{(3.14 \times \alpha \times T)^{1/2}}{(2 \times D_{ei} \times E \times K_{oa} \times 10^{-3} \text{ kg/g})}$$

SITE DATA/DEFAULT FACTORS:

LS	Length of contaminated area (m)	=	45
E	True soil porosity (unitless)	=	0.35
V	Wind speed in mixing zone (m/s)	=	2.25
ps	True soil density (g/cm ³)	=	2.65
DH	Diffusion height (m)	=	2
T	Residential exposure interval (s)	=	9.5e+08
T	Industrial exposure interval (s)	=	7.9e+08
A	Area of contamination (cm ²)	=	2.03e+07
OC	Organic carbon content, soil fraction	=	0.02

CHEMICAL SPECIFIC DATA:

D _i	Molecular Diffusivity (cm ² /s).
H	Henry's Law Constant (atm-m ³ /mol).
K _{oc}	Organic Carbon Partition Coefficient (cm ³ /g).
D _{ei}	Effective Diffusivity (cm ² /sec), calculated from D _i X E ^{0.33} .
K _d	Soil-water partition coefficient (cm ³ /g), calculated from K _{oc} X OC.
α	Alpha, (cm ² /s) = $\frac{(D_{ei} \times E)}{E + (p_s)(1-E)/K_{oa}}$
K _{oa}	Soil/air partition coefficient (g soil/cm ³ air). Calculated from K _{oa} = (H/K _d) X 41.

CONSTITUENT	Di	H	Koc	Dei	Kd	alpha	Kas	VF-R	VF-I
Acenaphthene	0.0695	9.20e-05	4600	0.04915	92	4.09e-07	4.10e-05	247756.8	225931.8
Acetone	0.1093	2.06e-05	2.2	0.077297	0.044	3.00e-04	1.92e-02	9112.912	8310.151
Acetonitrile		4.00e-06		0	0	NA	NA	ND	ND
Acetophenone		ND		0	0	NA	NA	ND	ND
Acrolein		ND		0	0	NA	NA	ND	ND
Acrylamide		ND		0	0	NA	NA	ND	ND
Acrylonitrile	0.1113	8.84e-05	0.85	0.078711	0.017	3.27e-03	2.13e-01	2658.041	2423.893
Alachlor		ND		0	0	NA	NA	ND	ND
Aldicarb		ND		0	0	NA	NA	ND	ND
Aldicarb Sulfone		ND		0	0	NA	NA	ND	ND
Aldicarb Sulfoxide		ND		0	0	NA	NA	ND	ND
Aldrin		ND		0	0	NA	NA	ND	ND
Aluminum Phosphide		ND		0	0	NA	NA	ND	ND
Aniline	0.0844	1.36e-01	1.86	0.059688	0.037 2	5.78e-02	1.50e+02	20.96483	19.11802
Anthracene	0.0568	1.02e-03	14000	0.040169	280	1.22e-06	1.49e-04	143588	130939.2
Antimony	NA	NA	NA	0	0	NA	NA	ND	ND
Arsenic	NA	NA	NA	0	0	NA	NA	ND	ND
Atrazine		ND		0	0	NA	NA	ND	ND
Barium (ionic)	NA	NA	NA	0	0	NA	NA	ND	ND
Benzene	0.0933	5.59e-03	83	0.065982	1.66	1.80e-03	1.38e-01	3634.287	3314.14
Benzidine		3.03e-07		0	0	NA	NA	ND	ND

CONSTITUENT	Dl	H	Koc	Dei	Kd	alpha	Kas	VF-R	VF-I
Beryllium	NA	NA	NA	0	0	NA	NA	ND	ND
Biphenyl	0.0598	8.54e-04	1713	0.042291	34.26	8.78e-06	1.02e-03	53492.01	48779.87
Bis (2-chloro-ethyl) ether	0.0695	1.31e-05	13.9	0.04915	0.278	1.93e-05	1.93e-03	36085.19	32906.42
Bis (2-chloroisopropyl) ether	0.0617	1.13e-04	61	0.043634	1.22	3.36e-05	3.80e-03	27311.81	26905.9
Bis (2-ethyl-hexyl) phthalate		ND		0	0	NA	NA	ND	ND
Bromodichloromethane	0.0868	1.60e-03	152	0.061385	3.04	2.68e-04	2.16e-02	9642.435	8793.028
Bromoform		NO		0	0	NA	NA	ND	ND
Bromomethane	0.1203	6.24e-03	126	0.085076	2.52	1.72e-03	1.02e-01	3745.942	3415.96
Butyl-4,6-dinitrophenol, 2-sec-		NO		0	0	NA	NA	ND	ND
Cadmium	NA	NA	NA	0	0	NA	NA	ND	ND
Carbofuran		NO		0	0	NA	NA	ND	ND
Carbon Disulfide	0.1106	1.23e-02	54	0.078216	1.08	6.78e-03	4.67e-01	1758.808	1603.873
CarbonTetrachloride	0.0818	2.41e-02	110	0.057849	2.2	4.84e-03	4.49e-01	2088.727	1904.73
Chlordane		9.63e-06		0	0	NA	NA	ND	ND
Chloroacetaline, p-		NO		0	0	NA	NA	ND	ND
Chlorobenzene	0.0804	3.72e-03	330	0.056859	6.6	2.66e-04	2.31e-02	9679.993	8827.278
Chlorobenzilate		2.34e-08		0	0	NA	NA	ND	ND
Chloroethane (Ethylchloride)	0.1114	6.92e-03	143	0.078782	2.86	1.56e-03	9.92e-02	3938.888	3591.909

CONSTITUENT	Di	H	Koc	Dei	Kd	alpha	Kas	VF-R	VF-I
Chloroform	0.0915	2.87e-03	31	0.064709	0.62	2.40e-03	1.90e-01	3114.207	2839.875
Chloronaphthalene, 2-		NO		0	0	NA	NA	ND	ND
Chlorophenol, 2-		NO		0	0	NA	NA	ND	ND
Chromium (total)	NA	NA	NA	0	0	NA	NA	ND	ND
Chromium (VI)	NA	NA	NA	0	0	NA	NA	ND	ND
Cresol, m-		1.10e-06		0	0	NA	NA	ND	ND
Cresol, o-		1.10e-06		0	0	NA	NA	ND	ND
Cresol, p-		1.10e-06		0	0	NA	NA	ND	ND
Cyanide		NA		0	0	NA	NA	ND	ND
DDD		7.96e-06		0	0	NA	NA	ND	ND
DDE	NA	6.50e-05		0	0	NA	NA	ND	ND
DDT	NA	5.13e-04		0	0	NA	NA	ND	ND
Di-n-butyl phthalate	NA	2.70e-07		0	0	NA	NA	ND	ND
Di-n-octyl phthalate		NO		0	0	NA	NA	ND	ND
Dibromo-3-chloropropane, 1,2-	NA	3.11e-04		0	0	NA	NA	ND	ND
Dibromochloromethane		NO		0	0	NA	NA	ND	ND
Dichlorobenzene (1,2)	0.0688	1.93e-03	1700	0.048655	34	2.30e-05	2.33e-03	33043.33	30132.52
Dichlorobenzene (1,3)	0.0688	3.24e-03	1700	0.048655	34	3.86e-05	3.91e-03	25498.83	23252.63

CONSTITUENT	DI	H	Koc	Dei	Kd	alpha	Kas	VF-R	VF-1
Dichlorobenzene (1,4)	0.0688	2.89e-03	1700	0.048655	34	3.44e-05	3.49e-03	26999.92	24621.48
Dichlorodifluoromethane	0.1028	3.90e-01	58	0.0727	1.16	5.36e-02	1.38e+01	180.2089	164.3342
Dichloroethane (1,1)	0.094	4.31e-03	30	0.066477	0.6	3.75e-03	2.95e-01	2441.586	2226.505
Dichloroethane (1,2)	0.094	9.78e-04	14	0.066477	0.28	1.88e-03	1.43e-01	3553.342	3240.326
Dichloroethylene (1,1)	0.0961	3.40e-02	65	0.067962	1.3	1.22e-02	1.07e+00	1180.557	1076.562
Dichloroethylene, cis-(1,2)	0.0962	7.58e-03	49	0.068033	0.98	4.12e-03	3.17e-01	2320.87	2116.423
Dichloroethylene, trans-(1,2)	0.0961	6.56e-03	59	0.067962	1.18	3.01e-03	2.28e-01	2762.588	2519.23
Dichlorophenol, 2,4-		2.75e-06		0	0	NA	NA	ND	ND
Dichlorophenoxyacetic acid, 2,4-	NA	1.88e-04		0	0	NA	NA	ND	ND
Dichloropropane (1,2)	0.0937	2.31e-03	51	0.066265	1.02	1.23e-03	9.29e-02	4442.07	4050.766
Dieldrin		4.56e-07		0	0	NA	NA	ND	ND
Diethyl phthalate		1.14e-06		0	0	NA	NA	ND	ND
Diethylhexyl adipate		NO		0	0	NA	NA	ND	ND
Dimethoate		ND		0	0	NA	NA	ND	ND
Dimethyl phenol, 2,4-		NO		0	0	NA	NA	ND	ND
Dinitrobenzene, 1,3-		NA		0	0	NA	NA	ND	ND
Dinitrophenol, 2,4-		6.45e-10		0	0	NA	NA	ND	ND

CONSTITUENT	Di	H	Koc	Dei	Kd	alpha	Kas	VF-R	VF-I
Dioxane (1,4)	0.0671	1.07e-05	3.5	0.047453	0.07	6.04e-05	6.27e-03	20381.65	18586.22
Diphenylamine		1.47e-07		0	0	NA	NA	ND	ND
Diphenylhydrazine, 1,2-		3.42e-09		0	0	NA	NA	ND	ND
Disulfoton		ND		0	0	NA	NA	ND	ND
Endosulfan		ND		0	0	NA	NA	ND	ND
Endothall		ND		0	0	NA	NA	ND	ND
Endrin		ND		0	0	NA	NA	ND	ND
Ethoxy ethanol, 2-		ND		0	0	NA	NA	ND	ND
Ethoxyethanol acetate, 2-		ND		0	0	NA	NA	ND	ND
Ethyl benzene	0.0748	6.43e-03	1100	0.052899	22	1.28e-04	1.20e-02	13952.33	12723.26
Ethylene dibromide	0.0828	6.73e-04	44	0.058556	0.88	3.71e-04	3.14e-02	8181.998	7461.242
Ethylene glycol		ND		0	0	NA	NA	ND	ND
Ethylene oxide	0.1416	7.56e-05	2.2	0.10014	0.044	1.41e-03	7.04e-02	4157.837	3791.571
Fluoranthene		6.46e-06		0	0	NA	NA	ND	ND
Fluorene	0.0626	6.42e-05	7300	0.044271	146	1.62e-07	1.80e-05	393677.7	358998.4
Fluorides		NA		0	0	NA	NA	ND	ND
Formaldehyde		9.87e-07		0	0	NA	NA	ND	ND
Heptachlor	NA	8.19e-04		0	0	NA	NA	ND	ND
Heptachlor epoxide	NA	4.39e-04		0	0	NA	NA	ND	ND

CONSTITUENT	DI	H	Koc	Def	Kd	alpha	Kas	VF-R	VF-I
Hexachlorobenzene	NA	6.81e-04		0	0	NA	NA	ND	ND
Hexachlorobutadiene	NA	4.57e+00		0	0	NA	NA	ND	ND
Hexachlorocyclohexane, alpha		5.87e-06		0	0	NA	NA	ND	ND
Hexachlorocyclohexane, beta		4.47e-07		0	0	NA	NA	ND	ND
Hexachlorocyclohexane, gamma		7.85e-06		0	0	NA	NA	ND	ND
Hexachloroethane		2.49e-03		0	0	NA	NA	ND	ND
Isobutyl alcohol		NO		0	0	NA	NA	ND	ND
Lead (inorganic)	NA	NA	NA	0	0	NA	NA	ND	ND
Mercury	NA	NA	NA	0	0	NA	NA	ND	ND
Methomyl		ND		0	0	NA	NA	ND	ND
Methoxy ethanol		NO		0	0	NA	NA	ND	ND
Methoxychlor		NO		0	0	NA	NA	ND	ND
Methoxyethanol acetate		NO		0	0	NA	NA	ND	ND
Methyl Ethyl Ketone	0.0943	2.74e-05	4.5	0.066689	0.09	1.69e-04	1.25e-02	12174.75	11102.27
Methyl isobutyl ketone		ND		0	0	NA	NA	ND	ND
Methyl methacrylate	0.0826	2.43e-01	840	0.058415	16.8	6.28e-03	5.93e-01	1785.152	1627.897
Methylene Chloride	0.1064	2.03e-03	8.8	0.075246	0.176	6.60e-03	4.73e-01	1780.879	1624
Nickel	NA	NA	NA	0	0	NA	NA	ND	ND
Nitrate		NO		0	0	NA	NA	ND	ND
Nitrite		NO		0	0	NA	NA	ND	ND

CONSTITUENT	Di	H	Koc	Dei	Kd	alpha	Kas	VF-R	VF-I
Nitrobenzene	0.0713	2.20e-05	36	0.050423	0.72	1.28e-05	1.25e-03	44246.07	40348.41
Nitroso-methyl-ethyl-amine, n-		NO		0	0	NA	NA	ND	ND
Nitrosodi-n-propylamine, n-		NO		0	0	NA	NA	ND	ND
Nitrosodiethylamine, n-		NO		0	0	NA	NA	ND	ND
Nitrosodimethylamine, n-		NO		0	0	NA	NA	ND	ND
Nitrosopyrrolidine, n-		2.07e-09		0	0	NA	NA	ND	ND
Pentachloronitrobenzene				0	0	NA	NA	ND	ND
Pentachlorophenol		2.75e-06		0	0	NA	NA	ND	ND
Phenol		4.54e-01		0	0	NA	NA	ND	ND
Phthalic anhydride		NO		0	0	NA	NA	ND	ND
Polychlorinated biphenyls	NA	1.07e-03		0	0	NA	NA	ND	ND
Pronamide		NO		0	0	NA	NA	ND	ND
Pyrene		NO		0	0	NA	NA	ND	ND
Pyridine		ND		0	0	NA	NA	ND	ND
Selenium		NA		0	0	NA	NA	ND	ND
Silver	NA	NA	NA	0	0	NA	NA	ND	ND
Strychnine		ND		0	0	NA	NA	ND	ND
Styrene		ND		0	0	NA	NA	ND	ND
Tetrachlorobenzene, 1,2,4,5-		NA		0	0	NA	NA	ND	ND
Tetrachloroethane (1,1,1,2)	0.073	3.81e-04	54	0.051626	1.08	1.51e-04	1.45e-02	12851.99	11719.86
Tetrachloroethane (1,1,2,2)	0.0727	3.81e-04	118	0.051413	2.36	6.91e-05	6.62e-03	19052.6	17374.25

CONSTITUENT	DI	H	Koc	Def	Kd	alpha	Kas	VF-R	VF-1
Tetrachloroethylene	0.0737	2.59e-02	364	0.052121	7.28	1.50e-03	1.46e-01	3975.204	3625.027
Tetrachlorophenol, 2,3,4,6-		NA		0	0	NA	MA	ND	ND
Tetraethyl dithiopyrophosphate		NO		0	0	NA	MA	ND	ND
Toluene	0.0838	6.37e-03	300	0.059263	6	5.20e-04	4.35e-02	6894.322	6286.998
Toxaphene	NA	4.36e-01		0	0	NA	MA	ND	ND
TP Silvex, 2,4,5-		NO		0	0	NA	MA	ND	ND
Trichlorobenzene (1,2,4)	0.0655	2.31e-03	9200	0.046322	184	4.84e-06	5.15e-04	72024.36	65679.7
1Trichloroethane (1,1,1)	0.0824	1.44e-02	152	0.058273	3.04	2.21e-03	1.94e-01	3242.705	2957.053
Trichloroethane (1,1,2)	0.0806	1.17e-03	56	0.057	1.12	4.92e-04	4.28e-02	7087.397	6463.065
Trichloroethylene	0.0819	9.10e-03	126	0.05792	2.52	1.69e-03	1.48e-01	3742.15	3412.502
Trichlorofluoromethane	1384.81	9.70e-02	159	979.3381	3.18	1.98e+02	1.25e+00	8.973938	8.183419
Trichlorophenol (2,4,5)	0.0628	2.18e-04	89	0.044412	1.78	4.53e-05	5.02e-03	23539.67	21466.05
Trichlorophenol, 2,4,6-		3.90e-06		0	0	NA	MA	ND	ND
Trichlorophenoxyacetic acid, 2,4,5-		ND		0	0	NA	MA	ND	ND
Trichloropropane, 1,1,2-		NO		0	0	NA	MA	ND	ND
Trichloropropane, 1,2,3-		ND		0	0	NA	MA	ND	ND
Trinitrobenzene, 1,3,5-		NO		0	0	NA	MA	ND	ND
Vinyl acetate		NO		0	0	NA	MA	ND	ND
Vinyl Chloride	0.1186	8.19e-02	57	0.083874	1.14	3.14e-02	2.95e+00	559.6677	510.3663

CONSTITUENT	Di	H	Koc	Dei	Kd	alpha	Kas	VF-R	VF-I
Xylene	0.074	7.04e-03	240	0.052333	4.8	6.32e-04	6.01e-02	6231.622	5682.675

FOOTNOTES:

1 The Volatilization Factor (VF) was calculated only for compounds with a Henry's Law (H) constant greater than 1×10^{-5} . VF-R and VF-I refer to the volatilization factors for residential and industrial land use, respectively.

NA Data or constants for the calculation of the VF were "Not Available" in the sources used for the construction of Table A. These sources included the following documents: (1) Superfund Public Health Evaluation Manual, U.S. Environmental Protection Agency (EPA), Office of Emergency and Remedial Response, 1986; (2) Exposure Factors Handbook, U.S. EPA, Office of Health and Environmental Assessment, 1989; and (3) Estimation of Air Impacts for the Excavation of Contaminated Soil, U.S. EPA, Office of Air Quality Planning and Standards, 1992. Table A will be updated as more information becomes available.

ND The VF was "Not Determined." The calculation of VF is not appropriate for this compound.

Table of Toxicity Information Used for Calculation of MSCs
Contained in Appendix II of Proposed Subchapter S

Class	Classification based on the U.S. Environmental Protection Agency Guidelines for Carcinogenic Risk Assessment (51 Federal Register 33992).
SFo	Oral Slope Factor, (mg/kg/day) ⁻¹ . Obtained from Integrated Risk Information System (IRIS) Chemical Files, U.S. Environmental Protection Agency, and other sources as specified in the rule.
SFi	Inhalation Slope Factor, (mg/kg/day) ⁻¹ . Obtained from IRIS and other sources as specified in the rule. In some cases, the SFo was substituted for the SFi in the calculation of soil MSCs when the SFi was unavailable.
RFDo	Oral Reference Dose, Chronic, mg/kg/day. Obtained from IRIS and other sources as specified in the rule.

RFDi Inhalation Reference Dose, chronic, mg/kg/day. Obtained from IRIS and other sources as specified in the rule. As noted, the RFDi was used for the calculation of soil MSCs when the RFDi was unavailable.

NA The U.S. EPA Carcinogen Classification is unavailable. The Reference Dose was used to calculate the Medium Specific Concentrations (MSC) for these compounds. The MSCs will be updated as new toxicological information becomes available.

NA/A,B,C Compounds classified as carcinogens according to the U.S. EPA, but without slope factors for the calculation of Medium Specific Concentrations (MSCs). In these cases, the Reference Dose was used to calculate the MSC for these compounds. The MSCs will be updated as new toxicological information becomes available.

CONSTITUENT	CAS #	CLASS	SFO	SFI	RFDO	RFDI
Acenaphthene	83-32-9	NA			6.00e-02	NA
Acetone	67-64-1	D			1.00e-01	NA
Acetonitrile	75-05-8	D			6.00e-03	1.43e-02
Acetophenone	98-86-2	D			1.00e-01	5.71e-06
Acrolein	107-02-8	NA/C			2.00e-02	5.71e-06
Acrylamide	79-06-1	B2	4.50e+00	4.55e+00		
Acrylonitrile	107-13-1	B1	5.40e-01	2.38e-01		
Alachlor	15972-60-8	B2	8.05e-02	NA		
Aldicarb	116-06-3	D			2.00e-04	NA
Aldicarb Sulfone	1646-88-4	D			3.00e-04	NA
Aldicarb Sulfoxide	1646-88-3	D			2.00e-04	NA
Aldrin	309-00-2	B2	1.70e+01	1.72e+01		
Aluminum Phosphide	20859-73-8	D			4.00e-04	NA
Aniline	62-53-3	B2	5.70e-03	NA		
Anthracene	120-12-7	NA			3.00e-01	NA
Antimony	7440-36-0	D			4.00e-04	NA
Arsenic	7440-38-2	A	1.75e+00	1.51e+01		
Atrazine	1912-24-9	C	2.22e-01	NA		
Barium (ionic)	7440-39-3	D			7.00e-02	1.40e-04
Benzene	71-43-2	A	2.90e-02	2.91e-02		
Benzidine	92-87-5	A	2.30e+02	2.30e+02		

CONSTITUENT	CAS #	CLASS	Sfo	Sfi	RFDo	RFDI
Beryllium	7440-41-7	B2	4.30e+00	8.40e+00		
Biphenyl	92-52-4	D			5.00e-02	NA
Bis (2-chloro-ethyl) ether	111-44-4	B2	1.10e+00	1.16e+00		
Bis (2-chloroisopropyl) ether	39638-32-9	C	7.00e-02	3.50e-02		
Bis (2-ethyl-hexyl) phthalate	117-81-7	B2	1.40e-02	NA		
Bromodichloromethane	75-27-4	B2	1.30e-01	NA		
Bromoform	75-25-2	B2	7.90e-03	3.85e-03		
Bromomethane	74-83-9	D			1.40e-03	1.43e-03
Butyl-4,6-dinitrophenol, 2-sec-	88-85-7	D			1.00e-03	NA
Cadmium	7440-43-9	D		6.30e+00	5.00e-04	5.00e-04
Carbofuran	1563-66-2	D			5.00e-03	NA
Carbon Disulfide	75-15-0	D			1.00e-01	2.86e-03
CarbonTetrachloride	56-23-5	B2	1.30e-01	5.25e-02		
Chlordane	57-74-9	B2	1.30e+00	1.30e+00		
Chloroaniline, p-	106-47-8	D			4.00e-03	NA
Chlorobenzene	108-90-7	D			2.00e-02	5.71e-03
Chlorobenzilate	510-15-6	D			2.00e-02	NA
Chloroethane (Ethylchloride)	75-00-3	NA			2.00e-02	2.86e+00
Chloroform	67-66-3	B2	6.10e-03	8.05e-02		
Chloronaphthalene, 2-	91-58-7	D			8.00e-02	NA
2-chlorophenol	95-57-8	D			5.00e-03	NA
Chromium (total)	7440-47-3	NA/A			5.00e-03	5.71e-07
Chromium (VI)	7440-47-3	NA/A	NA	4.20e+01	5.00e-03	NA

CONSTITUENT	CAS #	CLASS	Sfo	SFi	RFDo	RFDI
Cresol, m-	108-39-4	NA/C	NA	NA	5.00e-02	
Cresol, o-	95-48-7	NA/C	NA	NA	5.00e-02	
Cresol, p-	106-44-5	NA/C	NA	NA	5.00e-03	
Cyanide	57-12-5	D			2.00e-02	NA
DDD	72-54-8	B2	2.40e-01	NA		
DDE	72-55-9	B2	3.40e-01	NA		
DDT	50-29-3	B2	3.40e-01	3.40e-01		
Di-n-butyl phthalate	84-74-2	D			0.1	NA
Di-n-octyl phthalate	117-81-7	NA			2.00e-02	NA
Dibromo-3-chloropropane, 1,2-	96-12-8	B2	1.40e+00	2.40e-03		
Dibromochloromethane	124-48-1	C	8.40e-02	NA		
Dichlorobenzene (1,2)	95-50-1	D			9.00e-02	5.71e-02
Dichlorobenzene (1,3)	541-73-1	D			8.90e-02	NA
Dichlorobenzene (1,4)	106-46-7	C	2.40e-02	NA		
Dichlorodifluoromethane	75-71-8	D			2.00e-01	5.71e-02
Dichloroethane (1,1)	75-34-3	NA/C			1.00e-01	1.43e-01
Dichloroethane (1,2)	107-06-2	B2	9.10e-02	9.10e-02		
Dichloroethylene (1,1)	75-35-4	C	6.00e-01	1.75e-01		
Dichloroethylene, cis-(1,2)	156-59-2	D			1.00e-02	NA
Dichloroethylene, trans-(1,2)	156-60-5	D			2.00e-02	NA
Dichlorophenol, 2,4-	120-83-2	D			3.00e-03	NA
Dichlorophenoxyacetic acid, 2,4-	94-75-7	D			1.00e-02	NA
Dichloropropane (1,2)	78-87-5	B2	6.80e-02	NA		

CONSTITUENT	CAS #	CLASS	Sfo	Sfi	RFDo	RFDi
Dieldrin	60-57-1	B2	1.60e+01	1.61e+01		
Diethyl phthalate	84-66-2	D			8.00e-01	NA
Diethylhexyl adipate	103-23-1	C	1.20e-03	NA		
Dimethoate	60-51-5	D			2.00e-04	NA
Dimethyl phenol, 2,4-	105-67-9	D			2.00e-02	NA
Dinitrobenzene, 1,3-	99-65-0	D			1.00e-04	NA
Dinitrophenol, 2,4-	51-28-5	D			2.00e-03	NA
Dioxane (1,4)	123-91-1	B2	1.10e-02	NA		
Diphenylamine	122-39-4	D			2.50e-02	NA
Diphenylhydrazine, 1,2-	122-66-7	B2	8.00e-01	7.70e-01		
Disulfoton	298-04-4	D			4.00e-05	NA
Endosulfan	115-29-7	D			5.00e-05	NA
Endothall	145-73-3	D			2.00e-02	NA
Endrin	72-20-8	D			3.00e-04	NA
Ethoxy ethanol, 2-	110-80-5	NA			4.00e-01	5.71e-02
Ethoxyethanol acetate, 2-	111-15-9	NA			3.00e-01	NA
Ethyl benzene	100-41-4	D			1.00e-01	2.86e-01
Ethylene dibromide	106-93-4	B2	8.50e+01	7.70e-01		
Ethylene glycol	107-21-1	NA			2.00e+00	NA
Ethylene oxide	75-21-8	B1	1.02e+00	3.50e-01		
Fluoranthene	206-44-0	NA			4.00e-02	NA
Fluorene	86-73-7	D			4.00e-02	NA
Fluorides	7782-41-4	NA			6.00e-02	NA

CONSTITUENT	CAS #	CLASS	Sfo	Sfi	RFD0	RFDi
Formaldehyde	50-00-0	NA/B1	NA	4.55e-02	2.00e-01	NA
Heptachlor	76-44-8	B2	4.50e+00	4.55e+00		
Heptachlor epoxide	1024-57-3	B2	9.10e+00	9.10e+00		
Hexachlorobenzene	118-74-1	B2	1.60e+00	1.61e+00		
Hexachlorobutadiene	87-68-3	C	7.80e-02	7.70e-02		
Hexachlorocyclohexane, alpha	319-84-6	B2	6.30e+00	6.30e+00		
Hexachlorocyclohexane, beta	319-85-7	C	1.80e+00	1.80e+00		
Hexachlorocyclohexane, gamma	58-89-9	NA			3.00e-04	NA
Hexachloroethane	67-72-1	C	1.40e-02	1.40e-02		
Isobutyl alcohol	78-83-13	NA			3.00e-01	NA
Lead (inorganic)	7439-92-1	B1	NA	NA		
Mercury	7439-97-6	NA			3.00e-04	8.57e-05
Methomyl	16752-77-5	NA			2.50e-02	NA
Methoxy ethanol	109-86-4	NA			4.00e-03	5.71e-03
Methoxychlor	72-43-5	NA			5.00e-03	NA
Methoxyethanol acetate	110-49-6	NA			2.00e-03	NA
Methyl Ethyl Ketone	78-93-3	D			5.00e-02	2.86e-01
Methyl isobutyl ketone	108-10-1	NA			5.00e-02	2.29e-02
Methyl methacrylate	80-62-6	NA			8.00e-02	NA
Methylene Chloride	75-09-2	B2	7.50e-03	1.65e-03		
Nickel	7440-02-0	NA/A	NA	8.40e-01	2.00e-02	NA
Nitrate	14797-55-8	NA			1.60e+00	NA
Nitrite	14797-65-0	D			1.00e-01	NA

CONSTITUENT	CAS #	CLASS	SFO	SFI	RFD0	RFD1
Nitrobenzene	98-95-3	D			5.00e-04	5.71e-04
Nitroso-methyl-ethyl-amine, n-	10595-95-6	B2	2.20e+01	NA		
Nitrosodi-n-propylamine, n-	621-64-7	B2	7.00e+00	NA		
Nitrosodiethylamine, n-	55-18-5	B2	1.50e+02	1.51e+02		
Nitrosodimethylamine, n-	62-75-9	B2	5.10e+01	4.90e+01		
Nitrosopyrrolidine, n-	930-55-2	B2	2.10e+00	2.14e+00		
Pentachloronitrobenzene	82-68-8	C	2.60e-01	NA		
Pentachlorophenol	87-86-5	B2	1.20e-01	NA		
Phenol	108-95-2	NA			6.00e-01	NA
Phthalic anhydride	85-44-9	NA			2.00e+00	NA
Polychlorinated biphenyls	1336-36-3	B2	7.70e+00	NA		
Pronamide	23950-58-5	NA			7.50e-02	NA
Pyrene	129-00-0	C	5.91e-01	4.94e-01		
Pyridine	110-86-1	NA			1.00e-03	NA
Selenium	7782-49-2	D			5.00e-03	NA
Silver	7440-22-4	D			5.00e-03	NA
Strychnine	57-24-9	NA			3.00e-04	NA
Styrene	100-42-5	B2	3.00e-02	NA		
Tetrachlorobenzene, 1,2,4,5-	95-94-3	NA				
Tetrachloroethane (1,1,1,2)	630-20-6	C	2.60e-02	2.59e-02		
Tetrachloroethane (1,1,2,2)	79-34-5	C	2.00e-01	2.03e-01		
Tetrachloroethylene	127-18-4	C	5.20e-02	2.03e-03		
Tetrachlorophenol, 2,3,4,6-	58-90-2	D			3.00e-02	NA

CONSTITUENT	CAS #	CLASS	Sfo	SFi	RFDO	RFDi
Tetraethyl dithiopyrophosphate	3689-24-5	D			5.00e-04	NA
Toluene	108-88-3	D			2.00e-01	1.14e-01
Toxephene	8001-35-2	B2	1.10e+00	1.12e+00		
TP Silvex, 2,4,5-	93-72-1	D			8.00e-03	NA
Trichlorobenzene (1,2,4)	120-82-1	D			1.00e-02	2.57e-03
Trichloroethane (1,1,1)	71-55-6	D			9.00e-02	1.00e+00
Trichloroethane (1,1,2)	79-00-5	C	5.70e-02	5.60e-02		
Trichloroethylene	79-01-6	B2	1.10e-02	1.70e-02		
Trichlorofluoromethane	75-69-4	D			3.00e-01	2.00e-01
Trichlorophenol (2,4,5)	95-95-4	D			1.00e-01	NA
Trichlorophenol, 2,4,6-	88-06-2	B2	1.10e-02	1.09e-02		
Trichlorophenoxyacetic acid, 2,4,5-	93-76-5	D			1.00e-02	NA
Trichloropropane, 1,1,2-	598-77-6	NA			5.00e-03	NA
Trichloropropane, 1,2,3-	96-18-4	D			6.00e-03	NA
Trinitrobenzene, 1,3,5-	99-35-4	NA			5.00e-05	NA
Vinyl acetate	108-05-4	NA			1.00e+00	5.71e-02
Vinyl Chloride	75-01-4	A	1.90e+00	3.00e-01		
Xylene	1330-20-7	D			2.00e+00	2.00e-01

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

Closure—The act of permanently taking a waste management unit or facility out of service.

Contaminant—Includes, but is not limited to, solid waste, hazardous waste, and hazardous waste constituent as defined in this subchapter, pollutant as defined in the Texas Water Code, §26.001, and the Texas Health and Safety Code, §361.431, hazardous substance as defined in the Texas Health and Safety Code, §361.003, and any other substance, chemical component of a substance, or mixtures of substances which, when discharged, released, or spilled can create a present or future threat to human health and the environment.

Contaminated medium/media—A portion or portions of the physical environment that contain contaminants, to include soil, sediment, surface water, ground-water or air, as well as man-made features, such as but not limited to dikes, liners, or other containment or waste-handling structures or components.

Control—To apply engineering measures such as capping or treatment and/or institutional measures such as deed restrictions to sites with contaminated media where the measures by themselves do not result in the elimination of all substantial present or future threats but which are protective of human health and the environment when the person provides appropriate maintenance, monitoring, and any necessary further corrective action.

Decontaminate—To apply a treatment process(es) to contaminated media whereby the substantial present or future threat to human health and the environment is eliminated.

Remediation—The act of eliminating or reducing the concentration of contaminants which have been released to the environment.

Remove—To take away all hazardous and/or nonhazardous wastes, liners, leachate, and contaminated media (including ground-water) that pose a substantial present or future threat to human health and the environment.

Treatment—To apply a physical, biological, or chemical process(es) to wastes and contaminated media which significantly reduces the toxicity, volume, or mobility of contaminants and which, depending on the process(es) used, achieves varying degrees of long-term effectiveness.

§335.5. Deed Recordation of Waste Disposal.

(a) **Deed Recordation of Disposal of Industrial Solid Waste or Municipal Hazardous Waste [Recording Required]** No person may cause, suffer, allow, or permit the disposal of industrial solid waste or municipal hazardous waste in a landfill prior to recording in the county deed records of the county or counties in which the disposal takes place, the following information:

(1) a metes and bounds description of the portion or portions of the tract of land on which disposal of industrial solid waste or municipal hazardous waste will take place;

(2) the class or classes of industrial solid wastes or municipal hazardous wastes to be disposed of and waste description; and

(3) the name or permanent address of the person or persons operating the facility where more specific information on the disposal activity can be obtained.

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

§335.6. Notification Requirements.

(a)-(f) (No change.)

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

(h) (No change.)

§335.8. Closure and Remediation.

(a) **Applicability.** The regulations in this section apply to persons who undertake the closure of facilities used for the storage, treatment, or disposal of industrial solid waste or municipal hazardous waste. The regulations in this section also apply to persons who undertake the remediation of discharges from such facilities, either as part of closure or at any time before or after closure. The regulations in this section also apply to persons who undertake remediation of areas that are not otherwise designated as a facility but that contain discharges of industrial solid waste, municipal hazardous waste, or other contaminant, with the exception

of substances discharged or spilled from storage tanks regulated by Chapter 334 of this title (relating to Underground Storage Tanks). In instances where other requirements for closure or remediation apply, persons shall comply with those requirements in addition to the regulations of this section.

(1) This section applies to remediation of spills when immediate response actions being conducted pursuant to the Texas Water Code, §26.039 and §26.261 and the administrative and procedural requirements of the commission to carry out the Texas Hazardous Substance Spill Prevention and Control Act do not result in complete removal or decontamination.

(2) This section applies to closure or remediation in accordance with Subchapter K of this chapter (relating to Hazardous Substance Facilities Assessment and Remediation) with the exception that information shall be provided and potential remedies shall be evaluated in response to Subchapter K rather than the requirements of subsections (c) and (d) of this section and §335.553 of this title (relating to Required Information) and §335.562 of this title (relating to Remedy Evaluation Factors for Risk Reduction Standard Number 3).

(3)[(a)] Any person who stores, processes, or disposes of industrial solid waste or municipal hazardous waste at a facility permitted under §335.2(a) of this title (relating to Permit Required), shall, unless specifically modified by other order of the commission, close the facility in accordance with the closing provisions of the permit.

(4)[(b)] Any person who stores, processes, or disposes of hazardous waste is also subject to the applicable provisions relating to closure and post-closure in Subchapters E and F of this chapter (relating to Interim Standards for Hazardous Waste Storage, Processing, or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities, respectively).

(b) **Closure and Remediation Obligations.** Any person who has stored, processed, or disposed of industrial solid waste or municipal hazardous waste or has caused, suffered, allowed, or permitted the discharge of industrial solid waste, municipal hazardous waste, or other contaminant into or adjacent to any water in the state such that the discharge poses a substantial present or future threat to human health or the environment has a continuing obligation to:

(1) investigate any such discharge;

(2) notify the executive director in writing of any closure or remediation activities as is further specified in subsection (c) of this section;

(3) perform closure or remediation activities at the facility or area of discharge which meet one or more of the following risk reduction standards:

(A) Risk Reduction Standard Number 1: Closure/remediation to background-to remove and/or decontaminate all waste, waste residues, leachate, and contaminated media to background levels unaffected by waste management or industrial activities as further specified in §335.554 of this title (relating to Attainment of Risk Reduction Standard Number 1); or

(B) Risk Reduction Standard Number 2: Closure/remediation to health-based standards and criteria to remove and/or decontaminate all waste, waste residues, leachate, and contaminated media to standards and criteria such that any substantial present or future threat to human health or the environment is eliminated, as further specified in §335.555 of this title (relating to Attainment of Risk Reduction Standard Number 2); or

(C) Risk Reduction Standard Number 3: Closure/remediation with controls to remove, decontaminate, and/or control all waste, waste residues, leachate, and contaminated media to levels and in a manner such that any substantial present or future threat to human health or the environment is eliminated or reduced to the maximum extent practicable, as further specified in §335.561 of this title (relating to Attainment of Risk Reduction Standard Number 3);

(4) demonstrate in writing to the executive director that closure or remediation has been completed as is further specified in subsection (d) of this section; and

(5) perform any necessary post-closure care and deed certification or recordation activities as required by Subchapter S of this chapter (relating to Risk Reduction Standards) of this chapter.

(c) Notification and Initiation Requirements.

(1) A person who intends to perform any activity of closure or remediation in accordance with subsection (b)

of this section shall determine the risk reduction standards to be attained. The person shall notify the executive director in writing of the following information prior to conducting the activity:

(A) the facility to be subject to closure or remediation activities;

(B) the risk reduction standard(s) to be attained; and

(C) the estimated time necessary to complete the activity.

(2) After performing notification in accordance with paragraph (1) of this subsection, the person may initiate the actions necessary to attain risk reduction standard Numbers 1 or 2 without prior approval by the executive director, unless such approval is required by other regulation, order, or permit of the commission. Any plan submitted for prior approval by the executive director shall contain the information specified in §335.553(a) of this title (relating to Required Information).

(3) If the person intends to attain risk reduction standard Number 3, or determines that standard Numbers 1 or 2 has not been attained in a self-implemented action, the person shall submit to the executive director the information specified in §335.553(b) of this title (relating to Required Information) for approval prior to beginning, or continuing, as applicable, the closure or remediation activities.

(4) The person may include one or more waste management units or areas in a submittal for the purpose of responding to this subsection and subsection (d) of this section.

(5) Notwithstanding any other requirement, the person shall submit to the executive director upon request such information as may reasonably be required to enable the executive director to determine whether the closure or remediation is compliant with this section.

(d) Demonstration of Conformance with Risk Reduction Standards. Upon completion of a closure or remediation, the person shall demonstrate in a form acceptable to the executive director that the activity meets the intended risk reduction standards and any applicable closure criteria listed or referenced in this chapter. Any submittal to the executive director in response to this subsection shall be in the form of a plan or report that contains the information specified in §335.553 of this title (relating to Required Information).

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

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Mary Ruth Holder
Director, Legal Division
Texas Water Commission

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For further information, please call: (512) 908-2046

Subchapter S. Risk Reduction Standards

• 31 TAC §§335.551-335.569

The new sections are proposed under the Texas Water Code, §5.013 and §26.011, which provides the commission with authority to adopt any rules necessary to carry out its powers, duties, and policies to protect water quality in the state. The sections are also proposed under the Texas Solid Waste Disposal Act, §361.017, Texas Health and Safety Code, Chapter 361 (Vernon Pamphlet 1992), which provides the commission the authority to regulate industrial solid wastes and municipal hazardous wastes and all other powers necessary or convenient to carry out its responsibilities.

§335.551. Purpose, Scope, and Applicability.

(a) Purpose. This subchapter specifies the information and procedures necessary to demonstrate compliance with the three risk reduction standards of §335.8 of this title (relating to Closure and Remediation).

(b) Scope. The requirements of this subchapter will, when adequately carried out, assure adequate protection of human health and the environment from potential exposure to contaminants associated with releases from solid waste management facilities or other areas. Cleanup levels are specified for different types of contaminated environmental media such as air, surface water, ground water, and soil, and for cross-media contamination pathways such as soil to ground water and soil to air. General procedures based on scientific principles are provided or referenced by these regulations so that specific numeric cleanup levels can be generated. The commission will periodically review the general procedures and revise these regulations as necessary. Any person who completes a self-implemented action that is fully compliant with Risk Reduction Standards Number 1 or 2 or receives executive director approval for plans submitted to attain any of the risk reduction standards of this subchapter will not be required to take additional actions in re-

sponse to changes of this type unless a substantial change in exposure conditions occurs at the facility, in which case §335.8(b) of this title will apply and the then-prevailing criteria will be utilized.

(c) **Applicability.** The requirements of this subchapter apply to persons who undertake a closure or remediation in accordance with §335.8 of this title.

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

Carcinogen—Chemicals shown either through epidemiological studies to have a causal relationship to carcinomas in humans or through laboratory studies to be capable of eliciting a tumorigenic response in laboratory animals.

Carcinogen Classification—Carcinogens which have been classified for human carcinogenic risk based on the United States Environmental Protection Agency's Weight of Evidence System for Carcinogenicity: Group A—Human Carcinogen; Group B—Probable Human Carcinogen; Group C—Possible Human Carcinogen; Group D—Not Classifiable as to Human Carcinogenicity; and Group E—Evidence of Non-Carcinogenicity for Humans.

Long-term effectiveness—The ability of a remediation or corrective action to maintain over time the required level of protection of human health and the environment.

Non-residential property—Any real property, at which activities are being conducted, having the primary Standard Industrial Classification (SIC) major group numbers 01-48 inclusive, 49 except 4941, 50-67 inclusive, 72-79 inclusive, 80 except 8051, 8059, 8062, 8063, 8069, 81 and 82 except 8211, 8221, 8222, 83 except 8351, 8361, 84-86 except 8661, 87-91 inclusive, 92 except 9223, and 93-97 inclusive. Non-residential property includes all of the block(s) and lot(s) controlled by the same owner or operator that are vacant land, or that are used in conjunction with such business. For leased properties, non-residential property includes the leasehold and any external tank, surface impoundment, septic system, or any other structure, vessel, contrivance, or unit that provides, or are utilized, for the management of contaminants to or from the leasehold.

Permanence/permanent/permanently—The property of achieving the maximum degree of long-term effectiveness and of enduring indefinitely without posing the threat of any future release that would increase the risk above levels established for the facility or area.

Point of exposure—A location where human or environmental receptors can come into contact with contaminants; also, a loca-

tion which can be arbitrarily determined for purposes of estimating or measuring the concentration of contaminants available for exposure.

Practical quantitation limit/PQL—The lowest concentration of an analyte which can be reliably quantified within specified limits of precision and accuracy during routine laboratory operating conditions. The PQL minimizes to the extent possible the effects of instrument and operator variability and the influences of the sample matrix and other contaminants or substances upon the quantitation of the analyte. "Specified limits of precision and accuracy" are the criteria which have been included in applicable regulations or which are listed in the quality control sections of the analytical method. The PQL may be directly obtained or derived from the following sources and in the following order of preference: federal regulations; EPA guidance documents; calculation from interlaboratory studies; and experimentally determined analytical methods not available from other existing sources.

Residential property—Any property that does not exclusively meet the definition of non-residential property. Residential property includes any otherwise non-residential property that is used in part for residential activities, such as a day care center at a non-residential property.

Systemic toxicant—Chemicals shown either through epidemiological studies or through laboratory studies to cause adverse health effects other than cancer.

§335.553. **Required Information.**

(a) Risk reduction standard Number 1 or 2. The person shall provide a final report that documents attainment of the risk reduction standard in accordance with §335.554 or §335.555 of this title (relating to Attainment of Risk Reduction Standard Number 1 and Attainment of Risk Reduction Standard Number 2). The report shall include, but is not limited to, descriptions of procedures and conclusions of the investigation to characterize the nature, extent, direction, rate of movement, volume, composition and concentration of contaminants in environmental media; basis for selecting environmental media of concern; documentation supporting selection of exposure factors; descriptions of removal or decontamination procedures performed in closure or remediation; summaries of sampling methodology and analytical results which demonstrate that contaminants have been removed or decontaminated to applicable levels; and documentation of compliance with the requirements of §335.560(b) of this title (relating to Post Closure Care and Deed Certification), as applicable.

(b) Risk reduction standard Number 3. The person shall conduct the activities set

forth in paragraphs (1)-(4) of this subsection. The results of activities required by paragraphs (1)-(3) of this subsection may be combined to address a portion of a facility or one or more facilities of a similar nature or close proximity. The submittal shall be subject to review and approval by the executive director prior to carrying out the closure or remediation. Upon completion of the approved activity, the person shall submit the final report required by paragraph (4) of this subsection.

(1) The person shall prepare a remedial investigation report which contains sufficient documentation such as, but not limited to, descriptions of procedures and conclusions of the investigation to characterize the nature, extent, direction, rate of movement, volume, composition, and concentration of contaminants in environmental media of concern, including summaries of sampling methodology and analytical results. Information obtained from attempts to attain Risk Reduction Standard Numbers 1 or 2 may be submitted for this purpose.

(2) The person shall prepare a baseline risk assessment report which describes the potential adverse effects under both current and future conditions caused by the release of contaminants in the absence of any actions to control or mitigate the release. Residential land use with on-site exposure shall be assumed to evaluate the future use condition unless the person demonstrates to the satisfaction of the executive director that a different land use assumption such as industrial use is more appropriate. The standard exposure factors set forth in Table 1 (located in paragraph (4) of this subsection) shall be used unless the person documents to the executive director's satisfaction that site-specific exposure data should be used instead.

(3) The person shall evaluate the relative abilities and effectiveness of potential remedies to achieve the requirements for remedies described in §335.561 of this title (relating to Attainment of Risk Reduction Standard Number 3) when considering the evaluation factors described in §335.562 of this title (relating to Remedy Evaluation Factors). Using this information, the person shall prepare a corrective measure study which recommends the remedy which best achieves the requirements for remedies described in §335.561 of this title. Persons may propose in the corrective measure study that no remedy needs to be performed provided the person has successfully demonstrated in the baseline risk assessment that Risk Reduction Standard Number 3 can be attained without the use of removal, decontamination, or control measures. Upon review of the corrective measure study, the executive director may require the person to further evaluate the proposed remedy or to evaluate one or more additional remedies.

(4) The person shall submit to the executive director, for review and acceptance, sufficient documentation which demonstrates that the remedy has been completed in accordance with the approved plan.

Table 1. Standard Exposure Factors (for use with §335.553(b) (2) and §335.563(d)).

<u>Land Use</u>	<u>Exposure Pathway</u>	<u>Daily Intake Rate</u>	<u>Exposure Frequency</u>	<u>Exposure Duration</u>	<u>Body Weight</u>
Residential	Ingestion of	2 liters		350 days/yr	30 years 70 kg
	Potable Water Ingestion of	200 mg-child, age 1 - 6	350 days/yr	6 years*	15.1 kg*
	Soil and Dust ⁺	100 mg-adult, age 7 - 31		24 years**	70 kg**
					(*=child, **=adult)
	+ These factors yield the age-adjusted soil ingestion factor of 114 mg-yr/kg-day				
	Inhalation of	20 cu.m.-total	350 days/yr	30 years 70 kg	
Commercial/	Contaminants Ingestion of	15 cu.m.-indoor 1 liter	250 days/yr	25 years	70 kg
Industrial	Potable Water Ingestion of	50 mg	250 days/yr	25 years	70 kg
	Soil and Dust Inhalation of	20 cu.m./workday	250 days/yr	25 years	70 kg
Agricultural	Volatiles Consumption of	42 g-fruit	350 days/yr	30 years	70 kg
	Homegrown Produce	80 g-vegetables			
Factors for ingestion of potable water, soil and dust, and inhalation of volatiles: Use the Residential Land Use factors.					

Recreational Consumption of 10 g-freshwater 350 days/yr 30 years

70 kg

Locally Caught Fish 15 g-saltwater

§335.554. Attainment of Risk Reduction Standard Number 1: Closure/Remediation to Background.

(a) Compliance with this standard is attained when the criteria set forth in subsections (b)-(f) of this section are met.

(b) For closure of waste management units, all waste and waste residues must be removed from the unit. Contaminated design and operating system components such as liners, leachate collection systems, and dikes must be removed and/or decontaminated to cleanup levels specified in this section. Environmental media outside the design and operating system components of the waste management unit that have become contaminated by releases or discharges from the unit must be removed or decontaminated to cleanup levels specified in this section.

(c) Cleanup levels must be the greater of either of the concentrations de-

scribed in paragraphs (1) or (2) of this subsection for each contaminated medium:

(1) background as represented by results of analyses of samples taken from media that are unaffected by waste management or industrial activities;

(2) the Practical Quantitation Limit, provided that the person satisfactorily demonstrates to the executive director that lower levels of quantitation of a contaminant are not possible.

(d) Attainment of cleanup levels shall be demonstrated by collection and analysis of samples from the medium of concern. Persons shall utilize techniques described in SW 846, Test Methods for Evaluating Solid Waste, United States Environmental Protection Agency, or other available guidance in developing a sampling and analysis plan appropriate for the distribution, composition, and heterogeneity of contaminants and environmental medium. The number of samples shall be sufficient to demonstrate attainment of cleanup levels. Comparisons may be based on the following methods:

(1) direct comparison of the results of analysis of discrete samples of the medium of concern with the cleanup level; or

(2) for a data set of 10 or more samples, statistical comparison of the results of analysis utilizing the 95% tolerance limit of the mean concentration of the contaminant as determined by the following expression: $\text{Cleanup Level} \geq \bar{x} + ks$, where \bar{x} is the mean concentration, s is the standard deviation and k is a value from Table 2 (located in subsection (f) of this section) based on the number of samples.

(e) The person must submit a report to the executive director in accordance with §335.553(a) of this title (relating to Required Information) that documents compliance with the requirements of this section.

(f) Provided that attainment of this risk reduction standard for the facility can be demonstrated to the executive director pursuant to this section, the person is released from deed recordation requirements of §335.5 of this title (relating to Deed Recordation of Waste Disposal) and post-closure care responsibilities.

Table 2. Values for "k"

(for use with §335.554(d)(2) and §335.555(d)(2)(B))

n	k	n	k	n	k
10	2.911	20	2.396	50	2.065
11	2.815	21	2.371	60	2.022
12	2.736	22	2.350	70	1.990
13	2.670	23	2.329	80	1.965
14	2.614	24	2.309	90	1.944
15	2.566	25	2.292	100	1.927
16	2.523	30	2.220	120	1.899
17	2.486	35	2.166	145	1.874
18	2.453	40	2.126		
19	2.423	45	2.092		

§335.555. Attainment of Risk Reduction Standard Number 2: Closure/Remediation to Health-Based Standards and Criteria.

(a) Compliance with this standard is attained when the criteria set forth in subsections (b)-(f) of this section are met.

(b) For closure of waste management units, all waste and waste residues must be removed from the unit. Contaminated design and operating system components such as liners, leachate collection systems and dikes must be removed or decontaminated to cleanup levels specified in subsection (d) of this section. Environmental media outside the design and operating system components of the waste management unit that have become contaminated by releases or discharges from the unit must be removed or decontaminated to cleanup levels specified in subsection (d) of this section.

(c) In order for a treatment process to achieve decontamination, the person must demonstrate to the satisfaction of the executive director that the treatment process permanently alters all contaminants to levels that will not pose a substantial present or future threat to human health and the environment, and must further demonstrate that any residue remaining in place from the

treatment will not pose the threat of any future release that would increase the concentrations of contaminants in environmental media above the cleanup levels specified in subsection (d) of this section.

(d) The concentration of a contaminant in environmental media of concern such as ground water, surface water, air, or soil shall not exceed cleanup levels as defined in §335.556 of this title (relating to Determination of Cleanup Levels for Risk Reduction Standard Number 2).

(1) If the Practical Quantitation Limit (PQL) and/or the background concentration, determined in a manner consistent with §335.554 of this title (relating to Attainment of Risk Reduction Standard Number 1) for a contaminant is greater than the cleanup level, the greater of the PQL or background shall be used for determining compliance with the requirements of subsection (b) of this section.

(2) Attainment of cleanup levels shall be demonstrated by collection and analysis of samples from the medium of concern. Persons shall utilize techniques described in SW 846, Test Methods for Evaluating Solid Waste, United States Environmental Protection Agency, or other available guidance in developing a sampling and analysis plan appropriate for the distri-

bution, composition and heterogeneity of contaminants and environmental medium. The number of samples shall be sufficient to demonstrate attainment of cleanup levels. Comparisons may be based on the following methods:

(A) direct comparison of the results of analysis of discrete samples of the medium of concern with the cleanup level; or

(B) for a data set of 10 or more samples, statistical comparison of the results of analysis utilizing the 95% tolerance limit of the mean concentration of the contaminant as determined by the following expression: $\text{Cleanup Level} \geq \bar{X} + ks$, where \bar{X} is the mean concentration, s is the standard deviation and k is a value from Table 2 (located at the end of §335.554 of this title (relating to Attainment of Risk Reduction Standard Number 1) based on the number of samples.

(e) The person must carry out the deed certification requirements of §335.560 of this title (relating to Post Closure Care and Deed Certification for Risk Reduction Standard Number 2).

(f) The person must submit a report to the executive director in accordance with §335.553(a) of this title (relating to Re-

quired Information) that documents compliance with the requirements of this section. The executive director may require additional information or analysis, such as, but not limited to, consideration of cumulative health effects and cross-media contamination, prior to accepting a certification of closure or remediation under this performance standard.

§335.556. Determination of Cleanup Levels for Risk Reduction Standard Number 2.

(a) For purposes of this risk reduction standard, cleanup levels are represented by Texas or federal promulgated health-based standards, or, when these are not available or appropriate, the Medium Specific Concentration (MSC) for exposure to a single contaminated medium, such as drinking water. Where a contaminant in one medium has the potential to contaminate another medium, defined as cross-media contamination, numeric criteria that are neither promulgated standards nor MSCs can be developed as cleanup levels, if necessary (e.g., the soil to ground water contaminant pathway). To determine cleanup levels for contaminated media of concern, persons must perform the evaluations of subsections (b)-(e) of this section.

(b) In addition to the exposure pathways defined in the following sections, the person must evaluate other exposure pathways at or near the facility (e.g., dermal absorption, ingestion of contaminated fish, etc.) by which human populations (including sensitive subgroups) or environmental receptors (e.g., aquatic organisms, food-chain crops, etc.) are likely to be exposed to contaminants. If such evaluation indicates the need for remediation at the facility, then the person shall develop numeric criteria to serve in place of, or in addition to, cleanup levels determined pursuant to this section.

(c) The person must determine the appropriate exposure factors from §335.557 of this title (relating to Criteria for Selection of Non-Residential Soil Requirements for Risk Reduction Standard Number 2).

(d) The person must calculate MSCs in accordance with §335.558 of this title (relating to Medium Specific Concentrations for Risk Reduction Standard Number 2).

(e) The person must determine any cross-media requirements and modifications to cleanup levels in accordance with §335.559 of this title (relating to Medium Specific Requirements and Adjustments for Risk Reduction Standard Number 2).

§335.557. Criteria for Selection of Non-Residential Soil Requirements for Risk Reduction Standard Number 2. All facilities shall be subject to the residential soil requirements unless one of the conditions of paragraphs (1)-(3) of this section is satisfied for use of the non-residential soil requirements. If a person uses the non-residential soil requirements, additional notifications will be required as part of the deed certification provisions of §335.560 of this title (relating to Post Closure Care and Deed Certification for Risk Reduction Standard Number 2) to verify that the exposure factors will remain compatible with future use of the property.

(1) For property located within the jurisdictional area of a zoning authority, persons may provide documentation that the property is zoned for commercial or industrial use.

(2) For property not located within the jurisdictional area of a zoning authority, persons may provide documentation that the activities being conducted on

the property satisfy the definition for non-residential property (§335.552 of this title (relating to Definitions)).

(3) For government-owned (local, state or federal) property which does not satisfy either of the conditions of paragraphs (1) or (2) of this section but does have non-residential activities occurring on all or portions of the property, the person may provide documentation that access will be restricted such that the exposure assumptions remain valid for the duration of government control.

§335.558. Medium Specific Concentrations for Risk Reduction Standard Number 2.

(a) Medium specific concentrations (MSCs) for ingestion of surface water and ground water, and soil ingestion along with inhalation of volatiles and particulates are calculated according to the procedures specified in subsections (b)-(d) of this section based on residential exposure factors. MSCs are subject to additional numeric criteria and adjustments of §335.559 of this title (relating to Medium Specific Requirements and Adjustments for Risk Reduction Standard Number 2). The derivation of all equations is presented in §335.567 of this title (relating to Appendix I).

(b) For a contaminant which is a carcinogen, the MSC is the concentration which represents an excess upper bound lifetime cancer Target Risk (TR) of 0.000001 (also expressed as one in one million) for Class A and B carcinogens, or 0.00001 (also expressed as one in 100,000) for Class C carcinogens due to continuous lifetime exposure as calculated using the equations and factors listed in paragraphs (1) and (2) of this subsection.

(1) water MSC for Ingestion, in units of milligrams per liter (mg/L):

$$MSC = \frac{85.16 (TR)}{SF_0} \quad \text{Equation 1}$$

SF_0

where SF_0 is the chemical-specific oral cancer slope factor.

(2) soil MSC for Ingestion with Inhalation of volatiles and particulates, in units of milligram per kilogram (mg/kg):

Equation 2

$$MSC = 5110 (TR)$$

$$[(7.98 \times 10^{-3}) \times SF_0] + (SF_i \times [(450/VF) + (9.72 \times 10^{-8})])]$$

where VF is the chemical-specific soil-to-air volatilization factor.

(c) For a contaminant which is a systemic toxicant, the MSC is the concentration to which human populations (including sensitive subgroups) could be exposed by direct ingestion or inhalation on a daily basis without appreciable risk of deleterious effects during a lifetime. The MSC is calculated using the equations and factors listed in paragraphs (1) and (2) of this subsection.

(1) water MSC for Ingestion in units of milligram per liter (mg/L):

$$MSC = 36.5 RfD_0 \text{ mg/L} \quad \text{Equation 3}$$

where RfD₀ is the chemical-specific oral reference dose.

(2) soil MSC for Ingestion with Inhalation of volatiles and particulates, in units of milligram per kilogram (mg/kg):

Equation 4

$$MSC = 2190 \text{ mg/kg}$$

$$[(7.98 \times 10^{-3}/RfD_0) + ((1/RfD_i) \times [(450/VF) + (9.72 \times 10^{-8})])]$$

where VF is the chemical-specific soil-to-air volatilization factor.

(d) In determining toxicity information for contaminants (e.g., EPA carcinogen classification, type of toxicant, reference doses, carcinogenic slope factors, etc.), persons shall utilize values from the following sources in the order indicated. Persons may utilize data from these sources that are more current than those used to derive the cleanup levels listed in §335.568 of this title (relating to Appendix II).

(1) Integrated Risk Information System (IRIS);

(2) Health Effects Assessment Summary Table (HEAST);

(3) United States Environmental Protection Agency Criteria Documents;

(4) Agency for Toxic Substances and Disease Registry (ATSDR) Toxicity Profiles; and

(5) Other scientifically valid published sources.

(e) Examples of unadjusted MSCs, standards, and criteria are listed in §335.568 of this title (relating to Appendix II). The commission will revise Appendix II on an

annual basis to reflect newly promulgated standards and MSCs based on current toxicological data.

§335.559. *Medium Specific Requirements and Adjustments for Risk Reduction Standard Number 2.*

(a) Numeric cleanup levels. The subsections (b)-(h) of this section specify requirements that can define or modify numeric cleanup levels such as MSCs or require non-health based criteria to be addressed.

(b) Surface Water. In determining the necessity for remediation at the facility, persons shall utilize Chapter 307 of this title (relating to Texas Surface Water Quality Standards) or, if those values are not available, Maximum Contaminant Levels (MCLs) promulgated under the Safe Drinking Water Act, or if MCLs are not available or applicable, MSCs based upon human ingestion of the water. Any discharge or release into or adjacent to surface water, including storm water runoff, occurring during or after attainment of Risk Reduction Standard Number 2, shall be compliant with Chapter 307 of this title and may be subject to the permitting requirements of Chapter 305 of this title (relating to Consolidated Permits) or other authorization from the commission.

(c) Air. In determining the necessity for remediation at the facility, persons shall utilize National Ambient Air Quality Standards (NAAQS) or National Emission Standards for Hazardous Pollutants (NESHAPS) as found in 40 Code of Federal Regulations Parts 50 and 61, respectively, and as adopted by the Texas Clean Air Act, as well as concentrations established by Texas Air Control Board rules for particulate matter regarding Chapters 111, 112, and 113 of this title (relating to Sulfur Compounds; Beryllium; and Inorganic Fluoride).

(d) Soil. For all situations, concentrations of contaminants in soils must be

protective of surface water and air as defined in subsections (b) and (c) of this section. No soil remaining in place shall exhibit the hazardous waste characteristics of ignitability, corrosivity or reactivity as defined in 40 Code of Federal Regulations Part 261 Subpart C. The sum of concentrations of the volatile organic compounds in soil shall not exceed 1,000 parts per million.

(e) Residential soil requirements. In addition to the requirements of subsection (d) of this section, the concentration of a contaminant throughout the soil column (i.e., surface and subsurface soils) shall not exceed the lower of the Soil MSC, based upon residential human ingestion of soil and inhalation of particulates and volatiles, and the Soil-to-Ground Water Cross-Media Protection Concentration, a numeric value which is determined as follows:

(1) a value which is 100 times the Maximum Contaminant Level (MCL), if promulgated pursuant to the Federal Safe Drinking Water Act, §141, otherwise the MSC for water as determined by the procedures of §335.558 of this title (relating to MSCs). Examples of such values are listed in Appendix II; or

(2) a concentration in soil that does not produce a leachate in excess of MCLs or MSCs for ground water when subjected to the Synthetic Precipitation Leaching Procedure, Method 1312 of SW 846, Test Methods for Evaluating Solid Waste, United States Environmental Protec-

tion Agency. Other test methods that more accurately simulate conditions at the facility may be used in the demonstration in place of this method, subject to the approval of the executive director.

(f) Non-residential soil requirements. In addition to the requirements of subsection (d) of this section, the concentration of a contaminant in near-surface soils (i.e., within two feet of the land surface) shall not exceed the lower of the Non-Residential Soil MSC defined in paragraph (1) of this subsection, based upon worker ingestion of soil and inhalation of particulates and volatiles, and the Non-Residential Soil-to-Ground Water Cross-Media Protection Concentration defined in paragraph (2) of this subsection. In no event shall compliance be achieved with the surface soil criteria by applying two feet of clean soil onto the surface of a facility or area without prior approval from the executive director. The concentration of a contaminant in subsurface soils (i.e., greater than two feet in depth from the land surface) shall not exceed the Non-Residential Soil-to-Ground Water Cross-Media Protection Concentration.

(1) Non-residential soil msc. The MSC is calculated using the equations and factors listed in subparagraphs (A) and (B) of this paragraph. The chemical-specific factors SF₀, SF₁, RfD₀, RfD₁, and VF are the same as for the soil MSCs of the preceding section. The derivation of all equations is presented in Appendix I.

(A) Carcinogenic Effects Equation, in units of milligram per kilogram (mg/kg):

Equation 5

$$MSC = \frac{286.16 (TR)}{[(5 \times 10^{-5}) \times SF_0] + (SF_1 \times [(20/VF) + (4.3 \times 10^{-9})])}$$

(B) Systemic Toxicant Effects Equation, in units of milligram per kilogram (mg/kg):

$$MSC = 102.2$$

$$[(5 \times 10^{-5}/RfD_0) + ((1/RfD_i) \times [(20/VF) + (4.3 \times 10^{-9})])]]$$

(2) Non-residential soil-to-ground water cross-media protection concentration. Persons must demonstrate that a contaminant in soil does not pose the potential for a future release of leachate in excess of the ground-water concentration considered to be protective for non-residential exposure. This adjustment to the ground-water concentration is determined by multiplying the MSC for residential ground water by a factor of 3.36 (value = $MSC \times 3.36$) for carcinogens or a factor of 2.8 (value = $MSC \times 2.8$) for systemic toxicants to account for the difference between residential and non-residential exposure for ingestion of ground water. No adjustment is made for contaminants for which MCLs have been promulgated. Persons may make this demonstration by showing that a contaminant occurs in soil at less than either of the concentrations described in subparagraphs (A) or (B) of this paragraph:

(A) a concentration which is 100 times the ground-water concentration of this paragraph (i.e., concentration = $100 \times MCL$ if promulgated, otherwise concentration = $100 \times 3.36 \times MSC$ for carcinogens, or concentration = $100 \times 2.8 \times MSC$ for systemic toxicants); or

(B) a concentration in soil that does not produce a leachate in excess of the ground-water concentration of this paragraph when subjected to the Synthetic Precipitation Leaching Procedure, Method 1312 of SW 846, Test Methods for Evaluating Solid Waste, United States Environmental Protection Agency. Other test methods that more accurately simulate conditions at the facility may be used in the demonstration in place of this method, subject to prior approval by the executive director.

(g) Ground water. The concentration of a contaminant dissolved in ground water must not exceed the Maximum Contaminant Level (MCL), if promulgated pursuant to the Federal Safe Drinking Water Act, §141, otherwise the ingestion MSC for residential exposure if no MCL has been promulgated. In addition, this standard will not be met if phase-separated non-aqueous liquids released from the facility that is undergoing closure or remediation are present in the ground water.

(1) If the ground water at the facility has a naturally occurring background Total Dissolved Solids concentration greater than 10,000 milligrams per liter, the cleanup level for a contaminant dissolved in this ground water may be adjusted by multiplying the MSC for ground water by 100. The resulting value becomes the maximum concentration for ground water. No adjustment to the acceptable soil-to-ground water cross-media protection concentration of subsections (e) or (f) of this section shall be made due to this increase in the maximum value for ground water.

(2) The executive director may require the evaluation of additional exposure pathways or environmental receptors as part of the adjustment of paragraph (1) of this subsection.

(h) Other criteria. For contaminants that do not exceed standards or criteria protective of human health as determined by the procedures of this section but otherwise adversely impact environmental quality, or the public welfare and safety, or present objectionable characteristics (e.g., taste, odor, etc.), or make a natural resource unfit for use, other scientifically valid published criteria shall be utilized such as, but not limited to, Threshold Limit Values for air and secondary maximum contaminant levels for water.

§335.560. Post Closure Care and Deed Certification for Risk Reduction Standard Number 2.

(a) Provided that attainment of this risk reduction standard for the facility can be demonstrated to the executive director pursuant to §335.555 of this title (relating to Attainment of Risk Reduction Standard Number 2), the conditions of subsections (b) and (c) of this section apply.

(b) The person is released from post-closure care responsibilities.

(c) The person is required to place in the county deed records of the county or counties in which such activities take place the information specified in paragraphs (1)-(4) of this subsection. The statements should be worded such that a lay person can easily understand them. An example format is provided in §335.569 of this title (relating

to Appendix III). Proof of deed certification of the required information shall be provided to the executive director in writing no later than 90 days after completion of closure or remediation activities:

(1) a certification signed by the person and showing the person's full name and title that closure or remediation of the facility or area was carried out in accordance with applicable regulations and appropriate guidance and resulted in a remedy that eliminated substantial present and future risk such that no post-closure care or engineering or institutional control measures are required to protect human health and the environment;

(2) a metes and bounds description of the portion or portions of the tract of land on which closure or remediation of industrial solid waste, municipal hazardous waste, or contaminants was achieved;

(3) for a facility that satisfies the conditions of §335.557 of this title (relating to Criteria for Selection of Non-Residential Soil Requirements for Risk Reduction Standard Number 2) for use of non-residential soil requirements, a statement that future owners of the facility must notify the Texas Water Commission (or successor agency) if the owner intends to change the facility to residential land use. The notice shall indicate that the owner must undertake actions as necessary to protect human health and the environment in accordance with §335.8 of this title (relating to Closure and Remediation);

(4) a statement that information and documents concerning the closure or remediation of the facility or area are available for inspection upon request at the Texas Water Commission. The statement shall further describe the jurisdiction of the Texas Water Commission to review the establishment of the final cleanup criteria.

§335.561. Attainment of Risk Reduction Standard Number 3: Closure/Remediation With Controls.

(a) Compliance with this standard is attained when, in the evaluation of the executive director, the person recommends the remedy which best achieves the requirements of subsections (b)-(d) of this section taking into consideration the evaluation fac-

tors of §335.562 of this title (relating to Remedy Evaluation Factors) and then following approval subsequently completes the remedy.

(b) A remedy must be permanent or, if that is not practicable, achieve the highest degree of long-term effectiveness possible.

(c) A remedy must be cost-effective in that it achieves the best balance between long-term effectiveness and cost for alternative remedies which meet the cleanup objectives for a facility.

(d) A remedy must achieve media cleanup requirements as specified pursuant to §335.563 of this title (relating to Media Cleanup Requirements for Risk Reduction Standard Number 3).

§335.562. Remedy Evaluation Factors for Risk Reduction Standard Number 3.

(a) General. For closure/remediation in accordance with Risk Reduction Standard Number 3, persons shall consider the evaluation factors set forth in subsections (b)-(g) of this section when evaluating the relative abilities and effectiveness of potential remedies to achieve the requirements for remedies described in §335.561 of this title (relating to Attainment of Risk Reduction Standard Number 3). A description of the evaluation for these factors for the proposed remedy shall be included in the corrective measure study prepared pursuant to §335.553(b)(3) of this title (relating to Required Information). Persons performing these evaluations shall submit to the executive director upon request such additional information as may reasonably be required to enable the executive director to determine whether such evaluation has been conducted in a manner compliant with this section.

(b) Compliance with other laws and regulations. Remedies shall be evaluated to determine attainment of cleanup requirements for other Texas or federal environmental laws which are either legally applicable to the facility or that address problems or situations that are sufficiently similar to those encountered at the facility that their use is well suited to the facility.

(c) Long-term effectiveness and permanence. Remedies shall be evaluated for long-term effectiveness. Factors that shall be considered in this evaluation include:

(1) magnitude of risks remaining after completion of the closure or remedial action;

(2) the type, degree, and duration of post-closure care required including, but not limited to, operation and maintenance, monitoring, inspections, and reports

and their frequencies, or other activities which will be necessary to protect human health and the environment;

(3) potential for exposure of humans and environmental receptors to contaminants remaining at the facility;

(4) long-term reliability of any engineering and voluntary institutional controls; and

(5) potential need for replacement of components of the remedy.

(d) Reduction of toxicity, mobility, or volume. Remedies shall be evaluated to determine the degree to which treatment could be used to significantly and irreversibly reduce the toxicity, mobility, or volume of contaminants. Factors to be considered in this evaluation include:

(1) the amount of contaminants that will be treated or destroyed;

(2) the degree of expected reduction in toxicity, mobility, or volume;

(3) the type, quantity, toxicity, and mobility of contaminants remaining after treatment; and

(4) the degree to which the treatment is irreversible.

(e) Short-term effectiveness. The short-term effects of remedies shall be evaluated considering the following:

(1) short-term risks that might be posed to the community, workers, or the environment during implementation of the remedy and the effectiveness and reliability of protective measures; and

(2) time until protection is achieved.

(f) Implementability. The ease or difficulty of implementing the remedies shall be evaluated by considering the following types of factors:

(1) degree of difficulty associated with constructing the remedy;

(2) expected operational reliability of the remedy;

(3) availability of necessary equipment and specialists;

(4) available capacity and location of needed treatment, storage, and disposal services.

(g) Cost. The types of costs that shall be evaluated include the following:

(1) capital costs;

(2) operation and maintenance costs; and

(3) net present value of capital and operation and maintenance costs.

§335.563. Media Cleanup Requirements for Risk Reduction Standard Number 3.

(a) General. For closure/remediation in accordance with Risk Reduction Standard Number 3, persons shall propose media cleanup levels in accordance with the conditions set forth in subsections (b)-(j) of this section.

(b) Carcinogens. For known or suspected carcinogens, media cleanup levels shall be established at concentrations which represent an excess upperbound lifetime risk of between one in 10,000 and one in million. The executive director will use one in million as a goal in establishing such concentration limits. The cumulative excess risk to exposed populations (including sensitive subgroups) shall not be greater than one in 10,000.

(c) Systemic toxicants. For systemic toxicants, media cleanup levels shall represent concentrations to which the human population (including sensitive subgroups) could be exposed on a daily basis without appreciable risk of deleterious effect during a lifetime or part of a lifetime and where:

(1) the hazard quotient, which is the ratio of a single systemic toxicant exposure level for a specified time period to a reference dose for that systemic toxicant derived from the same time period, shall not exceed one; and

(2) the hazard index shall not exceed one. The hazard index is the sum of the hazard quotients for a single or multiple systemic toxicants which affect the same target organ or act by the same method of toxicity and act through a single or multiple media exposure pathways.

(d) Additional considerations. In establishing media cleanup levels pursuant to subsections (b) and (c) of this section, the executive director may consider and may direct persons who submit plans or reports in accordance with §335.553(b) of this title (relating to Required Information) to address the following:

(1) multiple contaminants in a medium;

(2) exposure to multiple contaminated media;

(3) reasonable expected future exposure conditions at the facility; and

(4) the technical limitations, effectiveness, practicability, or other relevant features of available remedies.

(e) Standard exposure factors. In determining media cleanup levels pursuant to subsections (b) and (c) of this section, persons shall use the standard exposure factors for residential use of the facility as set forward in Table 1 (located in §335.553 of

this title (relating to Required Information)) unless the person documents to the satisfaction of the executive director that:

(1) site-specific data warrant deviation from the standard exposure factors; or

(2) a land use other than residential is more appropriate based on:

(A) historical, current, and probable future land use; and

(B) effectiveness of institutional or legal controls placed on the future use of the land.

(f) Air. Media cleanup levels for air will be established to meet the requirements of paragraphs (1) and (2) of this subsection.

(1) Concentrations of contaminants in air that emanate from a facility, area of soil contamination, or plume of contaminated ground water shall not exceed the lowest of the following values at exposure points located within the contaminated area:

(A) National Ambient Air Quality Standards (NAAQS) or National Emission Standards for Hazardous Pollutants (NESHPS) (as found in 40 Code of Federal Regulations Parts 50 and 61 respectively, and as adopted by the Texas Clean Air Act);

(B) concentrations established by Texas Air Control Board rules for particulate matter (Chapter 111 of this title), sulfur compounds (Chapter 112 of this title), and beryllium and inorganic fluoride (Chapter 113 of this title); or

(C) concentrations that satisfy subsections (b)-(e) of this section.

(2) Provided that it is protective of human health and the environment, the executive director may approve a point of exposure located further from the source up to the property boundary.

(g) Surface water. In determining the necessity for remediation at the facility, persons shall utilize Chapter 307 of this title (relating to Texas Surface Water Quality Standards) or, if those values are not available, Maximum Contaminant Levels (MCLs) promulgated under the Safe Drinking Water Act or, if MCLs are not available or applicable, values calculated pursuant to subsections (b)-(e) of this section based upon human ingestion of the water or other site-specific exposure pathway. Any discharge or release into or adjacent to surface water, including storm water runoff, occurring during or after attainment of Risk Re-

duction Standard Number 3, shall be compliant with the Texas Surface Water Quality Standards of Chapter 307 of this title and may be subject to the permitting requirements of Chapter 305 of this title (relating to Consolidated Permits) or other authorization from the Commission.

(h) Ground water. Media cleanup levels for ground water that is a current or potential source of drinking water as defined in paragraph (1) of this subsection shall not exceed Maximum Contaminant Levels (MCLs) promulgated under the Safe Drinking Water Act or, if MCLs are not available, values calculated according to subsections (b)-(e) of this section based upon human ingestion of the water. Cleanup levels for ground water may be subject to the modifications of paragraphs (2)-(4) of this subsection.

(1) Ground water that has a background Total Dissolved Solids (TDS) content less than or equal to 10,000 milligrams per liter (mg/L) and that occurs within a geologic zone that is sufficiently permeable to transmit water to a pumping well in usable quantities shall be considered a current or potential source of drinking water for the purpose of determining cleanup levels.

(2) The cleanup levels shall be achieved throughout the plume of contaminated ground water, with the exception of the circumstances described in subparagraphs (A) -(C) of this paragraph:

(A) when Alternate Concentration Limits of §335.160(b) of this title (relating to Alternate Concentration Limits) have been approved in a permit issued by the Commission for a hazardous waste management facility;

(B) when the selected remedy calls for waste to be left in place and when appropriate control measures are installed or operated, the executive director may authorize the zone underlying the area encompassing the original source(s) of release to be excluded from this requirement;

(C) when the person documents to the executive director's satisfaction pursuant to subsection (e) of this section that a future land use other than residential is appropriate for the facility or area and further demonstrates that institutional or legal controls will effectively prevent use of the contaminated ground water, the extent of plume remediation may be determined in a manner consistent with §335.160(b) of this title (relating to Alternate Concentration Limits).

(3) The executive director may determine that remediation of ground water

to the extent required in paragraphs (1) or (2) of this subsection is not necessary if the person demonstrates to the executive director's satisfaction that:

(A) the contaminant is present in ground water that is not a current or potential source of drinking water and the contaminated ground water is not hydraulically connected with or is not likely to migrate to either surface water or to ground water that is a current or potential source of drinking water at a concentration greater than the cleanup levels for these media as determined by this subsection and subsection (g) of this section, respectively; or

(B) restoration of the ground water to these levels is technically impracticable.

(4) If a determination is made pursuant to paragraph (3) of this subsection, the executive director may require any alternative measures or cleanup levels that are necessary to protect human health and the environment. At a minimum, for all cases described in this subsection, phase-separated non-aqueous liquids shall be removed from ground water zones to the extent practicable.

(i) Soil. Concentrations of contaminants in soil shall not exceed the following values:

(1) the values calculated pursuant to subsections (b)-(d) of this section based upon human ingestion of the soils at all points where direct contact exposure to the soils may occur; and

(2) values which will allow the air, surface water, and ground-water cleanup levels specified in subsections (f), (g), and (h) of this section, respectively, to be maintained over time taking into account the effects of engineering controls.

(A) Such determinations shall be based on sound scientific principles including fate and transport evaluation of contaminant migration. Procedures and conclusions shall be documented to the satisfaction of the executive director.

(B) The executive director may require the evaluation of additional migration pathways beyond those listed in this section if determined necessary. Such additional pathways may include but are not limited to food chain contamination, impairment of soil for agricultural purposes, phytotoxicity, accumulations of contaminants in sediment of surface water bodies, or other impairments of natural resources, land, or water use.

(j) Other adjustments. Cleanup levels may be adjusted according to paragraphs (1)-(3) of this subsection.

(1) If the Practical Quantitation Limit (PQL) or the background concentration (represented by results of analyses of samples taken from media that are not affected by waste management or industrial activities) for a contaminant is greater than the cleanup level determined by procedures of this section, then the greater of the PQL or background shall become the cleanup level.

(2) Other scientifically valid published criteria, such as, but not limited to, Threshold Limit Values for air and secondary maximum contaminant levels for water, shall be utilized as cleanup levels for contaminants for which the procedures of this section are not appropriate (e.g., mixtures or substances that do not have toxicological data) or that do not exceed standards or criteria protective of human health as determined by the procedures of this section but otherwise adversely impact environmental quality, or the public welfare and safety, or present objectionable characteristics (e.g., taste, odor, etc.), or make a natural resource unfit for use.

(3) More stringent cleanup levels may be established for a facility than are specified in this section if, by utilizing available guidance or scientific literature, the executive director determines that it is necessary to protect environmental receptors.

§335.564. Post Closure Care Not Required for Risk Reduction Standard Number 3. In cases under Risk Reduction Standard Number 3 where the executive director determines that neither engineering nor institutional control measures are required to protect human health and the environment, the person is released from post closure care responsibilities but is required to

deed record the facility in accordance with §335.566 of this title (relating to Deed Recordation for Risk Reduction Standard Number 3).

§335.565. Post Closure Care Required for Risk Reduction Standard Number 3. In cases under Risk Reduction Standard Number 3 where the executive director determines that either engineering or institutional control measures are required to protect human health and the environment, the person shall comply with the requirements of paragraphs (1) and (2) in this section, as applicable, and deed record the facility in accordance with §335.566 of this title (relating to Deed Recordation for Risk Reduction Standard Number 3):

(1) carry out the post-closure requirements as evaluated and approved by the remedy evaluation process described in §335.562 of this title (relating to Remedy Evaluation Factors);

(2) for hazardous waste management facilities, the person must also satisfy the applicable requirements of Subchapter E and F of this chapter (relating to Interim Standards for Hazardous Waste Storage, Processing, or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities, respectively).

§335.566. Deed Recordation for Risk Reduction Standard Number 3.

(a) Upon completion of closure or remediation under Risk Reduction Standard Number 3, the person must record in the county deed records of the county or counties in which such activities take place the information specified in subsections (b)-(e) of this section. The statements should be worded such that a lay person can easily understand them. An example format is provided in §335.569 of this title (relating to Appendix III). Proof of recordation of the required information shall be provided to

the executive director in writing no later than 90 days after completion of closure or remediation activities.

(b) A certification, signed by the person and showing the person's full name and title, that remediation of the facility or area was carried out in accordance with applicable regulations and appropriate guidance and resulted in a remedy that eliminated or reduced to the maximum extent practicable substantial present and future risk and whether continued post-closure care or engineering or institutional control measures are required to protect human health and the environment.

(c) A description of any institutional or legal controls placed by the person on the future use of the property at a minimum, should include a statement that future owners of the facility must notify the Texas Water Commission (or successor agency) if the owner intends to change the facility to residential land use. The notice shall indicate that the owner must undertake actions as necessary to protect human health and the environment in accordance with §335.8 of this title (relating to Closure and Remediation).

(d) A metes and bounds description of the portion or portions of the tract of land on which closure or remediation of industrial solid waste, municipal hazardous waste, or contaminants was achieved.

(e) A statement that information and documents concerning the closure or remediation of the facility or area are available for inspection upon request at the Texas Water Commission shall further describe the jurisdiction of the Texas Water Commission to review the establishment of the final cleanup criteria.

§335.567. Appendix 1. Derivation of Reduced Equations for Calculation of Medium Specific Concentrations of Risk Reduction Standard Number 2.

Equation 1-MSc for Ingestion of Water; Carcinogenic Effects:

$$MSC = \frac{85.16 TR}{SF_0}$$

is derived from the following expression:

$$MSC = \frac{TR \times BW \times AT_c \times 365 \text{ days/yr}}{SF_0 \times IR_v \times EF \times ED \times A}$$

Equation 2-MSc for Ingestion of Soils and Inhalation of Volatiles and Particulates; Residential Scenario; Carcinogenic Effects:

$$MSC = \frac{5110 \text{ TR}}{[(7.98 \times 10^{-3}) \times SF_0] + (SF_i \times [(450/VF) + (9.72 \times 10^{-8})])}$$

is derived from the following expression:

$$MSC = \frac{TR \times BW \times AT_c \times 365 \text{ days/yr}}{EF [(BW \times SF_0 \times 10^{-6} \text{ Kg/mg} \times IF_{soil/adj} + (SF_i \times ED \times IR_{air} \times [1/VF + 1/PEF])]$$

Equation 3-MSC for Ingestion of Water; Systemic Toxicant Effects:

$$MSC = 36.5 \text{ RfD}_0$$

is derived from the following expression:

$$MSC = \frac{THI \times \text{RfD}_0 \times BW \times AT_s \times 365 \text{ days/yr}}{IR_w \times EF \times ED \times A}$$

Equation 4-MSC for Ingestion of Soils and Inhalation of Volatiles and Particulates; Residential Scenario; Systemic Toxicant Effects:

$$MSC = \frac{2190}{[(7.98 \times 10^{-3}/\text{RfD}_0) + ((1/\text{RfD}_i) \times [(450/VF) + (9.72 \times 10^{-8})])]}$$

is derived from the following expression:

$$MSC = \frac{THI \times BW \times AT_s \times 365 \text{ days/yr}}{EF [((1/\text{RfD}_0) \times BW \times 10^{-6} \text{ Kg/mg} \times IF_{soil/adj}) + ((1/\text{RfD}_i) \times ED \times IR_{air} [1/VF + 1/PEF])]}$$

Equation 5-MSC for Worker Ingestion of Soils and Inhalation of Volatiles and Particulates; Carcinogenic Effects:

$$MSC = \frac{286.16 \text{ TR}}{[(5 \times 10^{-5}) \times SF_0] + (SF_i \times [(20/VF) + (4.3 \times 10^{-9})])}$$

is derived from the following expression:

$$MSC = \frac{TR \times BW \times AT_c \times 365 \text{ days/yr}}{EF \times ED \times [(SF_0 \times 10^{-6} \text{ Kg/mg} \times IR_{soil}) + (SF_i \times IR_{air} \times [1/VF + 1/PEF])]}$$

Equation 6-MSC for Worker Ingestion of Soils and Inhalation of Volatiles and Particulates; Systemic Toxicant Effects:

$$MSC = \frac{102.2}{[(5 \times 10^{-5}/RfD_0) + ((1/RfD_1) \times [(20/VF) + (4.3 \times 10^{-9})])]}$$

is derived from the following expression:

$$MSC = \frac{THI \times BW \times AT_b \times 365 \text{ days/yr}}{EF \times ED \times [((1/RfD_0) \times 10^{-6} \text{ Kg/mg} \times IR_{soil}) + ((1/RfD_1) \times IR_{air} \times (1/VF + 1/PEF))]}$$

VF: Parameters, Definitions and Values for the
Soil to Air Volatilization Factor

$$VF(m^3/kg) = \frac{(LS \times V \times DH)}{A} \times \frac{(3.14 \times \alpha \times T)^{1/2}}{(2 \times D_{ei} \times E \times K_{ss} \times 10^{-3} \text{ kg/g})}$$

SITE DATA/DEFAULT FACTORS:

LS	Length of contaminated area (m)	=	45
E	true soil porosity (unitless)	=	0.35
V	wind speed in mixing zone (m/s)	=	2.25
ps	true soil density (g/cm ³)	=	2.65
DH	diffusion height (m)	=	2
T	exposure interval (s)	=	7.90e+08
A	area of contamination (cm ²)	=	2.03e+07
OC	organic carbon content, soil fraction	=	0.02

CHEMICAL SPECIFIC DATA:

D _i	Molecular Diffusivity (cm ² /s).
H	Henry's Law Constant (atm-m ³ /mol).
K _{oc}	Organic Carbon Partition Coefficient (cm ³ /g).
D _{ei}	Effective Diffusivity (cm ² /sec), calculated from D _i X E ^{0.33} .
Kd	Soil-water partition coefficient (cm ³ /g), calculated from Koc X OC.
α	Alpha, (cm ² /s) = $\frac{(D_{ei} \times E)}{E + (p_s)(1-E)/K_{ss}}$
K _{ss}	Soil/air partition coefficient (g soil/cm ³ air). Calculated from K _{ss} = (H/Kd) X 41.

Parameters, Definitions and Values used in Equations 1 through 6 are displayed in the following table:

Parameters	Definitions (Units)	Values
MSC	Medium Specific Concentration (mg/Kg for soils, mg/L for water)	chemical-specific
TR	Target excess individual lifetime cancer risk (unitless)	10^{-6} for Class A and B carcinogens; 10^{-5} for Class C carcinogens
THI	Target hazard index (unitless)	1
SF _o	Oral cancer slope factor ((mg/Kg-day) ⁻¹)	chemical-specific
SF _i	Inhalation cancer slope factor ((mg/Kg-day) ⁻¹)	chemical-specific
RfD _o	Oral chronic reference dose (mg/Kg-day)	chemical-specific
RfD _i	Inhalation chronic reference dose (mg/Kg-day)	chemical-specific
BW	Adult body weight (Kg)	70 Kg
AT _c	Averaging time for carcinogens (yr)	70 yr
AT _s	Averaging time for systemic toxicants (yr)	30 yr
EF	Exposure frequency (days/yr)	350 days/yr
ED	Exposure duration (yr)	30 yr
IR _w	Daily water ingestion rate (liter/day)	2 liter/day
IR _{soil}	Workday soil ingestion rate (mg/day)	50 mg/day
IF _{soil/adj}	Age-adjusted ingestion factor (mg-yr/Kg-day)	114 mg-yr/Kg-day
IR _{air}	Daily indoor inhalation rate (m ³ /day)	15 m ³ /day
PEF	Particulate emission factor (m ³ /Kg)	4.63×10^9 m ³ /Kg
VF	Soil-to-air volatilization factor	chemical-specific
A	Absorption factor	1

Reference: U.S. EPA, OSWER Directive 9285.7-01B, Dec. 13, 1991, Human Health Evaluation Manual, Part B: "Development of Risk-based Preliminary Remediation Goals"

§335.568. *Appendix II. Examples of Medium-Specific Concentrations, Standards and Criteria for Health-Based Closure/Remediation (See §335.558 of this title (relating to Medium Specific Concentrations for Risk Reduction Standard Number 2.)) Explanation of column headings.*

CAS #=Chemical Abstracts Service Number for the Specific Compound.

GW=Ground Water. Maximum Concentration in Ground Water (mg/L).

GWP-Res=Ground-Water Protection Standard for Residential Use. Concentration in Residential Soil Assumed Protective of Ground Water Considering Cross-media Contamination of Ground Water from Contaminated Soil (mg/kg).

GWP-Ind=Ground-Water Protection Standard for Industrial Use. Concentration in Industrial Soil Assumed Protective of Ground Water Considering Cross-media

Contamination of Ground Water from Contaminated Soil (mg/kg).

SAI-Res=Soil/Air and Ingestion Standard for Residential Use. Maximum Concentration in Residential Soil Considering Cross-media Contamination of Air and the Human Ingestion and Inhalation Pathways (mg/kg).

SAI-Ind=Soil/Air and Ingestion Standard for Industrial Use. Maximum Concentration in Industrial Soil Considering Cross-media Contamination of Air and the Human Ingestion and Inhalation Pathways (mg/kg).

CONSTITUENT	CAS #	GW	(1-4)	GMP-Res (1,5)	GMP-Ind (1,6)	SAI-Res (1,7,10,11)	SAI-Ind (1,8,10,11)
Acenaphthene	83-32-9	2.19e+00		2.19e+02	6.13e+02	1.34e+04 (13)	4.43e+04 (13)
Acetone	67-64-1	3.65e+00		3.65e+02	1.02e+03	3.82e+03 (13)	4.16e+03 (13)
Acetonitrile	75-05-8	2.19e-01		2.19e+01	6.13e+01	1.65e+03	1.23e+04
Acetophenone	98-86-2	3.65e+00		3.65e+02	1.02e+03	2.26e+04	8.15e+04
Acrolein	107-02-8	7.30e-01 (12)		7.30e+01	2.04e+02	1.56e+03 (12)	2.04e+04 (12)
Acrylamide	79-06-1	1.89e-05		1.89e-03	6.36e-03	1.42e-01	1.27e+00
Acrylonitrile	107-13-1	1.58e-04		1.58e-02	5.30e-02	1.15e-01 (13)	1.44e-01 (13)
Atachlor	15972-60-8	2.00e-03 (9)		2.00e-01	2.00e-01	7.95e+80	7.10e+01
Aldicarb	116-06-3	3.00e-03 (9)		3.00e-01	3.00e-01	5.49e+01	4.09e+02
Aldicarb Sulfone	1646-88-4	2.00e-03 (9)		2.00e-01	2.00e-01	8.23e+01	6.13e+02
Aldicarb Sulfoxide	1646-88-3	4.00e-03 (9)		4.00e-01	4.00e-01	5.49e+01	4.09e+02
Aldrin	309-00-2	5.01e-06		5.01e-04	1.68e-03	3.77e-02	3.36e-01
Aluminum Phosphide	20859-73-8	1.46e-02		1.46e+00	4.09e+00	1.10e+02	8.18e+02
Aniline	62-53-3	1.49e-02		1.49e+00	5.02e+00	4.18e-02 (13)	4.80e-02 (13)
Anthracene	120-12-7	1.10e+01		1.10e+03	3.07e+03	5.91e+04 (13)	1.51e+05 (13)
Antimony	7440-36-0	6.00e-03 (9)		6.00e-01	6.00e-01	1.10e+02	8.18e+02

CONSTITUENT	CAS #	GW	(1-4)	GMP-Res	(1,5)	GMP-Ind	(1,6)	SAI-Res	(1,7,10,11)	SAI-Ind	(1,8,10,11)
Arsenic	7440-38-2	5.00e-02	(9)	5.00e+00		5.00e+00		3.66e-01		3.27e+00	
Atrazine	1912-24-9	3.00e-03	(9)	3.00e-01		3.00e-01		2.88e+01		2.58e+02	
Barium (ionic)	7440-39-3	2.00e+00	(9)	2.00e+02		2.00e+02		1.91e+04		1.37e+05	
Benzene	71-43-2	5.00e-03	(9)	5.00e-01		5.00e-01		1.33e+00	(13)	1.62e+00	(13)
Benzidine	92-87-5	3.70e-07		3.70e-05		1.24e-04		2.78e-03		2.49e-02	
Beryllium	7440-41-7	4.00e-03	(9)	4.00e-01		4.00e-01		1.49e-01		1.33e+00	
Biphenyl	92-52-4	1.83e+00		1.83e+02		5.11e+02		6.68e+03	(13)	1.11e+04	(13)
Bis (2-chloro-ethyl) ether	111-44-4	7.74e-05		7.74e-03		2.60e-02		2.20e-01	(13)	5.39e-01	(13)
Bis (2-chloroisopropyl) ether	39638-32-9	1.22e-02		1.22e+00		4.09e+00		4.50e+01	(13)	9.05e+01	(13)
Bis (2-ethyl-hexyl) phthalate	117-81-7	6.08e-03		6.08e-01		2.04e+00		4.57e+01		4.09e+02	
Bromodichloromethane	75-27-4	1.00e-01	(9)	1.00e-01		1.00e+01		7.19e-01	(13)	9.46e-01	(13)
Bromoform	75-25-2	1.00e-01	(9)	1.00e-01		1.00e+01		8.11e+01		7.24e+02	
Bromomethane	74-83-9	5.11e-02		5.11e+00		1.43e+01		2.44e+01	(13)	2.47e+01	(13)
Butyl-4,6-dinitrophenol, 2-sec-	88-85-7	3.65e-02		3.65e+00		1.02e+01		2.74e+02		2.04e+03	
Cadmium	7440-43-9	5.00e-03	(9)	5.00e-01		5.00e-01		1.37e+02		1.02e+03	
Carbofuran	1563-66-2	4.00e-02	(9)	4.00e+00		4.00e+00		1.37e+03		1.02e+04	

CONSTITUENT	CAS #	GW	(1-4)	GMP-Res	(1,5)	GMP-Ind	(1,6)	SAI-Res	(1,7, 10,11)	SAI-Ind	(1,8, 10,11)
Carbon Disulfide	75-15-0	3.65e+00		3.65e+02		1.02e+03		2.45e+01	(13)	2.34e+01	(13)
CarbonTetrachloride	56-23-5	5.00e-03	(9)	5.00e-01		5.00e-01		4.14e-01	(13)	5.13e-01	(13)
Chlordane	57-74-9	2.00e-03	(9)	2.00e-01		2.00e-01		4.93e-01		4.40e+00	
Chloroaniline, p-	106-47-8	1.46e-01		1.46e+01		4.09e+01		1.10e+03		8.18e+03	
Chlorobenzene	108-90-7	1.00e-01	(9)	1.00e+01		1.00e+01		2.56e+02	(13)	2.56e+02	(13)
Chlorobenzilate	510-15-6	7.30e-01		7.30e+01		2.04e+02		5.49e+03		4.09e+04	
Chloroethane (Ethylchloride)	75-00-3	7.30e-01		7.30e+01		2.04e+02		4.99e+03	(13)	2.30e+04	(13)
Chloroform	67-66-3	1.00e-01	(9)	1.00e+01		1.00e+01		4.37e-01	(13)	5.04e-01	(13)
Chloronaphthalene, 2-	91-58-7	2.92e+00		2.92e+02		8.18e+02		2.20e+04		1.64e+05	
2-chlorophenol	95-57-8	1.83e-01		1.83e+01		5.11e+01		1.37e+03		1.02e+04	
Chromium (total)	7440-47-3	1.00e-01	(9)	1.00e+01		1.00e+01		3.91e+02	(12)	5.11e+03	(12)
Chromium (VI)	7440-47-3	1.00e-01	(9)	1.00e+01		1.00e+01		3.91e+02	(12)	5.11e+03	(12)
Cresol, m-	108-39-4	1.83e+00	(12)	1.83e+02		5.11e+02		3.91e+03	(12)	5.11e+04	(12)
Cresol, o-	95-48-7	1.83e+00	(12)	1.83e+02		5.11e+02		3.91e+03	(12)	5.11e+04	(12)
Cresol, p-	106-44-5	1.83e+00	(12)	1.83e+02		5.11e+02		3.91e+02	(12)	5.11e+03	(12)
Cyanide	57-12-5	2.00e-01	(9)	2.00e+01		2.00e+01		5.49e+03		4.09e+04	

CONSTITUENT	CAS #	GW	(1-4)	GMP-Res	(1,5)	GMP-Ind	(1,6)	SAI-Res	(1,7, 10,11)	SAI-Ind	(1,8, 10,11)
DDD	72-54-8	3.55e-04		3.55e-02		1.19e-01		2.67e+00		2.38e+01	
DDE	72-55-9	2.50e-04		2.50e-02		8.41e-02		1.88e+00		1.68e+01	
DDT	50-29-3	2.50e-04		2.50e-02		8.41e-02		1.88e+00		1.68e+01	
Di-n-butyl phthalate	84-74-2	3.65e+00		3.65e+02		1.02e+03		2.74e+04		2.04e+05	
Di-n-octyl phthalate	117-81-7	7.30e-01		7.30e+01		2.04e+02		5.49e+03		4.09e+04	
Dibromo-3-chloropropane, 1,2-	90-22-8	2.00e-04 (9)		2.00e-02		2.00e-02		4.57e-01		4.09e+00	
Dibromochloromethane	124-48-1	1.00e-01 (9)		1.00e+01		1.00e+01		7.62e+01		6.81e+02	
Dichlorobenzene (1,2)	95-50-1	6.00e-01 (9)		6.00e+01		6.00e+01		6.69e+03 (13)		8.39e+03 (13)	
Dichlorobenzene (1,3)	541-73-1	6.00e-01 (9)		6.00e+01		6.00e+01		7.61e+03 (13)		9.99e+03 (13)	
Dichlorobenzene (1,4)	106-46-7	7.50e-02 (9)		7.50e+00		7.50e+00		8.64e+01 (13)		1.38e+02 (13)	
Dichlorodifluoromethane	75-71-8	7.30e+00		7.30e+02		2.04e+03		5.00e+01 (13)		4.79e+01 (13)	
Dichloroethane (1,1)	75-34-3	3.65e+00		3.65e+02		1.02e+03		7.30e+03 (13)		2.04e+04 (13)	
Dichloroethane (1,2)	107-06-2	5.00e-03 (9)		5.00e-01		5.00e-01		4.17e-01 (13)		5.05e-01 (13)	
Dichloroethylene (1,1)	75-35-4	7.00e-03 (9)		7.00e-01		7.00e-01		7.15e-01 (13)		8.72e-01 (13)	
Dichloroethylene, cis-(1,2)	156-59-2	7.00e-02 (9)		7.00e+00		7.00e+00		1.08e+02 (13)		1.08e+02 (13)	
Dichloroethylene, trans-(1,2)	156-60-5	1.00e-01 (9)		1.00e+01		1.00e+01		2.56e+02 (13)		2.56e+02 (13)	

CONSTITUENT	CAS #	GM	(1-4)	GMP-Res (1,5)	GMP-Ind (1,6)	SAI-Res (1,7,10,11)	SAI-Ind (1,8,10,11)
Dichlorophenol, 2,4-	120-83-2	1.10e-01		1.10e+01	3.07e+01	8.23e+02	6.13e+03
Dichlorophenoxyacetic acid, 2,4-	94-75-7	7.00e-02 (9)		7.00e+00	7.00e+00	2.74e+03	2.04e+04
Dichloropropane (1,2)	78-87-5	5.00e-03 (9)		5.00e-01	5.00e-01	6.88e-01 (13)	8.43e-01 (13)
Dieldrin	60-57-1	5.32e-06		5.32e-04	1.79e-03	4.00e-02	3.57e-01
Diethyl phthalate	84-66-2	2.92e+01		2.92e+03	8.18e+03	2.20e+05	1.64e+06
Diethylhexyl adipate	103-23-1	5.00e-01 (9)		5.00e+01	5.00e+01	5.34e+03	4.77e+04
Dimethoate	60-51-5	7.30e-03		7.30e-01	2.04e+00	5.49e+01	4.09e+02
Dimethyl phenol, 2,4-	105-67-9	7.30e-01		7.30e+01	2.04e+02	5.49e+03	4.09e+04
Dinitrobenzene, 1,3-	99-65-0	3.65e-03		3.65e-01	1.02e+00	2.74e+01	2.04e+02
Dinitrophenol, 2,4-	51-28-5	7.30e-02		7.30e+00	2.04e+01	5.49e+02	4.09e+03
Dioxane (1,4)	123-91-1	7.74e-03		7.74e-01	2.60e+00	1.55e+01 (13)	2.31e+01 (13)
Diphenylamine	122-39-4	9.13e-01		9.13e+01	2.56e+02	6.86e+03	5.11e+04
Diphenylhydrazine, 1,2-	122-66-7	1.06e-04		1.06e-02	3.58e-02	8.00e-01	7.15e+00
Disulfoton	298-04-4	1.46e-03		1.46e-01	4.09e-01	1.10e+01	8.18e+01
Endosulfan	115-29-7	1.83e-03		1.83e-01	5.11e-01	1.37e+01	1.02e+02
Endothall	145-73-3	1.00e-01 (9)		1.00e+01	1.00e+01	5.49e+03	4.09e+04

CONSTITUENT	CAS #	GW	(1-4)	GMP-Res (1,5)	GMP-Ind (1,6)	SAI-Res (1,7,10,11)	SAI-Ind (1,8,10,11)
Endrin	72-20-8	2.00e-03 (9)		2.00e-01	2.00e-01	8.23e+01	6.13e+02
Ethoxy ethanol, 2-	110-80-5	1.46e+01		1.46e+03	4.09e+03	1.10e+05	8.17e+05
Ethoxyethanol acetate, 2-	111-15-9	1.10e+01		1.10e+03	3.07e+03	8.23e+04	6.13e+05
Ethyl benzene	100-41-4	7.00e-01 (9)		7.00e+01	7.00e+01	1.14e+04 (13)	1.70e+04 (13)
Ethylene dibromide	106-93-4	5.00e-05 (9)		5.00e-03	5.00e-03	7.09e-03 (13)	4.53e-02 (13)
Ethylene glycol	107-21-1	7.30e+01		7.30e+03	2.04e+04	5.49e+05	4.09e+06
Ethylene oxide	75-21-8	8.35e-05		8.35e-03	2.80e-02	1.11e-01 (13)	1.51e-01 (13)
Fluoranthene	206-44-0	1.46e+00		1.46e+02	4.09e+02	1.10e+04	8.18e+04
Fluorene	86-73-7	1.46e+00		1.46e+02	4.09e+02	9.60e+03 (13)	3.87e+04 (13)
Fluorides	7782-41-4	4.00e+00 (9)		4.00e+02	4.00e+02	1.65e+04	1.23e+05
Formaldehyde	50-00-0	7.30e+00 (12)		7.30e+02	2.04e+03	1.56e+04 (12)	2.04e+05 (12)
Heptachlor	76-44-8	4.00e-04 (9)		4.00e-02	4.00e-02	1.42e-01	1.27e+00
Heptachlor epoxide	1024-57-3	2.00e-04 (9)		2.00e-02	2.00e-02	7.04e-02	6.29e-01
Hexachlorobenzene	118-74-1	1.00e-03 (9)		1.00e-01	1.00e-01	4.00e-01	3.57e+00
Hexachlorobutadiene	87-68-3	1.09e-02		1.09e+00	3.67e+00	8.21e+01	7.33e+02
Hexachlorocyclohexane, alpha	319-84-6	1.35e-05		1.35e-03	4.54e-03	1.02e-01	9.08e-01

CONSTITUENT	CAS #	GW	(1-4)	GWP-Res	(1,5)	GWP-Ind	(1,6)	SAI-Res	(1,7, 10,11)	SAI-Ind	(1,8, 10,11)
Hexachlorocyclohexane, beta	319-85-7	4.73e-04		4.73e-02		1.59e-01		3.56e+00		3.18e+01	
Hexachlorocyclohexane, gamma	58-89-9	2.00e-04	(9)	2.00e-02		2.00e-02		8.23e+01		6.13e+02	
Hexachloroethane	67-72-1	6.08e-02		6.08e+00		2.04e+01		4.57e+02		4.09e+03	
Isobutyl alcohol	78-83-13	1.10e+01		1.10e+03		3.07e+03		8.23e+04		6.13e+05	
Lead (inorganic)	7439-92-1	1.50e-02	(9)	1.50e+00		1.50e+00		5.00e+02	(14)	1.00e+03	(14)
Mercury	7439-97-6	2.00e-03	(9)	2.00e-01		2.00e-01		8.23e+01		6.13e+02	
Methomyl	16752-77-5	9.13e-01		9.13e+01		2.56e+02		6.86e+03		5.11e+04	
Methoxy ethanol	109-86-4	1.46e-01		1.46e+01		4.09e+01		1.10e+03		8.18e+03	
Methoxychlor	72-43-5	4.00e-02	(9)	4.00e+00		4.00e+00		1.37e+03		1.02e+04	
Methoxyethanol acetate	110-49-6	7.30e-02		7.30e+00		2.04e+01		5.49e+02		4.09e+03	
Methyl Ethyl Ketone	78-93-3	1.83e+00		1.83e+02		5.11e+02		7.58e+03	(13)	1.40e+04	(13)
Methyl isobutyl ketone	108-10-1	1.83e+00		1.83e+02		5.11e+02		1.37e+04		1.02e+05	
Methyl methacrylate	80-62-6	2.92e+00		2.92e+02		8.18e+02		6.74e+02	(13)	6.63e+02	(13)
Methylene Chloride	75-09-2	5.00e-03	(9)	5.00e-01		5.00e-01		1.07e+01	(13)	1.38e+01	(13)
Nickel	7440-02-0	1.00e-01	(9)	1.00e+01		1.00e+01		1.56e+03	(12)	2.04e+04	(12)
Nitrate	14797-55-8	1.00e+01	(9)	1.00e+03		1.00e+03		4.39e+05		3.27e+06	

CONSTITUENT	CAS #	GW	(1-4)	GMP-Res	(1,5)	GMP-Ind	(1,6)	SAI-Res	(1,7, 10,11)	SAI-Ind	(1,8, 10,11)
Nitrite	14797-65-0	1.00e+00 (9)		1.00e+02		1.00e+02		2.74e+04		2.04e+05	
Nitrobenzene	98-95-3	1.83e-02		1.83e+00		5.11e+00		6.48e+01 (13)		1.06e+02 (13)	
Nitroso-methyl-ethyl-amine, n-	10595-95-6	3.87e-06		3.87e-04		1.30e-03		2.91e-02		2.60e-01	
Nitrosodi-n-propylamine, n-	621-64-7	1.22e-05		1.22e-03		4.09e-03		9.15e-02		8.17e-01	
Nitrosodiethylamine, n-	55-18-5	5.68e-07		5.68e-05		1.91e-04		4.27e-03		3.81e-02	
Nitrosodimethylamine, n-	62-75-9	1.67e-06		1.67e-04		5.61e-04		1.26e-02		1.12e-01	
Nitrosopyrrolidine, n-	930-55-2	4.06e-05		4.06e-03		1.36e-02		3.05e-01		2.72e+00	
Pentachloronitrobenzene	82-68-8	3.28e-03		3.28e-01		1.10e+00		2.46e+01		2.20e+02	
Pentachlorophenol	87-86-5	1.00e-03 (9)		1.00e-01		1.00e-01		5.34e+00		4.77e+01	
Phenol	108-95-2	2.19e+01		2.19e+03		6.13e+03		1.65e+05		1.23e+06	
Phthalic anhydride	85-44-9	7.30e+01		7.30e+03		2.04e+04		5.49e+05		4.09e+06	
Polychlorinated biphenyls	1336-36-3	5.00e-04 (9)		5.00e-02		5.00e-02		8.32e-02 (15)		7.43e-01 (15)	
Pronamide	23950-58-5	2.74e+00		2.74e+02		7.67e+02		2.06e+04		1.53e+05	
Pyrene	129-00-0	1.44e-03		1.44e-01		4.84e-01		1.08e+01		9.68e+01	
Pyridine	110-86-1	3.65e-02		3.65e+00		1.02e+01		2.74e+02		2.04e+03	
Selenium	7782-49-2	5.00e-02 (9)		5.00e+00		5.00e+00		1.37e+03		1.02e+04	

CONSTITUENT	CAS #	GW	(1-4)	GMP-Res (1,5)	GMP-Ind (1,6)	SAI-Res (1,7,10,11)	SAI-Ind (1,8,10,11)
Silver	7440-22-4	1.83e-01		1.83e+01	5.11e+01	1.37e+03	1.02e+04
Strychnine	57-24-9	1.10e-02		1.10e+00	3.07e+00	8.23e+01	6.13e+02
Styrene	100-42-5	1.00e-01 (9)		1.00e+01	1.00e+01	2.13e+01	1.91e+02
Tetrachlorobenzene, 1,2,4,5-	95-94-3	1.10e-02		1.10e+00	3.07e+00	8.23e+01	6.13e+02
Tetrachloroethane (1,1,1,2)	630-20-6	3.28e-02		3.28e+00	1.10e+01	4.59e+01 (13)	6.29e+01 (13)
Tetrachloroethane (1,1,2,2)	79-34-5	4.26e-03		4.26e-01	1.43e+00	8.00e+00 (13)	1.17e+01 (13)
Tetrachloroethylene	127-18-4	5.00e-03 (9)		5.00e-01	5.00e-01	7.93e+01 (13)	2.07e+02 (13)
Tetrachlorophenol, 2,3,4,6-	58-90-2	1.10e+00		1.10e+02	3.07e+02	8.23e+03	6.13e+04
Tetraethyl dithiopyrophosphate	3689-24-5	1.83e-02		1.83e+00	5.11e+00	1.37e+02	1.02e+03
Toluene	108-88-3	1.00e+00 (9)		1.00e+02	1.00e+02	3.58e+03 (13)	3.63e+03 (13)
Toxaphene	8001-35-2	3.00e-03 (9)		3.00e-01	3.00e-01	5.82e-01	5.20e+00
TP Silvex, 2,4,5-	93-72-1	5.00e-02 (9)		5.00e+00	5.00e+00	2.20e+03	1.64e+04
Trichlorobenzene (1,2,4)	120-82-1	7.00e-02 (9)		7.00e+00	7.00e+00	6.78e+02 (13)	8.28e+02 (13)
Trichloroethane (1,1,1)	71-55-6	2.00e-01 (9)		2.00e+01	2.00e+01	9.63e+03 (13)	1.40e+04 (13)
Trichloroethane (1,1,2)	79-00-5	5.00e-03 (9)		5.00e-01	5.00e-01	1.27e+01 (13)	1.62e+01 (13)
Trichloroethylene	79-01-6	5.00e-03 (9)		5.00e-01	5.00e-01	2.40e+00 (13)	2.85e+00 (13)

CONSTITUENT	CAS #	GM	(1-4)	GMP-Res (1,5)	GMP-Ind (1,6)	SAI-Res (1,7,10,11)	SAI-Ind (1,8,10,11)
Trichlorofluoromethane	75-69-4	1.10e+01		1.10e+03	3.07e+03	8.73e+00 (13)	8.36e+00 (13)
Trichlorophenol (2,4,5)	95-95-4	3.65e+00		3.65e+02	1.02e+03	8.08e+03 (13)	1.04e+04 (13)
Trichlorophenol, 2,4,6-	88-06-2	7.74e-03		7.74e-01	2.60e+00	5.82e+01	5.20e+02
Trichlorophenoxyacetic acid, 2,4,5-	93-76-5	3.65e-01		3.65e+01	1.02e+02	2.74e+03	2.04e+04
Trichloropropane, 1,1,2-	598-77-6	1.83e-01		1.83e+01	5.11e+01	1.37e+03	1.02e+04
Trichloropropane, 1,2,3-	96-18-4	2.19e-01		2.19e+01	6.13e+01	1.65e+03	1.23e+04
Trinitrobenzene, 1,3,5-	99-35-4	1.83e-03		1.83e-01	5.11e-01	1.37e+01	1.02e+02
Vinyl acetate	108-05-4	3.65e+01		3.65e+03	1.02e+04	2.74e+05	2.04e+06
Vinyl Chloride	75-01-4	2.00e-03 (9)		2.00e-01	2.00e-01	1.99e-02 (13)	2.41e-02 (13)
Xylene	1330-20-7	1.00e+01 (9)		1.00e+03	1.00e+03	6.00e+03 (13)	5.80e+03 (13)

(1) Concentrations for constituents are expressed in scientific notation. Examples 2.20E-00 = 2.2; 2.20E+02 = 220; and 2.20E-01 = 0.22.

(2) The development of final cleanup levels may involve other factors not considered in this table, including cumulative health effects as described in §335.559(h) of this title (relating to Medium Specific Requirements and Adjustments for Risk Reduction Standard Number 2).

(3) Ground-water concentrations are based on Maximum Contaminant Levels (MCLs) or the formula and parameters for residential use of ground water which are contained in 31 TAC §335.567 (relating to Appendix I).

(4) For some constituents, the Practical Quantitation Limit (PQL) may be the appropriate Ground Water MSC as described in 31 TAC 335.555(d)(1) of this title (relating to Attainment of Risk Reduction Standard Number 2: Closure/Remediation to Health-Based Standards and Criteria). See 40 Code of Federal Regulations Part 264 (Appendix IX) for a list of ground-water PQLs.

(5) Residential soil ground-water protection concentrations are based on a dilution factor of 100 times the ground-water MSC.

(6) Industrial soil ground-water protection concentrations are based on a dilution factor of 100 times the MCL or, when an MCL is not available, a factor of 100 times the ground-water concentration calculated using the formula and parameters which are contained in 31 TAC §335.559(f)(2) of this title.

(7) Residential soil concentrations (maximum) are calculated using the formula and parameters for residential land use which are contained in §335.567 of this title (relating to Appendix I). The person must also demonstrate that ground water is protected and that no nuisance conditions exist (§335.559(a)-(h) of this title).

(8) Industrial soil concentrations (maximum) are calculated using the formula and parameters for industrial land use which are contained in §335.567 of this title (relating to Appendix I). The person must also demonstrate that ground water is protected and that no nuisance conditions exist (§335.559(a)-(h) of this title).

(9) The final, proposed or listed Maximum Contaminant Level (MCL), from Section 141 of the Federal Safe Drinking Water Act. For lead, the Action Level for lead in drinking water is used as the MSC.

(10) All concentrations were calculated using data from the Integrated

Risk Information System (IRIS) Chemical Files, or data from the Health Effects Assessment Summary Tables (HEAST), developed by the United States Environmental Protection Agency, Office of Research and Development and Office of Health and Environmental Assessment, Washington, D.C. 20460. The toxicity information, and the MSCs, will be updated as new information becomes available.

(11) In some cases, an oral Reference Dose (RFD) or an oral Slope Factor (SF) was substituted for the inhalation RFD or inhalation SF in calculating MSC. This MSC will be updated when this information becomes available.

(12) The MSCs calculated for this compound are based on noncarcinogenic effects. The following formula was used for calculating the soil MSCs: $MSC = [(oral\ RFD)(Body\ Weight)(ED)(365\ days/yr)] / [(EF)(ED)(IR)(CF)]$. For residential soils, the following exposure factors were used: BW = 15 Kg; ED = five years; EF = 350 days/year; IR = 200 mg/day. For industrial soils, the following exposure factors were used: BW = 70 Kg; ED = 25 years; EF = 250 days/year; IR = 100 mg/day. In both cases, the CF is 0.00001 kg/mg. When oral slope factors become available, these MSCs will be revised.

(13) As described in §335.559 of this title, the additive soil concentration for total volatile organics shall not exceed 1,000 ppm.

(14) The MSC for lead in soil is based on values calculated by the United States EPA using the Lead Uptake/Biokinetic Model, Version 0.4, which has been developed by the United States EPA Office of Health & Environmental Assessment.

(15) Alternative soil MSCs may be proposed for polychlorinated biphenyls based upon the April 2, 1987, TSCA regulations (see 52 FR 10688).

§335.569. Appendix III.

MODEL DEED CERTIFICATION LANGUAGE

STATE OF TEXAS

() COUNTY

INDUSTRIAL SOLID WASTE

CERTIFICATION OF REMEDIATION

KNOW ALL MEN BY THESE PRESENTS THAT: Pursuant to the Rules of the Texas Water Commission pertaining to Industrial Solid Waste Management, this document is hereby filed

in the Deed Records of _____ County, Texas in compliance with the recordation requirements of said rules:

(Company Name) has performed a remediation of the land described herein. A copy of the Notice of Registration (No.), including a description of the facility, is attached hereto and is made part of this filing. A list of the waste constituents, including concentrations (i.e., soil and ground water, if applicable), which have been left in place is attached hereto and is made part of this filing. Further information concerning this matter may be found by an examination of company records or in the Notice of Registration (No.) files, which are available for inspection upon request at the central office of the Texas Water Commission in Austin.

The Texas Water Commission derives its authority to review the remediation of this tract of land from the Texas Solid Waste Disposal Act, §361.002, Texas Health and Safety Code, Chapter 361, which enables the Texas Water Commission to promulgate closure and remediation standards to safeguard the health, welfare and physical property of the people of the State and to protect the environment by controlling the management of solid waste. In addition, pursuant to the Texas Water Code, §5.012 and §5.013, Texas Water Code, Chapter 5, the Texas Water Commission is given primary responsibility for implementing the laws of the State of Texas relating to water and shall adopt any rules necessary to carry out its powers and duties under the Texas Water Code.

II

Being a _____ acre tract, more or less, out of the (Company Name) called _____ acre tract in the (Name) League (No.), Abstract (No.), recorded in Volume (No.), Page (No.) of the Deed of Records

_____ County, Texas, said _____ acre tract being more particularly described as follows:

(Insert metes and bounds description here)

For Standard 2 cleanups: Contaminants deposited hereon have been remediated to health-based standards and criteria such that future land use is suitable for (residential, non-residential (i.e., industrial/commercial)) purposes. Future land use is intended to be (residential, non-residential).

For Standard 3 cleanups: (Contaminants/contaminants and waste) deposited hereon have been remediated such that any substantial present or future risk has been eliminated or reduced to the maximum extent practicable. Continued post-closure care or engineering or institutional control measures (are/are not) required to protect human health or the environment. Future use of the property is appropriate for (describe). Institutional or legal controls placed on the property to ensure appropriate future use include (describe).

For both Standard 2 and 3 cleanups: If the current or future owner of this tract of land intends to change the use of this land from non-residential to residential purposes, he must notify the Texas Water Commission or successor agencies within 90 days of making this decision. The current or future owner must undertake actions as necessary to pro-

cordance with the rules of the Texas Water Commission.

III

The owner of the site is (Company Name), a Texas corporation, and its address is (P.O. Box or Street), (City), Texas (Zip Code),

where more specific information may be obtained from the (plant manager, owner).

EXECUTED this the ____ day of _____, 19__.

(Company Name)

a Texas corporation

(Name)

Plant Manager

STATE OF TEXAS

(_____) COUNTY

BEFORE ME, on this the ____ day of _____, personally appeared (Name), (Plant Manager, Owner) of (Company Name), a Texas corporation, known to me to be the person and agent of said corporation whose name is subscribed to the foregoing instrument, and he acknowledged to me that he executed the same for the purposes and capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the ____ day of _____, 19__.

Notary Public in and for the State of Texas, County of _____

My Commission Expires _____

(END OF APPENDIX III)

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 December 14, 1992.

TRD-9216587 Mary Ruth Holder Director, Legal Division Texas Water Commission

Earliest possible date of adoption: January 18, 1993

For further information, please call: (512) 908-2046



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part VII. Texas Commission on Law Enforcement Officer Standards and Education Chapter 211. Administrative Division

Substantive Rules

• 37 TAC §211.67

The Texas Commission on Law Enforcement Officer Standards and Education proposes an amendment to §211.67, concerning the requirements for academy advisory boards, this amendment will increase the flexibility of the advisory boards to establish admission standards for their respective academies.

Johanna McCully-Bonner, general counsel, has determined that for the first five-year period the section is in effect there will be no major fiscal implications for state or local government as a result of enforcing or administering this section.

Ms. McCully-Bonner also has determined that for each year of the first five years the section is in effect the public benefit anticipated is that each advisory board will have more flexibility in establishing their respective admission procedures. There will be no effect on small businesses. There is no anticipated increased economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal must be received at the Commission and may be submitted to Johanna McCully-Bonner, General Counsel, Texas Commission on Law Enforcement Officer Standards and Education, 1033 La Posada, Suite 240, Austin, Texas 78752.

The new section is proposed under the Texas Government Code, Chapter 415, §415.010(1) and §415.12, which provide the Texas Commission on Law Enforcement Officer Standards and Education with the authority to pass rules for the administration of Chapter 415, and Texas Civil Statutes, Article 6252-13a, which taken together establish the procedures for the rule making requirements for the Commission.

§211.67. Academy Advisory Boards.

(a)-(i) (No change.)

(j) A board must advise on the establishment of admission standards, and determine the order of preference between employees or prospective appointees of the sponsoring organization and other persons, if any. No person may be admitted to a training course without meeting the admission standards. [The academy is encouraged but not required to set admission and retention standards that meet or exceed the current minimum licensing standards set by the commission.]

(k)-(l) (No change.)

(m) The effective date of this section is February 1, 1990; and the effective date for subsection (j) as amended is June 1, 1993.

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 December 10, 1992.

TRD-9216508 Johanna McCully-Bonner General Counsel Texas Commission on Law Enforcement Officer Standards and Education

Earliest possible date of adoption: January 18, 1993

For further information, please call: (512) 450-0188



• 37 TAC §§211.83, 211.98, 211.107

(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 Commission on Law Enforcement Officer Standards and Education or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Commission on Law Enforcement Officer Standards and Education proposes the repeal of § 211.83, concerning the requirements for minimum standards for retention of a license, §211.98, concerning psychological examination of an initial license applicant, and §211.107, concerning the requirements for psychological reexamination of a license holder after break in service. The proposed new §217.10 Psychological declaration will replace §211.98 and §211.107.

Johanna McCully-Bonner, general counsel, has determined that for the first five-year period the repeals are in effect there will be no major fiscal implications for state or local government as a result of enforcing or administering this repeal.

Ms. McCully-Bonner also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated is that each law enforcement agency will have greater flexibility in establishing and enforcing their respective psychological standards. There will be no effect on small businesses. There is no anticipated increased economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal must be received at the Commission and may be submitted to Johanna McCully-Bonner, General Counsel, Texas Commission on Law Enforcement Officer Standards and Education, 1033 La Posada, Suite 240, Austin, Texas 78752.

The repeals are proposed under the Texas Government Code, Chapter 415, §§ 415.010(1), 415.051, 415.060, and 415.57,

which provides the Texas Commission on Law Enforcement Officer Standards and Education with the authority to pass rules for the administration of Chapter 415, and Texas Civil Statutes, Article 6252-13a, which taken together establish the procedures for the rule making requirements for the Commission.

§211.83. Minimum Standards for Retention of License.

§211.98. Psychological Examination of an Initial License Applicant.

§211.107. Psychological ReExamination of a License Holder after Break in Service.

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 December 10, 1992.

TRD-9216507

Johanna McCully-Bonner
General Counsel
Texas Commission on Law
Enforcement Officer
Standards and
Education

Earliest possible date of adoption: January 18, 1993

For further information, please call: (512) 450-0188

◆ ◆ ◆
Chapter 217. Licensing Requirements Division

• 37 TAC §217.10

The Texas Commission on Law Enforcement Officer Standards and Education proposes new §217.10, concerning the procedure and filing requirements for the psychological declaration, this new rule will replace the administrative procedures and filing requirements set out in §211.98 and §211.107.

Johanna McCully-Bonner, general counsel, has determined that for the first five-year period the section is in effect there will be no major fiscal implications for state or local government as a result of enforcing or administering this section.

Ms. McCully-Bonner 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 applicants for licensing and licensees subject to 180-day break in service will continue to be subject to the psychological requirements for licensing and appointment. There will be no effect on small businesses. There is no anticipated increased economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal must be received at the Commission and may be submitted to Johanna McCully-Bonner, General Counsel, Texas Commission on Law Enforcement Officer Standards and Education, 1033 La Posada, Suite 240, Austin, Texas 78752.

The new section is proposed under the Texas Government Code, Chapter 415, §§415.010(1), 415.051, and 415.057, which provides the Texas Commission on Law Enforcement Officer Standards and Education with the authority to pass rules for the administration of Chapter 415, and Texas Civil Statutes, Article 6252-13a, which taken together establish the procedures for the rule making requirements for the Commission.

§217.10. Psychological Declaration.

(a) An initial license applicant or a licensed officer, or county jailer subject to the requirements of a 180-day break in service must undergo a psychological examination conducted pursuant to professionally recognized standards and methods. Neither the Government Code, Chapter 415 nor the rules of the commission require this examination to be conducted prior to a conditional offer of employment. This examination must be administered by an experienced professional who is a:

(1) licensed psychologist or licensed psychiatrist, selected by the requesting agency; or

(2) licensed physician recognized under exceptional circumstances.

(b) The declaration required by the commission is completed by the requesting agency and forwarded to the professional for completion, with information regarding the duties, responsibilities, and qualifications for the type of license and appointment sought. The chief administrator sends a copy of the current declaration to the commission. A declaration expires one year after its effective date, unless withdrawn by the professional.

(c) The chief administrator shall require the applicant or licensee to sign a waiver of confidentiality prior to sending the declaration to the commission. The chief administrator shall retain the waiver on file, pursuant to the agency's record retention program, or for as long as the individual is carrying a current appointment with the agency.

(d) The chief administrator shall notify the commission in writing within 10 days of its receipt from the professional of a withdrawal of a declaration based on false, misleading, or incorrect information, by forwarding a copy of same to the commission.

(e) The commission may require, an initial license applicant or licensee to submit to another examination by a professional appointed by the commission within one year of the effective date of the declaration, or invalidate an existing declaration if it has cause to believe that:

(1) the agency, failed to follow commission rules relating to the declaration; or

(2) the examinee, or the agency, has submitted a false or incorrect declaration.

(f) The chief administrator requesting approval from the executive director to be allowed to use a licensed qualified physician, shall submit the declaration with written certification to the commission that the individual signing the declaration is a licensed qualified physician and further that the services of a licensed psychologist or psychiatrist is not available to the agency within a 100 mile radius of the agency. The chief administrator shall be notified in writing if the request is not approved.

(g) For the purposes of this section, the licensing types and capacities referenced in this section are:

(1) peace officer and reserve;

(2) jailer; and

(3) armed public security officer.

(h) The effective date of this section is March 1, 1993.

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 December 10, 1992.

TRD-9216508

Johanna McCully-Bonner
General Counsel
Texas Commission on Law
Enforcement Officer
Standards and
Education

Earliest possible date of adoption: January 18, 1993

For further information, please call: (512) 450-0188

◆ ◆ ◆
TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 50. Day Activity and Health Services

Provider Eligibility

• 40 TAC §50.2908

The Texas Department of Human Services (DHS) proposes an amendment to §50.2908, concerning contracts in its Day Activity and Health Services (DAHS) chapter. The purpose of the amendment is to revise how the effective date of a provider contract is determined. The effective date of the contract will be the date DHS receives the license or license notice from the Texas Department of Health or the facility.

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

Mr. 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 assurance that a client is placed in a facility only after the facility is issued a license. 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 Maria Montoya at (512) 450-3155 in DHS's Community Care Section. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-307, Texas Department of Human Services E-503, 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.

§50.2908. *Contracts.*

- (a) (No change.)

(b) To contract with DHS to provide day activity and health services, the facility must [The effective date of the provider contract for an initial certification is the date the on-site survey is completed by the Texas Department of Health if the facility meets]:

(1) be licensed by the Texas Department of Health (TDH) as an adult day health care facility; and [all health and safety standards;]

(2) meet all day activity and health services program standards. [all program standards as certified by the DHS certifying officer; and]

[(3) any other requirements imposed by DHS.]

(c) The effective date of the provider contract is the date DHS receives the license or license notice from TDH or the facility. [If the facility does not meet all of the requirements specified for an initial certification, the contract is effective on the earlier of the following dates:

[(1) the day the facility meets all requirements; or

[(2) the day the certifying officer accepts the facility's plan of correction.

[(d) The effective date of the provider contract for facilities which have a current contract is the day after the expiration date of the previous contract if the facility continues to meet certification and contract requirements.

[(e) The effective date for any provider contract cannot be earlier than the effective date of the license issued by the Texas Department of Health.]

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 December 11, 1992.

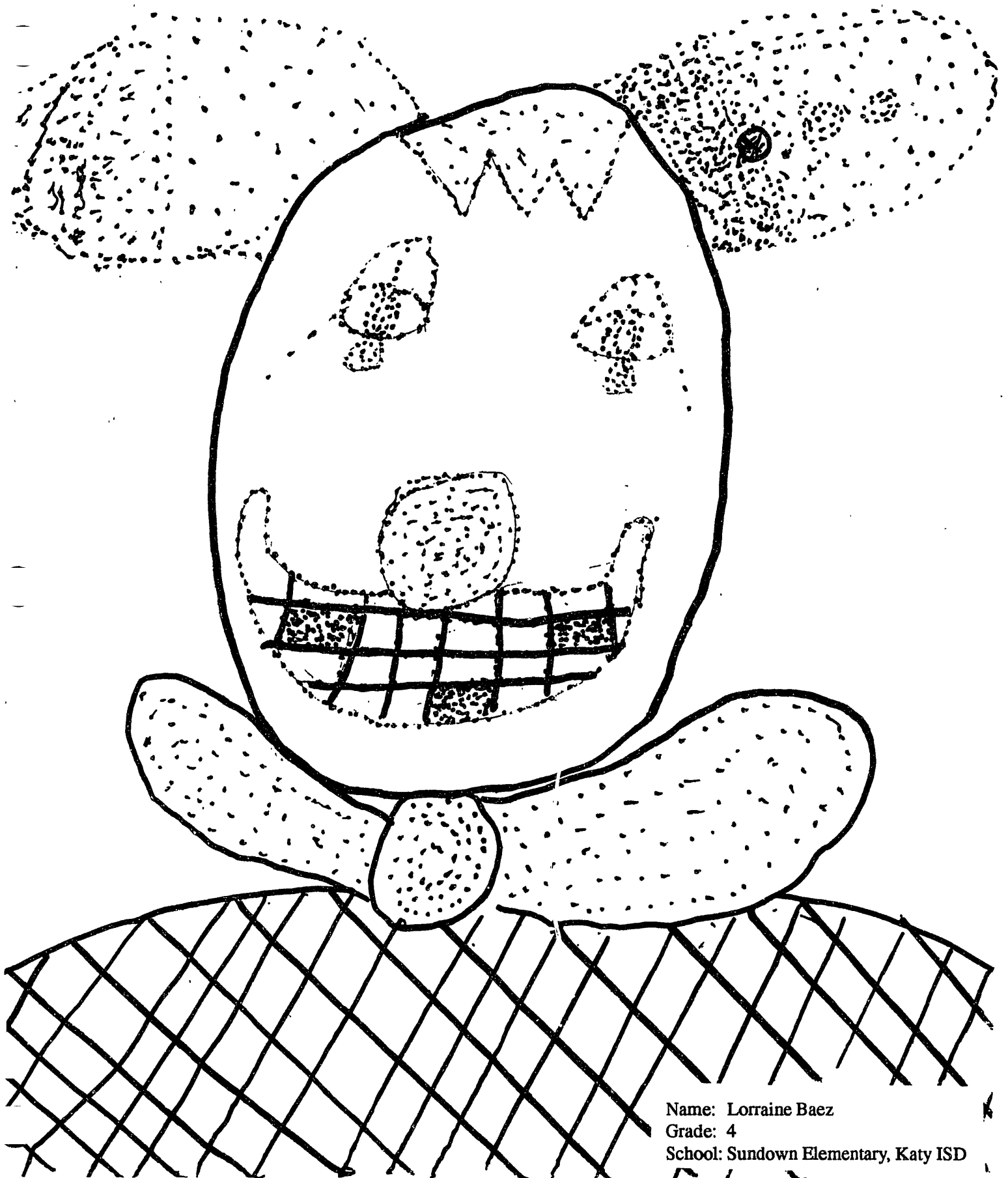
TRD-9216543

Nancy Murphy
Agency Liaison, Policy and
Document Support
Texas Department of
Human Services

Proposed date of adoption: February 15, 1993

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





Name: Lorraine Baez
Grade: 4
School: Sundown Elementary, Katy ISD

Withdrawn Sections

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

TITLE 31. NATURAL RE- SOURCES AND CON- SERVATION

Part II. Texas Parks and Wildlife Department

Chapter 69. Resource Protection

Memorandum of Understanding

• 31 TAC §69.71

The Texas Parks and Wildlife Department has withdrawn from consideration for permanent adoption a proposed new §69.71 which appeared in the July 21, 1992, issue of the *Texas Register* (17 TexReg 5062). The effective date of this withdrawal is December 10, 1992.

Issued in Austin, Texas, on December 10, 1992.

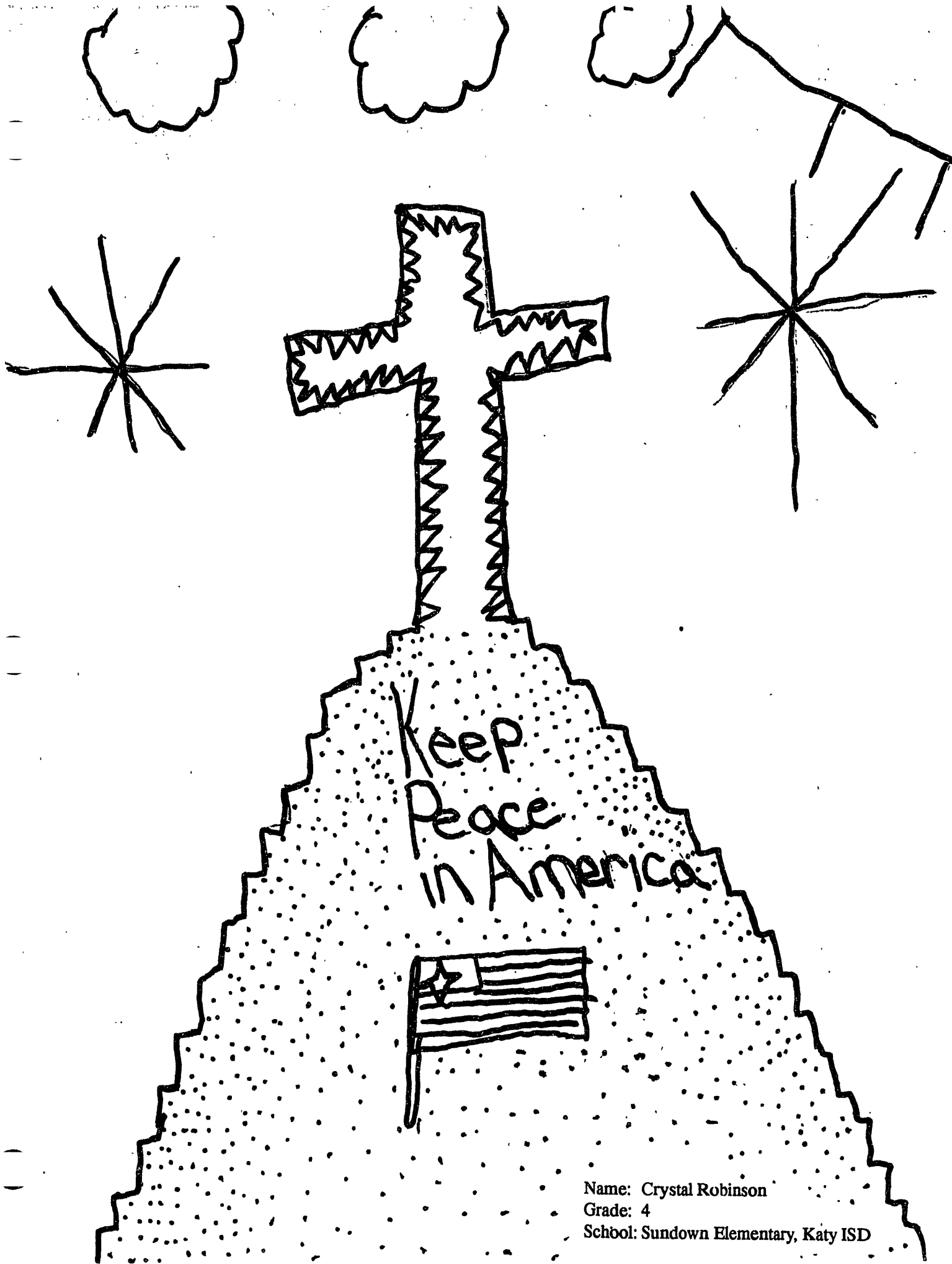
TRD-9216490

Paul M. Shinkawa
General Counsel
Texas Parks and Wildlife
Department

Effective date: December 10, 1992

For further information, please call: (512)
389-4867





Name: Crystal Robinson
Grade: 4
School: Sundown Elementary, Katy ISD

Adopted Sections

An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 15. Consumer Services Division

Texas Weights and Measures

• 4 TAC §15.13

The Texas Department of Agriculture adopts an amendment to §15.13, concerning Texas weights and measures, without changes to the proposed text as published in the October 23, 1992, issue of the *Texas Register* (17 TexReg 7499).

The department is amending the section in order to clarify that the inspection requirements of that section are applicable to commodities in standard weight package form. The amendment also updates the tables used for inspection procedures to be in conformity with the National Institute of Standards and Technology.

The amendments specifically make §15.13 applicable to standard weight packages, update the title of publication used by the department in its sampling procedures; and update the tables used for sampling by the department.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Agriculture Code, Chapter 13, which provides the Texas Department of Agriculture with the authority to promulgate rules establishing the standard fill for commodities in package form.

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

Issued in Austin, Texas, on December 8, 1992.

TRD-9216425

Dolores Alvarado Hibbs
Chief Administrative Law
Judge
Texas Department of
Agriculture

Effective date: December 30, 1992

Proposal publication date: October 23, 1992

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



TITLE 22. EXAMINING BOARDS

Part XIII. Texas Board of Licensure for Nursing Home Administrators

Chapter 247. Continuing Education

• 22 TAC §247.4

The Texas Board of Licensure for Nursing Home Administrators adopts an amendment to §247.4, concerning continuing education sponsor fee, with changes to the proposed text as published in the June 16, 1992, issue of the *Texas Register* (17 TexReg 4327).

Historically, the board has not taken an active role in continuing education, but with the board's new leadership and direction, it has assigned the formerly part-time duties to a full-time position. There is no current fee assessed for reviewing and approving the curriculum, processing and promoting educational opportunities and results, monitoring classes and class evaluations, or investigating alternative continuing education possibilities.

The new rules require a \$10 fee per licensed nursing home administrator seminar attendee, to be assessed to continuing education sponsors outside of the Texas Board of Licensure for Nursing Home Administrators. These fees will be due upon the submission of the seminar list of licensed nursing home administrators attendees turned into the agency by the sponsors for continuing education credit.

The following comments were received during the comment period concerning the proposed sections. The agency desires to address and explain the comments that were received: the \$10 fee should already be covered by the license fee; the fee will serve no purpose other than to increase the bureaucracy of the TBLNHA; it appears to me that the Board and Agency are merely after a new revenue service rather than improving education; how do you propose to improve the seminars by imposing a \$10 fee that will not be available to the sponsoring organization to pay for better programs?; if additional revenue is needed, why not utilize excess funds that have been generated, in lieu of placing an additional and unnecessary burden on the administrators of this state. A report submitted to the Sunset Commission by the Licensure Board indicates that \$170,000 was turned back last year; I understand all money collected by agencies of the state is required

by law to be deposited in the state general fund, not retained by the agency to spend as it wishes. If this is true, my \$10 each time will just go to the state fund; there has been no effort by TBLNHA to identify how the current program is lacking or how a \$10 fee would improve course content; what is currently wrong with the quality of the seminars?; since this fee will supposedly apply to all attendees regardless of whether or not they hold an administrator's license, I would like to know how you intend to justify this action to other licensing agencies; if there are problems with particular providers then the Board should deal with their specific situation rather than impose constraints on the provider groups as a whole; the posting in the *Texas Register* states there will be no affect on small businesses. This does not seem to be the case. Ownership, including both large and small operators, will ultimately pay the fee for most administrators attending sessions. These costs, in turn, will be passed on to the state in medicaid costs or to private paying patients, so the cost impact has been underestimated by TBLNHA; my seminars for this fall 1992 have already been planned and advertised. If the fee is approved will this go into effect in 1993?; the \$10 fee per seminar makes no distinction among three-hour credit seminars and those of six hours of some other length; there are apparent errors in the Preamble relating to the estimated cost and estimated increase in revenue. The figures presented are only for four years rather than the required five. The proposed rule does not clearly establish a length of time for comments as is usual with *Texas Register* procedure; as a general state policy most other professional licensing agencies set continuing educational requirements and approve courses. We feel that this proposal is out of step with standard practice, would stifle innovation, and limit diversity among types of educational offering; the Preamble states that the cost to sponsoring organizations will range from \$2,341 to \$2,633 per year. Since the Preamble assumes that the fee will not be passed on, this figure is also inaccurate. TAHA alone anticipates at least 1,200 attendees this year at continuing education seminars we sponsor that are approved for credit, or \$12, 000 for just one of 19 sponsoring organizations.

Commenters opposing adoption of the amendment were: Texas Health Care Association; 91 Individuals; and Texas Association of Homes for the Aging.

The Licensure Board for Nursing Home Administrators intends to conduct a thorough assessment of the continuing education program to determine its effectiveness and valid-

ity and to identify problems or shortfalls within the seminars offered through sponsors. The \$10 continuing education fee is but one aspect of this process. A 1991 survey of licensed nursing home administrators mandated that the board take an active role in continuing education. The continuing education fee will enable the board to meet this mandate by assigning a full-time education specialist to review and approve curriculum, process and promote educational opportunities and results, monitor classes and prepare evaluations, and to investigate alternative continuing education possibilities. The board does not feel that the rule is out of step with the standard practices of other licensing boards. The board feels that the rule would not stifle innovation or limit diversity among the types of educational offerings, but would foster innovation and encourage diversity by allowing for the development of alternative approaches to continuing education.

The fee would not be required for seminars approved before the rule becomes effective. Only seminars submitted for approval after the rule is passed will be required to comply.

The wording of the rule has been changed to include only those seminar participants who are licensed nursing home administrators.

The original \$250 licensure fee covers the processing of the application and an applicant's initial testing. Renewal fees are set by the legislature and go directly into special revenue fund number 137. These funds are not appropriated to TBLNHA. The \$177,301 that was previously turned back to the general revenue fund was accumulated over a number of years. Its return was mandated by Senate Bill 222 and was out of the agency's control. We do not expect an accumulation of funds in the future.

The agency stands by its assessment on the cost to sponsoring organizations. These figures were determined from statistics compiled by the agency for fiscal year 1991. The report titled "Annual Sum Participation in Sponsored Conferences" showed the total number of licensed nursing home administrators attending seminars for the 23 sponsors. To arrive at the cost to sponsoring organizations, the agency took the current number of active licensed administrators and increased the total by eight percent per year. This number was multiplied by the average number of classes taken by an administrator per year and the sum was multiplied by \$10. The total of that equation was divided by the number of approved sponsors (23). We feel that this is an adequate formula for determining the average cost for each sponsor.

When this rule was published an error was made by the *Texas Register*. A letter was sent to the *Texas Register* explaining their error and requesting a correction. Because the agency expected the rule to become effective in 1992, the proposed preamble included this year as the first of the five years of anticipated economic cost to persons who are required to comply with the rule. Although it was expected that the rule would be effective, the agency would exempt organizations from complying for previously approved seminars. A comment period was not specified because the *Texas Register* does not require

that a length of time for comments be specified in a proposed rule. Comment periods of varying lengths can be stipulated if the agency desires to extend the comment period beyond 30 days. If none is specified the comment period defaults to 30 days from the date of publication.

The amendment is adopted under Texas Civil Statutes, Article 4442d, §8, which provide TBLNHA with the authority to make rules and regulations not inconsistent with law as may be necessary or proper for the performance of its duties, and to take such other actions as may be necessary to enable the State to meet the requirements set forth in the Social Security Act, §1908 (42 United States Code Annotated §1396g), the Federal rules and regulations promulgated thereunder, and other pertinent Federal authority; provided, however, that no rule shall be promulgated, altered, or abolished without the approval of a two-thirds majority of the Board.

§247.4. Continuing Education.

(a) (No change.)

(b) Any course, seminar, or workshop designed to meet the requirements and qualifications for renewal of a nursing home administrator's license shall be registered and approved in accordance with §247.1 of this title (relating to Registration of Educational Programs) and include subject areas designated in §247.3 of this title (relating to College Courses/Programs of Study). Upon submission of attendance information, approved continuing education sponsors must submit a \$10 fee for each licensed nursing home administrator receiving credit for the seminar. Continuing education credit will not be given until such fees are received.

(c)-(e) (No change.)

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

Issued in Austin, Texas, on December 8, 1992.

TRD-9216497 Janet Monteros
Assistant Attorney General
State of Texas Office of
the Attorney General

Effective date: December 31, 1992

Proposal publication date: June 16, 1992

For further information, please call: (512) 458-1955

Chapter 255. Public Comment

• 22 TAC §255.1, §255.2

The Texas Board of Licensure for Nursing Home Administrators (TBLNHA) adopts new §255.1 and §255.2, concerning public comment, without changes to the proposed text as published in the August 7, 1992, issue of the *Texas Register* (17 TexReg 5505).

The proposed rules are created to promote open communication between the Board and

its public. They will facilitate a fair and equal opportunity for all citizens to present information and opinions to the Board in an orderly fashion.

The new chapter sets policies and procedures for the Board to receive public comments at hearings and at board or committee meetings.

No comments were received regarding adoption of the new sections.

The new sections are adopted under Texas Civil Statutes, Article 4442d, §8, which provide TBLNHA with the authority to make rules and regulations not inconsistent with law as may be necessary or proper for the performance of its duties, and to take such other actions as may be necessary to enable the State to meet the requirements set forth in the Social Security Act, §1908 (42 United States Code Annotated, §1396g), the Federal rules and regulations promulgated thereunder, and other pertinent Federal authority, provided, however, that no rule shall be promulgated, altered, or abolished without the approval of a two-thirds majority of the Board.

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

Issued in Austin, Texas, on December 8, 1992.

TRD-9216496 Janet Monteros
Assistant Attorney General
State of Texas Office of
the Attorney General

Effective date: December 31, 1992

Proposal publication date: August 7, 1992

For further information, please call: (512) 458-1955

◆ ◆ ◆ Part XXIII. Texas Real Estate Commission

Chapter 535. Provisions of the Real Estate License Act

Termination of Salesman's Association with Sponsoring Broker

• 22 TAC §535.121

The Texas Real Estate Commission adopts an amendment to §535.121, concerning notifications required when a broker's sponsorship of a salesman comes to an end, without changes to the proposed text as published in the October 23, 1992, issue of the *Texas Register* (17 TexReg 7513).

The amendment requires a broker to notify a salesman immediately in writing if the broker terminates the sponsorship and requires a salesman to notify the broker immediately in writing if the salesman leaves the sponsorship.

The amendment is necessary to avoid confusion between brokers and salesmen they sponsor as to the authority of the salesmen to

act for the brokers.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

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

Issued in Austin, Texas, on December 11, 1992.

TRD-9216580 Mark A. Moseley
General Counsel
Texas Real Estate
Commission

Effective date: February 1, 1993

Proposal publication date: October 23, 1992

For further information, please call: (512) 465-3960



Licensed Real Estate Inspectors

• 22 TAC §535.221

The Texas Real Estate Commission adopts new §535.221, concerning advertisements, with changes to the proposed text as published in the October 23, 1992, issue of the *Texas Register* (17 TexReg 7513).

The new section establishes guidelines for advertisements used by real estate inspectors and their sponsored inspectors-in-training or apprentices. The new section is necessary to ensure that consumers know who is responsible for advertisements placed by inspectors and to prevent misleading advertising.

The Texas Real Estate Inspector Committee recommended that the definition of the term "advertisements" be amended to include purchased telephone directory displays. The commission concurred and made the suggested change.

The new section is adopted under Texas Civil Statutes, Article 6573a, §5(h), which provide the Texas Real Estate Commission with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§535.221. Advertisements.

(a) For the purposes of this section advertisements include, but are not limited to, inspection reports, business cards, invoices, signs, purchased telephone directory displays, and advertising by newspaper, radio, and television.

(b) Advertisements by a person li-

censed as a real estate inspector or inspector-in-training or registered as an apprentice inspector shall contain the name or assumed business name of the licensee or registrant. If the person is licensed as an inspector or inspector-in-training, the advertisements shall also contain the license number of the person. If the person is licensed as an inspector-in-training or registered as an apprentice inspector, the advertisements shall also contain the following:

(1) the name of the person's sponsoring inspector; and

(2) a statement indicating that the person is sponsored by that inspector.

(c) A licensed inspector, inspector-in-training, or registered apprentice inspector shall immediately notify the commission in writing of the licensee or registrant's use of an assumed name in the inspection business.

(d) The commission may reprimand or suspend or revoke the license or registration of a person who is found to have engaged in false or misleading advertising or to have failed to comply with provisions of this section.

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

Issued in Austin, Texas, on December 11, 1992.

TRD-9216581 Mark A. Moseley
General Counsel
Texas Real Estate
Commission

Effective date: February 1, 1993

Proposal publication date: October 23, 1992

For further information, please call: (512) 465-3960



• 22 TAC §535.226

The Texas Real Estate Commission adopts an amendment to §535.226, concerning sponsorship of apprentice real estate inspectors and real estate inspectors-in-training, without changes to the proposed text as published in the October 23, 1992, issue of the *Texas Register* (17 TexReg 7513).

The amendment provides minimum guidelines for the supervision of apprentices and inspectors-in-training with regard to performance of inspections and review of inspection reports. The amendment is necessary to establish a means of determining whether inspectors provide adequate supervision of the apprentices and inspectors-in-training they supervise.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 6573a, §5(h), which autho-

rize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

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

Issued in Austin, Texas, on December 11, 1992.

TRD-9216582 Mark A. Moseley
General Counsel
Texas Real Estate
Commission

Effective date: February 1, 1993

Proposal publication date: October 23, 1992

For further information, please call: (512) 465-3960

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 3. Income Assistance Services

Subchapter G. Resources

The Texas Department of Human Services (DHS) adopts amendments to §3.704 and §3.902, without changes to the proposed text as published in the November 10, 1992, issue of the *Texas Register* (17 TexReg 7857).

The justification for the amendments is to exclude income and resources that are exempt by federal law (the Seneca Nation Settlement Act of 1990, Public Law 101-503) for Native Americans who receive AFDC and/or Food Stamps.

The amendments will function by ensuring that Native Americans of the Seneca Nation in Texas will receive the income and resource exclusions mandated by federal law to be effective January 1, 1993.

No comments were received regarding adoption of the amendments.

• 40 TAC §3.704

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 31, which provides the department with the authority to administer public assistance and financial assistance programs.

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

Issued in Austin, Texas, on December 11, 1992.

TRD-9216544 Nancy Murphy
Agency Liaison, Policy and
Document Support
Texas Department of
Human Services

Effective date: January 1, 1993

Proposal publication date: November 10, 1992

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

Subchapter I. Income

• 40 TAC §3.902

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 31, which provides the department with the authority to administer public assistance and financial assistance programs.

§3.902. Types.

(a) Aid to Families with dependent children. The Texas Department of Human Services (DHS) counts the following as income:

(1)-(28) (No change.)

(b) Aid to families with dependent children. Exclusions from income for AFDC are:

(1)-(9) (No change.)

(10) native and Indian claims. DHS exempts payments made under the Alaska Native Claims Settlement Act (Public Law 92-203, as amended by Public Law 100-241), Seneca Nation Settlement Act of 1990 (Public Law 101-503), and funds distributed or held in trust by the Indian Claims Commission for members of Indian tribes under Public Laws 92-254; 94-540; 94-114, §6; 95-433; 96-420; 98-64, §2; and 93-134, §7 (as amended by Public Law 97-458, §4).

(11)-(18) (No change.)

(c)-(d) (No change.)

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

Issued in Austin, Texas, on December 11, 1992.

TRD-9216545

Nancy Murphy
Agency Liaison, Policy and
Document Support
Texas Department of
Human Services

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Proposal publication date: November 10, 1992

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

Chapter 19. Long-Term Care Nursing Facility Requirements for Licensure and Medicaid Certification

Subchapter U. State and Local Requirements

• 40 TAC §19. 2003, §19.2004

The Texas Department of Human Services (DHS) adopts amendments to §19. 2003 and §19.2004. The amendment to §19.2003 is adopted with changes to the proposed text as published in the October 23, 1992, issue of the *Texas Register* (17 TexReg 7523). The amendment to §19.2004 is adopted without changes to the proposed text, and will not be republished.

The justification for the amendments is to comply with Rider 22 of the 1992-1993 Appropriations Act concerning the moratorium on increasing the number of Medicaid-contracted beds in Texas. The moratorium is applicable, with exceptions, to counties in which 90% of available nursing facility Medicaid beds are occupied. The moratorium is intended to enable DHS to control the total number of Medicaid-contracted beds while still protecting the availability of Medicaid services to clients.

The amendments will function by ensuring a more proportional distribution of available Medicaid-contracted beds across the state.

No comments were received regarding adoption of the amendments. However, DHS is adopting §19.2003(c)(5)(D) and (6)(C) with editorial changes referencing the remedies rules, and with a clarification of the intent in (c) (8)(B), approved by the DHS Board, concerning requirements for a Medicaid contract under the commissioner's waiver.

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§19.2003. Participation Requirements.

(a) (No change.)

(b) Except as specified in subsection (c) of this section and in §19. 2004 of this title (relating to Selection and Contracting Procedures for Adding Beds in High-Occupancy Areas), the Texas Department of Human Services (DHS) does not accept applications for participation in the Texas Medicaid Nursing Home Program or for a contract for nursing facility beds with any nursing facility that was not granted a valid certificate of need (CON) by the Texas Health Facilities Commission before September 1, 1985; a waiver by DHS prior to January 1, 1993; or other valid order that had the effect of authorizing the operation of the facility at the bed capacity for which participation is sought.

(c) If the provider meets all criteria, DHS may exempt the following facilities

from the policy stated in subsection (b) of this section.

(1) (No change.)

(2) Facilities that the Texas Department of Health (TDH) has decertified. DHS limits contracting to no more than the number of certified Medicaid beds on the effective date of decertification. The facility must meet all certification and contract requirements within 12 months of the effective date of decertification.

(3) Facilities whose Medicaid contracts are terminated because of the imposition of any remedies as specified in §19.2012 of this title (relating to Remedies for Violations of Title XIX Nursing Facility Provider Agreements). DHS limits contracting to no more than the number of certified Medicaid beds on the effective date of the contract cancellation. The facility must meet all certification and contract requirements within 12 months of the effective date of its contract cancellation.

(4) (No change.)

(5) Facilities that add no more than 10 beds or 10% of the existing number of certified Medicaid beds, whichever is less, within a 24-month period. In computing the 24-month periods, the first 24-month period begins September 1, 1985, and expires August 31, 1987. DHS will accept an application from a facility if the facility:

(A) (No change.)

(B) has an occupancy rate of at least 90% during each of the previous six months ending the last day of the month immediately preceding the month of application (the facility must submit written documentation acceptable to DHS substantiating the occupancy rate);

(C) is located in a county where the occupancy rate is at least 85% during each of the previous six months ending the last day of the month immediately preceding the month of application; and

(D) has not had remedies imposed as specified in this chapter which have resulted in contract cancellation in the 12-month period immediately preceding the month of application.

(6) Facilities whose capacity is less than 60 licensed beds. For reasons of efficiency, DHS will accept an application to contract up to 60 beds from a small facility of less than 60 licensed beds if the facility:

(A) is located in a county where the occupancy rate for contracted Medicaid beds is at least 85% during each of the previous six months immediately preceding the month of application (the facility must submit written documentation acceptable to DHS substantiating the occupancy rate);

(B) has a Medicaid contract to provide nursing facility services; and

(C) has not had remedies imposed as specified in this chapter which have resulted in contract cancellation in the 12-month period immediately preceding the month of application.

(7) Facilities contracted to operate as teaching nursing facilities. DHS will honor all teaching nursing facility approvals issued prior to January 1, 1993. If the facility has not completed construction requirements, and if the facility is not licensed and certified by TDH within 18 months of January 1, 1993, DHS will rescind its approval for the facility to operate as a teaching nursing facility. Facilities contracted under this paragraph must have met the following criteria.

(A) The facility must have provided DHS with acceptable written documentation that is entered into an affiliation agreement of at least five years' duration with a school offering an accredited family practice residency program and/or an accredited nursing program for registered or vocational nurses or both. The school must offer classroom training on its own campus or on the campus of an accredited college or university of which it is a part, and the curriculum must include a geriatric component. At the end of the five-year period, the facility may continue or discontinue the affiliation agreement at its own discretion.

(B) During the first year of the initial Medicaid contract for beds under this paragraph, DHS has not accepted or does not accept a change in the facility's ownership unless the new owner operates the facility under the same terms and conditions that existed at the time the contract under this paragraph was awarded. After the first year, DHS does accept an ownership change as long as the change does not affect continuance of the affiliation agreement between the facility and a school for the remainder of the five years specified in subparagraph (A) of this paragraph.

(8) Facilities that apply for participation under the special DHS commissioner's waiver authority.

(A) The commissioner of DHS has authority to waive the restriction on contracting in subsection (b) of this sec-

tion and direct DHS to enter into Medicaid contracts with nursing facilities that satisfy the requirements specified in this subparagraph. In a manner acceptable to DHS, each of these facilities must:

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

(B) DHS applies the following criteria when granting special DHS commissioner's waivers.

(i) If facilities have not completed construction requirements, and if facilities have not been licensed and certified by TDH within 18 months of the date on the DHS letter approving the waiver, the DHS commissioner will rescind the approvals for all such waivers granted on or after January 1, 1993. If a facility has a DHS commissioner's waiver, has not completed construction requirements, and has not been licensed and certified by TDH prior to January 1, 1993, the DHS commissioner will rescind the approval for the waiver 18 months after January 1, 1993.

(ii) DHS may grant one 90-day extension for extenuating circumstances, at the discretion of the DHS commissioner.

(d) (No change.)

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

Issued in Austin, Texas, on December 10, 1992.

TRD-9216463

Nancy Murphy
Agency Liaison, Policy and
Document Support
Texas Department of
Human Services

Effective date: January 1, 1993

Proposal publication date: October 23, 1992

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

Chapter 48. Community Care for the Aged and Disabled

Transition to Life in the Community Program

• 40 TAC §§48.2001-48.2005

The Texas Department of Human Services (DHS) adopts new §§48.2001-48.2005 concerning transition to life in the community program. New §§48.2001-48.2004 is adopted with changes to the proposed text as published in the October 6, 1992, issue of the *Texas Register* (17 TexReg 7201). New §48.2005 is adopted without changes to the proposed text and will not be republished.

The justification for the new sections is to assist individuals to live in a community setting by providing them with money to pay for

rent, utilities, and start-up costs incurred when moving out of institutions. Individuals may also apply for and receive adaptive devices or home modifications that will assist them to reside in a community setting.

The new sections will function by providing a significant cost savings to the state for each individual placed in the community since institutional costs are much higher than the benefits provided in the Transition to Life in the Community (TLC) Program.

No comments were received regarding adoption of the sections. DHS, however, has initiated several changes to the text. In §48.2001, for the community setting definition, DHS has reordered the wording to clarify the meaning. Also in §48.2001, for the nursing facility waiver definition, DHS has added wording to define more precisely the specific waiver program. In §48.2002, DHS has reordered the subsections to clarify the meaning. Also, §48.2002(a) (1)(c)(i) has been revised to clarify that the individual is choosing to live in the community. In §48.2003(a), DHS has clarified that a person who receives Community Living and Support Services (CLASS) or Nursing Facility (NF) Waiver program services is not required to complete a separate application for TLC benefits. In §48.2003(b) and (c), DHS has added wording to define the date of application for a person who receives CLASS or NF Waiver program services. In §48.2004(a), DHS has deleted redundant wording. In §48.2004(f) (1)(A)(i), DHS has added wording to clarify what direct moving expenses are. In §48.224(g), DHS has substituted "household members" for "spouse" for situations in which the applicant lives with a person or persons other than a spouse.

The new sections are adopted under the Human Resources Code, Title 2, Chapters 22, 32, and 35, which provides the department with the authority to administer public assistance, medical assistance and support services for persons with disabilities programs.

§48.2001. *Definitions.* The following words and terms, when used in this subchapter, shall have the following meanings, unless the content clearly indicates otherwise.

Adaptive aids—Devices, controls, or appliances which enable persons to increase their abilities to perform activities of daily living or control the environment in which they live. Adaptive aids consist of the following services, including repair and maintenance not covered by the warranty:

(A) patient lifts:

(i) van lifts/adaptations;

(ii) wheelchair lifts;

(iii) porch or stair lifts;

(iv) hydraulic, manual, or other electronic lifts;

(B) mobility aids:

(i) positioning devices;

- (ii) braces, crutches, orthopedic shoes;
- (iii) orthotic devices;
- (iv) standing boards/frames/wheelchairs/batteries and chargers;

(C) control switches/pneumatic switches and devices:

- (i) sip and puff controls;
- (ii) adaptive switches/devices;

(D) environmental control units:

- (i) locks;
- (ii) electronic devices;
- (iii) safety restraints;
- (iv) voice-activated, light-activated, and motion-activated devices;

(E) medically necessary supplies:

- (i) tracheostomy care;
- (ii) decubitus care;
- (iii) ostomy care;
- (iv) respirator/ventilator care;
- (v) catheterization;
- (vi) diapers and linens;
- (vii) nutritional supplements;
- (viii) enteral feeding formulas and supplies;
- (ix) prescribed medications beyond the three-per-month limit under the Texas Medicaid program;

(F) communication aids (including repair, maintenance, and batteries):

- (i) communicators:
 - (I) direct selection communicators;
 - (II) alphanumeric communicators;
 - (III) scanning communicators;
 - (IV) encoding communicators;
 - (V) emergency response systems;

- (ii) speech amplifiers, aids, and assistive devices;

- (iii) interpreters;
- (iv) medically necessary durable medical equipment not covered within the amount, duration, and scope of the Texas Medicaid State Plan;

(v) customized seating systems;

- (vi) assistive devices, such as, reachers; stabilizing devices; weighted equipment; holders; shared, bent, built-up utensils; long-handled equipment; addition of friction covering; and coated feeding equipment;

- (vii) safety restraints and safety devices, such as, bed rails, safety padding, helmets, and safety restraints.

Case Manager—An employee of the Texas Department of Human Services (DHS) or of an agency which has contracted with DHS to provide case management services for the Community Living and Support Services program. The case manager determines eligibility and benefit levels in the Transition to Life in the Community (TLC) program, subject to final approval by DHS.

CLASS—The Community Living and Support Services program, a Medicaid waiver program for certain individuals who qualify for an Intermediate Care Facility for the Mentally Retarded (ICF-MR) VIII level of care. The statutory basis for the program is the Social Security Act, §1915(c).

Community setting—For persons seeking to obtain services through the CLASS or Nursing Facility Waiver programs, a community setting is any living arrangement which will allow the individual to receive waiver services from the particular waiver program the individual is otherwise eligible to receive. For all other persons, a community setting is any long-term living arrangement other than a nursing home, state hospital, medical or psychiatric hospital, rehabilitation facility, school for the blind, school for the deaf, Texas Youth Commission facility, Texas Department of Criminal Justice facility, or ICF-MR facility.

DHS—The Texas Department of Human Services.

Home modifications—Those services which assess the need for, arrange for, and provide modifications and/or improvements to a participant's living quarters to allow for community living and ensure safety, security, and accessibility. Home modification services consist of the following:

- (A) purchase or repair of wheelchair ramps;

- (B) modifications/additions to bathroom facilities:

- (i) roll-in showers;
- (ii) sink modifications;
- (iii) bathtub modifications;
- (iv) toilet modifications;
- (v) water faucet controls;
- (vi) floor urinal and bidet adaptations;
- (vii) plumbing modifications;
- (viii) turnaround space modifications;

(C) modifications/additions to kitchen facilities:

- (i) sink modifications;
- (ii) sink cut-outs;
- (iii) turnaround space adaptations;
- (iv) water faucet controls;
- (v) plumbing modifications/additions;
- (vi) worktable/worksurface adjustments/additions;
- (vii) cabinet adjustments/additions;

(D) specialized accessibility/safety adaptations/additions (including repair and maintenance):

- (i) door widening;
- (ii) electrical wiring;
- (iii) grab bars and handrails;
- (iv) automatic door openers/doorbells;
- (v) fire safety adaptations;
- (vi) medically necessary air filtering devices;
- (vii) medically necessary heating/cooling adaptations.

Institutional setting—A long-term care nursing facility licensed by the Texas Department of Health or an ICF-MR Level VIII facility licensed by the Texas Department of Health. For persons seeking to obtain services from the CLASS or Nursing Facility Waiver programs, an "institutional setting" is any setting which is not an allowable living arrangement for that program.

Nursing Facility Waiver—A Medicaid waiver program, based on the Social Security Act, §1915(c), which provides a comprehensive array of community-based services for adults over age 21 who qualify

for a nursing facility level of care and who meet all other eligibility criteria for this waiver.

TLC—The Transition to Life in the Community program.

§48.2002. Client Eligibility Criteria. To be eligible to receive benefits from the Transition to Life in the Community (TLC) program, the individual must meet the criteria specified in paragraphs (1) and (2) of this section.

(1) The individual must meet one of the criteria listed in subparagraphs (A)-(C) of this paragraph:

(A) be accepted for services under the Nursing Facility (NF) Waiver program and require the benefits of TLC services in order to move to a setting which is acceptable to the NF Waiver program;

(B) be accepted for services under the Community Living Assistance and Support Services (CLASS) program and require the benefits of the TLC program in order to move to a setting which is acceptable to the CLASS program; or

(C) be a Texas Medicaid recipient who:

(i) resides in a licensed nursing home which receives Medicaid payments for the recipient but who chooses to live in a community setting; and

(ii) has not been determined to be inappropriate for nursing home care as a result of Preadmission Screening and Annual Resident Review (PASARR) requirements, unless the individual is ineligible to receive services through a waiver allowed under the Social Security Act, §1915(c)(7) (B).

(2) The individual must meet all of the criteria specified in subparagraphs (A)-(D) of this paragraph:

(A) not have received prior benefits through the TLC program;

(B) have a plan of care for living in a community setting which demonstrates a reasonable expectation that daily living needs can be met appropriately in a community setting on an ongoing basis. Acceptance into the CLASS program or into the NF Waiver Program satisfies this requirement;

(C) demonstrate a financial ability to maintain ongoing household expenses after the temporary TLC assistance has been exhausted; and

(D) move to a community setting within four months of the date eligibility for TLC is determined; otherwise, the application will be denied. To be reconsidered for eligibility, the individual must re-apply and be placed at the end of the waiting list.

§48.2003. Application.

(a) An applicant or the designated responsible party must complete and sign an application to begin the eligibility determination process for the Transition to Life in the Community (TLC) program. An individual who has been accepted for services in the Community Living Assistance and Support Services (CLASS) or Nursing Facility (NF) Waiver program is not required to complete a separate application for TLC.

(b) Applications are processed on a first-come, first-served basis according to the date the signed and dated application is received by the case manager. For individuals accepted into the CLASS or NF Waiver programs, applications for TLC are processed in the order in which the Department of Human Services (DHS) is notified that the plan of care for CLASS or NF Waiver program has been completed and that the individual is applying for TLC.

(c) If funds are not available, an applicant is placed on the waiting list according to the date the case manager receives the application. For individuals accepted into the CLASS or NF waiver programs, applications for TLC are removed from a waiting list in the order in which DHS is notified that the individual's plan or care for waiver services has been completed and that the individual is applying for TLC.

§48.2004. Program Benefits.

(a) Transition to Life in the Community (TLC) program benefits are contingent upon the availability of program funds. If funds are not available, the applicant is placed on a waiting list.

(b) The Texas Department of Human Services (DHS) separates the allocation of program benefits to applicants entering the Community Living and Support Services program and all other applicants. DHS reserves the right to adjust the allocations to meet the demand for service.

(c) Approval of benefits must be obtained from DHS before any funds are distributed.

(d) An individual may receive program benefits only once.

(e) The TLC program will not provide benefits which the individual is eligible

and able to receive through any other programs.

(f) An eligible individual may receive two possible grants, as specified in paragraphs (1) and (2) of this subsection.

(1) Start-up grant.

(A) An eligible individual may receive a one-time grant of up to \$1,800 to pay for the following expenses related to moving and household start-up costs, if the expenses are approved by the case manager:

(i) expenses directly related to moving from an institutional setting to a community setting, such as the cost of paying others to move the household belongings, the cost of moving cartons, and the cost of transporting the individual to the community setting;

(ii) rent deposits for the community setting, limited to first and last month's rent plus reasonable damage and security deposits;

(iii) utility deposits for the community setting, including deposits required by electricity, gas, water, wastewater, telephone, and sanitation companies;

(iv) the first month's rent or mortgage payment at the community setting;

(v) the first month's utilities at the community setting;

(vi) cooking utensils, dishes, cleaning supplies, furniture, appliances, towels, sheets, blankets, and other items needed to set up a household in the community setting; and

(vii) other moving-related expenses and household start-up costs as approved by the case manager.

(B) An individual who is likely to receive Supplemental Security Income (SSI) benefits in the community setting may receive payment for mortgage payments, rent, utilities, and other household costs if the case manager verifies additional time is necessary to establish SSI eligibility in the community setting. These payments may be for up to six months or until the first SSI payment is received, whichever comes first, and are subject to the \$1,800 limit.

(2) Modification/adaptive aid grant. Except for individuals entering the CLASS program or the Nursing Facility Waiver program, an eligible individual may also receive a one-time grant of up to \$2,200 for the purchase of home modifications or adaptive aids which will enable the individual to reside in a community setting. Adaptive aids and home modifications must

be approved by the case manager and DHS. They must be included in the list of items for the definitions of adaptive aids and home modifications described in §48.2001 of this title (relating to Definitions).

(g) In the case of household members, the following paragraphs apply.

(1) If all individuals meet the eligibility criteria, each individual may receive both grants up to the maximum as long as no duplication of expenses occurs.

(2) If only one household member meets the eligibility criteria, only the eligible household member may receive either grant. The ineligible household member's moving-related expenses and household start-up costs may be included in the eligible household member's grant, subject to the overall \$1,800 limitation, provided that the ineligible household member is moving to the same community setting as the eligible household member.

(h) Payments may be made directly to the eligible individual or to the vendor of service. The payee must obtain a vendor identification number from the Texas State Comptroller of Public Accounts before payment can be made.

§48.2005. Client Rights.

(a) The applicant or the designated responsible party will receive written notification of the eligibility decision for the Transition to Life in the Community program from the case manager. If the application is granted, the written notice states the amount of the grant the individual will receive.

(b) The applicant or the designated responsible party may request a conference with the Texas Department of Human Services or Community Living and Support Services (CLASS) program managers to discuss denial of benefits or to discuss the amount of benefits. The applicant or designated responsible party may request a fair hearing to appeal a denial of eligibility or the level of benefits if the request is made within three months of the date of the eligibility decision.

(c) The eligible individual or the designated responsible party is entitled to participate fully in the determination of the specific services, adaptive aids, housing modifications, or other benefits are needed to enable a successful transition to a community setting.

(d) The eligible individual or the designated responsible party has the right to choose the community setting to which the individual will move, provided it meets the definition of a community setting in §48.2001 of this title (relating to Definitions). For individuals entering the CLASS

or Nursing Facility Waiver programs, this setting must be acceptable to the program.

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

Issued in Austin, Texas, on December 10, 1992.

TRD-9216462

Nancy Murphy
Agency Liaison, Policy and
Document Support
Texas Department of
Human Services

Effective date: January 15, 1993

Proposal publication date: October 6, 1992

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

TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 23. Division of Travel and Information

• 43 TAC §23.1

The Texas Department of Transportation adopts the repeal of §23.1, concerning division of travel and information, without changes to the proposed text as published in the October 9, 1992, issue of the *Texas Register* (17 TexReg 7051).

Repeal of this section is necessary because existing §25.8, entitled Maintenance of Designated Highways in Incorporated Cities, Towns, or Villages more adequately describes current department policies and procedures concerning the subject matter.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Articles 6666 and 6673b, which provide the Texas Transportation Commission with the authority to promulgate rules and regulations for the conduct of the work of the Texas Department of Transportation, and to enter into contracts with municipalities for maintenance of state highways.

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

Issued in Austin, Texas, on December 10, 1992.

TRD-9216501

Diane L. Northam
Legal Administrative
Assistant
Texas Department of
Transportation

Effective date: December 31, 1992

Proposal publication date: October 9, 1992

For further information, please call: (512) 463-8630

• 43 TAC §23.2

The Texas Department of Transportation adopts the repeal of §23.2, without changes to the proposed text as published in the October 9, 1992, issue of the *Texas Register* (17 TexReg 7051).

Repeal of this section is necessary because the subject matter of the section falls within the functional responsibilities of the department's Division of Maintenance and Operations, and therefore, belongs in Chapter 25, Division of Maintenance and Operations.

The subject matter will be reenacted in new §25.9 which is being contemporaneously proposed for adoption in an amended form to clarify and update the provisions of the rule, and to include provisions for historical routes.

No comments were received regarding adoption of the repeal.

The repeal is proposed under Texas Civil Statutes, Articles 6666 and 6673e-4, which provide the Texas Transportation Commission with the authority to promulgate rules and regulations for the conduct of the work of the Texas Department of Transportation, and provide for the designation of memorial highways and historical routes by local governments and the Texas Transportation Commission.

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

Issued in Austin, Texas, on December 10, 1992.

TRD-9216502

Diane L. Northam
Legal Administrative
Assistant
Texas Department of
Transportation

Effective date: December 31, 1992

Proposal publication date: October 9, 1992

For further information, please call: (512) 463-8630

Chapter 25. Division of Maintenance and Operations

General

• 43 TAC §25.9

The Texas Department of Transportation adopts new §25.9, concerning division of maintenance and operations, without changes to the proposed text as published in the October 9, 1992, issue of the *Texas Register* (17 TexReg 7055).

Texas Civil Statutes, Article 6673e-4, provide for the designation of memorial highways and historical routes by local governments and the Texas Transportation Commission.

New §25.9 replaces existing §23.2, concerning the naming of memorial highways, structures, and rest areas, which is contemporaneously being repealed. Existing §23.2 prescribes the policies and procedures

governing the designation and maintenance of memorial highways. New §25.9 reenacts the subject matter of §23.2 in an amended form to clarify and update the provisions of the rule, and to include provisions for historical routes. The subject matter of existing §23.2 is also being transferred to Chapter 25 since it is a function of the department's division of maintenance and operations.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Articles 6666 and 6673e-4, which provide the Texas Transportation Commission with the authority to promulgate rules and regulations for the conduct of the work of the Texas Department of Transportation, and provide for the designation of memorial highways and historical routes by local governments and Texas Transportation Commission.

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

Issued in Austin, Texas, on December 10, 1992.

TRD-9216503 Diane L. Northam
 Legal Administrative
 Assistant
 Texas Department of
 Transportation

Effective date: December 31, 1992

Proposal publication date: October 9, 1992

For further information, please call: (512) 463-8630

◆ ◆ ◆
• 43 TAC §25.10

The Texas Department of Transportation adopts new §25.10, concerning division of maintenance and operations, without changes to the proposed text as published in the October 9, 1992, issue of the *Texas Register* (17 TexReg 7056).

Senate Bill 1267, 72nd Legislature, 1991, added Texas Civil Statutes, Article 6674v-7, which prohibits persons from erecting, placing, or maintaining a sign on the right-of-way of a highway designated as part of the state highway system unless authorized by state law; authorizes the department to remove and dispose of unauthorized signs; and authorizes the department to adopt rules for the enforcement of the article.

New §25.10, Signs on State Highway Right-of-Way, provides as follows: subsection (a), Purpose, states the purpose of the section; subsection (b), Definitions, defines words and terms used in the section; subsection (c), Removal, authorizes the department to remove an unauthorized sign without prior notice, except that the department will provide 14-day notice to the owner of a permanent sign prior to removal, if the name and address of the owner is reasonably ascertainable, and will provide 31-day notice to the owner of a regulated encroaching sign prior to remedying the encroachment; subsection (d), Disposal, authorizes the department to dispose of a removed sign unless claimed by

the owner, and requires the department, prior to disposal, to provide written notice to the owner of a removed sign if the name and address of the owner is reasonably ascertainable; and subsection (e), Removal costs, provides that the owner of a removed sign must remit removal costs to the department, and describes how removal costs will be determined.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Articles 6666 and 6674v-7, which provide the Texas Transportation Commission with the authority to promulgate rules and regulations for the conduct of the work of the Texas Department of Transportation, and to adopt rules governing the removal and disposal of unauthorized signs.

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

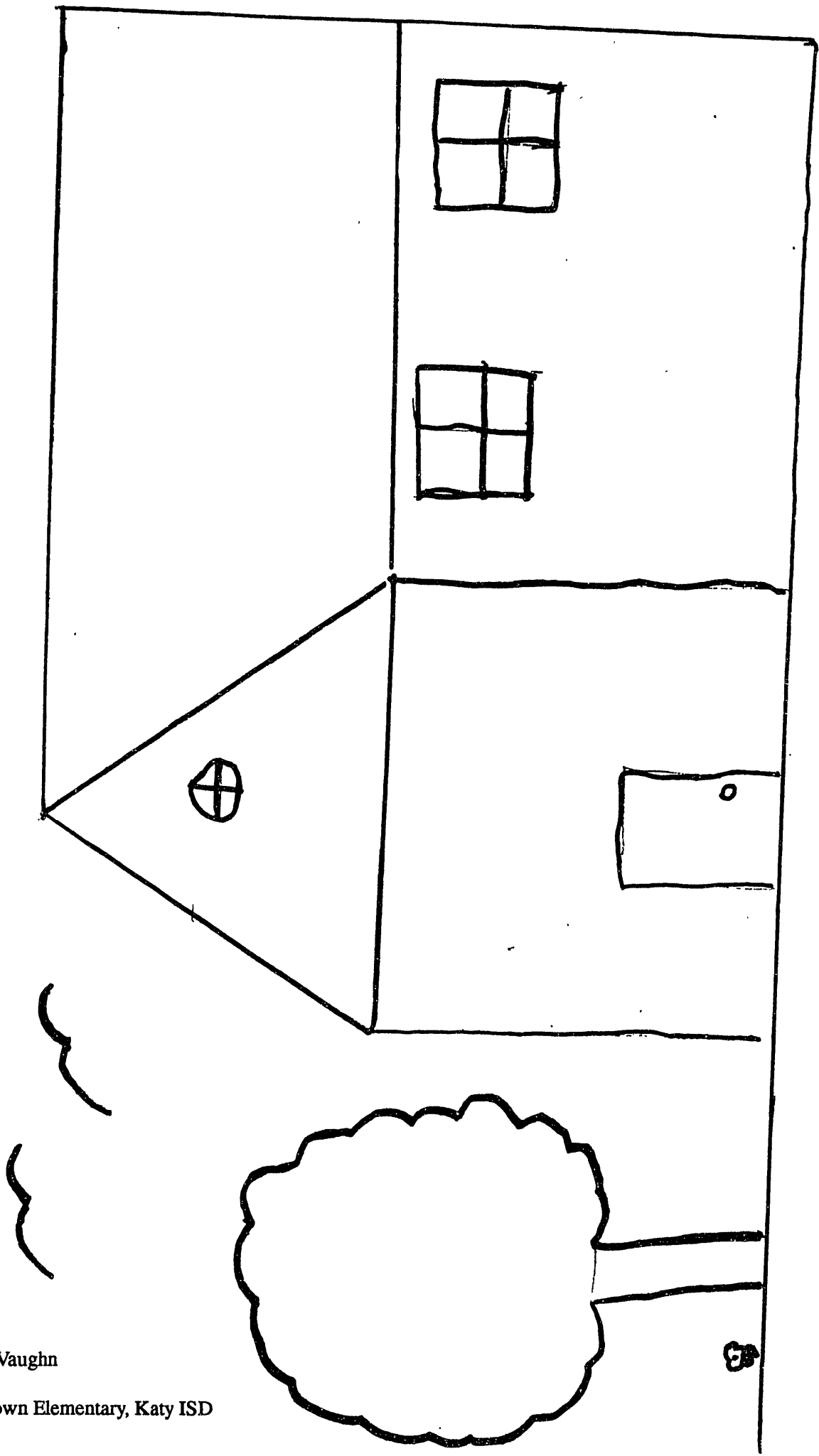
Issued in Austin, Texas, on December 9, 1992.

TRD-9216413 Diane L. Northam
 Legal Administrative
 Assistant
 Texas Department of
 Transportation

Effective date: December 30, 1992

Proposal publication date: October 9, 1992

For further information, please call: (512) 463-8630



Name: Nick Vaughn
Grade: 4
School: Sundown Elementary, Katy ISD

Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register*.

Emergency meetings and agendas. Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the Office of the Secretary of State in lobby of 221 East 11th Street, Austin. These notices may contain more detailed agenda than what is published in the *Texas Register*.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

Texas Department of Agriculture

Monday, December 21, 1992, 10:30 a.m. The Texas Agricultural Diversification Program Board of the Texas Department of Agriculture will meet at Stephen F. Austin Building, 1700 North Congress Avenue, Room 924A, Austin. According to the complete agenda, the board will discuss and act on: minutes of the November 6, 1992 meeting; grants; discuss other business; and discuss and act on next meeting date.

Contact: Richard Salmon, P.O. Box 12847, Austin, Texas 78711, (512) 463-7577.

Filed: December 11, 1992, 2:19 p.m.

TRD-9216542

Texas Bond Review Board

Friday, December 18, 1992, 10 a.m. The Texas Bond Review Board will meet in revised agenda meeting in Room 402, Central Services Building, 1711 San Jacinto Street, Austin. According to the revised agenda summary, the board will discuss additional item for other business; meet in executive session-consider applicants for executive director position; and consider and possibly vote on the selection of executive director, Texas Bond Review Board.

Contact: Beverly S. Bunch, 300 West 15th Street, Suite 409, Austin, Texas 78711, (512) 463-1741.

Filed: December 10, 1992, 4:08 p.m.

TRD-9216504

Texas Employment Commission

Tuesday, December 22, 1992, 8:30 a.m. The Texas Employment Commission will meet at the TEC Building, Room 644, 101 East 15th Street, Austin. According to the agenda summary, the commission will discuss approval of prior meeting notes; meet in executive session to discuss relocation of agency headquarters; actions, if any, resulting from executive session; consider proposed or pending legislation and possible action with respect thereto; consider collection activity regarding accounts 01-088046-7 and 00-843392-5; consider and designate signature authority for agency vouchers; internal procedures of commission appeals; consider and act on tax liability cases and higher level appeals in unemployment compensation cases listed on Commission Docket 51; and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: December 14, 1992, 4:05 p.m.

TRD-9216613

Texas Funeral Service Commission

Monday, December 21, 1992, 1:30 p.m. The Texas Funeral Service Commission will meet at the Texas Funeral Service Commission Office, 8100 Cameron Road, Suite B-550, Austin. According to the complete agenda, the commission will hold a legislative committee meeting to discuss legislative matters.

Contact: Larry A. Farrow, 8100 Cameron Road, Suite B-550, Austin, Texas 78753,

(512) 834-9992.

Filed: December 11, 1992, 4:06 p.m.

TRD-9216562

Office of the Governor

Monday, December 21, 1992, 9:30 a.m. The Automobile Theft Prevention Authority of the Office of the Governor will meet at the John H. Reagan Building, Room 107, 105 West 15th Street, Austin. According to the complete agenda, the authority will call the meeting to order; make introductions; discuss and approve proposed rule for fee assessment form and formula; and adjourn.

Contact: Linda Young, 221 East 11th Street, Austin, Texas 78701, (512) 463-1919.

Filed: December 11, 1992, 4:34 p.m.

TRD-9216573

Texas Department of Health

Monday, December 21, 1992, 9 a.m. The Advisory Committee for Personal Care Facilities of the Texas Department of Health will meet at the Texas Department of Health, 1100 West 49th Street, Room T-607, Austin. According to the complete agenda, the committee will review subcommittee comments regarding proposed rules in Title 25, *Texas Administrative Code*.

Contact: Janice Caldwell, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7709. For ADA assistance, call Richard Butler, (512) 458-7488 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: December 11, 1992, 3:03 p.m.

TRD-9216546

Friday, January 8, 1993, 9:30 a.m. The Texas Radiation Advisory Board Nominating Committee of the Texas Department of Health will meet at the Exchange Building, 8407 Wall Street, Room S-402, Austin. According to the complete agenda, the committee will discuss and possibly act on nomination of officers; appointments of board members; and other items not requiring board action.

Contact: Dave Lacker, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6688. For ADA assistance, call Richard Butler, (512) 458-7488 or T. D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: December 14, 1992, 10:35 a.m.

TRD-9216594

Texas Department of Insurance

Tuesday, December 22, 1992, 9 a.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby II, Fourth Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider the proposed plan of merger of Paramount National Life Insurance Company, Dallas, into Republic American Life Insurance Company, Phoenix, Arizona, with Republic American Life Insurance Company being the survivor, admission and redomestication of Republic American Life Insurance Company. Docket Number 11641.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby I, Austin, Texas 78701, (512) 475-2983.

Filed: December 14, 1992, 2:31 p.m.

TRD-9216603

Wednesday, December 23, 1992, 9 a.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby II, Fourth Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider the application for amendment of the articles of incorporation of Paramount National Life Insurance Company, Dallas, increasing the authorized capital. Docket Number 11633.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby I, Austin, Texas 78701, (512) 475-2983.

Filed: December 14, 1992, 2:31 p.m.

TRD-9216602

Wednesday, December 23, 1992, 9 a.m.

The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby II, Fourth Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider the application for amendment of the articles of incorporation of Republic Bankers Life Insurance Company, Dallas, increasing the authorized capital. Docket Number 11634.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby I, Austin, Texas 78701, (512) 475-2983.

Filed: December 14, 1992, 2:31 p.m.

TRD-9216601

Wednesday, January 13, 1993, 10 a.m. The State Board of Insurance of the Texas Department of Insurance will meet in Room 100, William P. Hobby Building, 333 Guadalupe Street, Austin. According to the complete agenda, the board will hold a public hearing under Docket Number 1967 to consider a rate filing outside statutory limitation filed by the Phoenix Insurance Company, pursuant to Article 5.101, §3(f), which requests a rate 45% above the benchmark rate for private passenger automobiles for substandard business.

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

Filed: December 11, 1992, 10:39 a.m.

TRD-9216526

Texas Board of Private Investigators and Private Security Agencies

Wednesday, December 16, 1992, 9 a.m. The Texas Board of Private Investigators and Private Security Agencies held an emergency revised agenda meeting at the Worthington Hotel, 200 Main Street, Fort Worth. According to the emergency revised complete agenda, the board added the following items for new business: presentation and possible board approval of private investigations courses by William C. Dear and Associates, Inc.; and public comments. The emergency status was necessary due to there being no such training readily available in the State of Texas. The school was already in existence and there was a need for this type of training.

Contact: Clema D. Sanders, 313 East Anderson, Suite 200, Austin, Texas 78752, (512) 463-5545.

Filed: December 10, 1992, 11:39 a.m.

TRD-9216459

Texas Department of Protective and Regulatory Services

Friday-Saturday, December 18-19, 1992, 8 a.m. The Board of the Texas Department of Protective and Regulatory Services will meet in the TABC Board Room, 5806 Mesa Drive, Austin. According to the complete agenda, the board will consider minutes; excused absences; public testimony; current efforts and potential options for increasing PRS revenue through fines and fees, maximizing PRS receipt of federal funds, and implementing community partnerships; staff recommendations for policy or legislative amendments to streamline procedures or to narrow scope of responsibility within all PRS program areas in accordance with Fiscal Year 1994-1995 budget; PRS LAR revisions and action regarding the HHS consolidated budget; child placing agency standards; automation briefing; and budget adjustments fiscal year 1993. The board will meet in closed session with legal counsel on pending litigation in C. Child, a minor, by and through Phillip Jenkins and Lana Jenkins et al vs. Camille Miller. The board will continue meeting in closed executive session to evaluate and consider the duties of personnel serving in exempt positions; the 30 administrative support functional categories, including salary group classifications, and filling the position of executive director. The board will reconvene in open session to take action, if necessary, resulting from discussion in executive session; and at 8 a.m. on Saturday, the board meeting will continue with regular agenda.

Contact: Sherry Wilkie, P.O. Box 149030, Mail Code W-639, Austin, Texas 78714-9030, (512) 450-4890.

Filed: December 10, 1992, 3:57 p.m.

TRD-9216500

Public Utility Commission of Texas

Monday, December 21, 1992, 2 p.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 11650, application of Navasota Valley Electric Cooperative, Inc. for authority to change rates.

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

Filed: December 10, 1992, 2:57 p.m.

TRD-9216492

Monday, December 28, 1992, 9 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 11623-petition of Houston Lighting and Power Company to change its economy sales pricing methodology from Gensom-D to Energy Management and Control System (EMACS).

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

Filed: December 14, 1992, 3:09 p.m.

TRD-9216607

Tuesday, December 29, 1992, 9 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 11566-application of United Telephone Company of Texas, Inc. for approval of new Advanced Business Connection (ABC) Service.

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

Filed: December 14, 1992, 3:08 p.m.

TRD-9216606

Tuesday, January 12, 1993, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a hearing on the merits in Docket Number 11337-application of GTE Southwest, Inc. to establish rates for a service called Pseudo Number.

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

Filed: December 14, 1992, 3:10 p.m.

TRD-9216608

Thursday, January 28, 1993, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 11624, complaint of Lizzie J. Lovall and Keeble Lovall against Southwestern Bell Telephone Company.

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

Filed: December 10, 1992, 2:58 p.m.

TRD-9216493

Texas Racing Commission

Monday, December 14, 1992, 10 a.m. The Texas Racing Commission held an emergency meeting at the Brown-Heatly Building, Section 1420-1430, 4900 North Lamar Boulevard, Austin. According to the complete agenda, the commission considered and acted on request for additional simulcasting at Trinity Meadows during the Spring, 1993. The emergency status was necessary to facilitate the completion of the grandstand facility, which will further protect the patrons and licensees.

Contact: Paula Cochran Carter, 9420 Research Boulevard, Echelon III, Suite 200, Austin, Texas 78759, (512) 794-8461.

Filed: December 11, 1992, 4:50 p.m.

TRD-9216575

Railroad Commission of Texas

Monday, December 21, 1992, 9:30 a.m. The Railroad Commission of Texas will meet in the First Floor Conference Room (1-111), William B. Travis Building, 1701 North Congress Avenue, Austin. Agendas follow.

The commission will consider and act on the personnel division director's report on division administration, budget, procedures, and personnel matters. The commission will meet in executive session to consider the appointment, employment, evaluation, re-assignment, duties, discipline and/or dismissal of personnel.

Contact: Mark Bogan, P.O. Box 12967, Austin, Texas 78711, (512) 463-7187.

Filed: December 11, 1992, 10:17 a.m.

TRD-9216516

The commission will consider and act on the investigation division director's report on division administration, investigations, budget, and personnel matters.

Contact: Marcelo R. Montemayor, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-6828.

Filed: December 11, 1992, 10:17 a.m.

TRD-9216517

The commission will consider and act on the office of information services director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Box 12967, Austin, Texas 78711, (512) 463-6710.

Filed: December 11, 1992, 10:17 a.m.

TRD-9216518

The commission will consider and act on the division director's report on budget and personnel matters related to organization of the Alternative Fuels Research and Education Division.

Contact: Dan Kelly, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7110.

Filed: December 11, 1992, 10:18 a.m.

TRD-9216519

The commission will meet in consideration of category determinations under §§102(c)(1)(B), 102(c)(1)(C), 103, 107, and 108 of the Natural Gas Policy Act of 1978.

Contact: Margie Osborn, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6755.

Filed: December 11, 1992, 10:18 a.m.

TRD-9216520

The commission will consider and act on the administrative services division director's report on division administration, budget, procedures, and personnel matters.

Contact: Roger Dillon, P.O. Box 12967, Austin, Texas 78711, (512) 463-7257.

Filed: December 11, 1992, 10:18 a.m.

TRD-9216521

The commission will consider and act on the automatic data processing division director's report on division administration, budget, procedures, equipment acquisitions, and personnel matters.

Contact: Bob Kmetz, P.O. Box 12967, Austin, Texas 78711, (512) 463-7251.

Filed: December 11, 1992, 10:18 a.m.

TRD-9216522

The commission will consider and act on the office of the executive director's report on commission budget and fiscal matters, administrative and procedural matters, personnel and staffing, state and federal legislation, and contracts and grants. The commission will discuss the implementation of individual operating budgets for each individual Commissioners's office; a proposed training agreement for the Gas Utility Section of the Legal Division. The commission will meet in executive session to consider the appointment, employment, evaluation, re-assignment, duties, discipline and/or dismissal of personnel, and pending litigation. Consider a contract for public information services.

Contact: Walter H. Washington, Jr., P.O. Box 12967, Austin, Texas 78711, (512) 463-7274.

Filed: December 11, 1992, 10:18 a.m.

TRD-9216523

The commission will consider various applications and other matters within the juris-

diction of the agency including oral arguments at the time specified on the agenda. The commission may consider the procedural status of any contested case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received. The commission will meet in executive session as authorized by the Open Meetings Act.

Contact: Carole J. Vogel, P.O. Box 12967, Austin, Texas 78711, (512) 463-6921.

Filed: December 11, 1992, 10:19 a.m.

TRD-9216524

The commission will consider a motion for rehearing for Docket Number 7C-98321, to consider whether to enter a commission order assessing administrative penalties and/or requiring compliance with commission regulations on Eastern Exploration, Inc., Tina (11954) Lease Well Number 1, Byers (Gardner) Field, Runnels County.

Contact: Carole J. Vogel, P.O. Box 12967, Austin, Texas 78711, (512) 463-6921.

Filed: December 11, 1992, 4:21 p.m.

TRD-9216564

(According to the emergency revised agenda) The commission will consider a motion for rehearing for Docket Numbers 4-96,860, 4-96,861, 4-96,862, and 4-96, 863 for Oil and Gasland Company, Emil Hinze (06136) Lease, Well Number 2, Ramada, S. (3200) Field; Emil Hinze (06917) Lease, Well Number 1, Ramada, S. (2900) Field; Paul Vorwerk (05402) Lease, Well Numbers 1 and 3, Clara Driscoll, S. (3800 Oil) Field; and E. M. Hinze Lease Well Number 1 (I.D. Number 109341), Ramada, S. (3100) Field, Nueces County. The emergency revised agenda is necessary as of the regular posting deadline, the Hearings Examiner in this docket had not received notice of a Motion for Rehearing. After the posting deadline, the Hearings Examiner received such notice. Action on the Motion for Rehearing is required at the next regularly scheduled meeting, December 21, 1992, before the Motion for Rehearing is overruled by law.

Contact: Carole J. Vogel, P.O. Box 12967, Austin, Texas 78701, (512) 463-6921.

Filed: December 14, 1992, 4 p.m.

TRD-9216610

Texas Tech University

Thursday, December 17, 1992, 10:30 a.m. The Academic, Student, and Administrative Affairs Committee of Board of Regents of the Texas Tech University met in Room 2B152, Health Sciences Center Building, Campus, Lubbock. According to the complete agenda, the committee discussed ap-

proval of the minutes of October 29, 1992, meeting; considered: finding of fact regarding the appointment of an employee to another position of honor, trust, or profit; changed name of department from Theatre Arts to Department of Theatre and Dance; ratified leaves of absence and conferral of degrees for December 19, 1992, commencement; and reports.

Contact: Anne Davis, P.O. Box 42011, Lubbock, Texas 79409-2011, (806) 742-2161.

Filed: December 10, 1992, 2:19 p.m.

TRD-9216480

Thursday, December 17, 1992, 10:30 a.m. The Campus and Building Committee of Board of Regents of the Texas Tech University met in Room 2B152, Health Sciences Center Building, Campus, Lubbock. According to the complete agenda, the committee discussed approval of the minutes of October 29, 1992, meeting; considered: appoint project architect for renovation of auditorium in Agricultural Education and Communications Buildings, and limited services contract for replacement of Hulen/Clements Residence Hall roof; received bids for expansion of weight room in Student Recreation Center, installation of card activated residence halls door access system, and construction of emergency fuel oil storage system at Central Heating and Cooling Plant II and appoint project engineer; award construction contract for library addition to law school; ratified acceptance dates; and reports.

Contact: Anne Davis, P.O. Box 42011, Lubbock, Texas 79409-2011, (806) 742-2161.

Filed: December 10, 1992, 2:20 p.m.

TRD-9216482

Thursday, December 17, 1992, 10:30 a.m. The Committee of the Whole of the Board of Regents of the Texas Tech University met in Room 2B152, Health Sciences Center Building, Campus, Lubbock. According to the complete agenda, the committee considered: election of officers for chair and vice chair of Board of Regents; met in executive session: Vernon's Texas Civil Statutes, Article 6252-17, consultation with president and general counsel regarding pending and contemplated litigation, settlement offers, settlement negotiations, and matters confidential pursuant to Code of Professional Responsibility of State Bar of Texas; discussed prospective gifts to the University and Health Sciences Center and contractual negotiations contemplated and those in progress; discussed concerned evaluation and duties of Texas Tech University and Texas Tech University Health Sciences Center officers and employees; and conference with various employees for the purpose of receiving information and asking

questions of employees.

Contact: Anne Davis, P.O. Box 42011, Lubbock, Texas 79409-2011, (806) 742-2161.

Filed: December 10, 1992, 2:20 p.m.

TRD-9216486

Thursday, December 17, 1992, 10:30 a.m. (Revised agenda). The Committee of the Whole of the Board of Regents of Texas Tech University met in Room 2B152, Health Sciences Center Building, Campus, Lubbock. According to the complete revised agenda, the committee considered: enforceability of human dignity provisions in Code of Student Conduct; election of officers for chair and vice chair of Board of Regents; met in executive session: Vernon's Annotated Texas Civil Statutes, Article 6252-17, consultation with president and general counsel regarding pending and contemplated litigation, settlement offers, settlement negotiations, and matters confidential pursuant to Code of Professional Responsibility of State Bar of Texas; discussed prospective gifts to the University and Health Sciences Center and contractual negotiations contemplated and those in progress; discussed evaluation and duties of Texas Tech University and Texas Tech University Health Sciences Center officers and employees; and conference with various employees for the purpose of receiving information and asking questions of employees.

Contact: Anne Davis, P.O. Box 42011, Lubbock, Texas 79409-2011, (806) 742-2161.

Filed: December 14, 1992, 9:56 a.m.

TRD-9216592

Thursday, December 17, 1992, 10:30 a.m. The Development and Public Affairs Committee of Board of Regents of the Texas Tech University met in Room 2B152, Health Sciences Center Building, Campus, Lubbock. According to the complete agenda, the committee discussed approval of the minutes of October 29, 1992, meeting; and reports.

Contact: Anne Davis, P.O. Box 42011, Lubbock, Texas 79409-2011, (806) 742-2161.

Filed: December 10, 1992, 2:20 p.m.

TRD-9216483

Thursday, December 17, 1992, 10:30 a.m. The Finance Committee of Board of Regents of the Texas Tech University met in Room 2B152, Health Sciences Center Building, Campus, Lubbock. According to the complete agenda, the committee discussed approval of the minutes of October 29, 1992, meeting; considered: long-term sponsorship contracts for Dan Law Field scoreboard; award fire, lightning and ex-

tended coverage insurance policy on buildings and contents; revised operating guidelines for Center for Professional Development; budget adjustments for September and October, 1992; ratified delegation of authority; and reports.

Contact: Anne Davis, P.O. Box 42011, Lubbock, Texas 79409-2011, (806) 742-2161.

Filed: December 10, 1992, 2:19 p.m.

TRD-9216481

Thursday, December 17, 1992, 10:30 a.m. The Governmental Affairs Committee of Board of Regents of the Texas Tech University met in Room 2B152, Health Sciences Center Building, Campus, Lubbock. According to the complete agenda, the committee discussed approval of the minutes of October 29, 1992, meeting; and reports.

Contact: Anne Davis, P.O. Box 42011, Lubbock, Texas 79409-2011, (806) 742-2161.

Filed: December 10, 1992, 2:20 p.m.

TRD-9216485

Thursday, December 17, 1992, 10:30 a.m. The Research Affairs Committee of Board of Regents of the Texas Tech University met in Room 2B152, Health Sciences Center Building, Campus, Lubbock. According to the complete agenda, the committee discussed approval of the minutes of August 20, 1992, meeting; considered: appointment of individuals to the Board of Directors of the Texas Tech Research Foundation; and reports.

Contact: Anne Davis, P.O. Box 42011, Lubbock, Texas 79409-2011, (806) 742-2161.

Filed: December 10, 1992, 2:20 p.m.

TRD-9216484

Friday, December 18, 1992, 9:55 a.m. The Board of Regents of the Texas Tech University will meet at the Board Suite, Administration Building, Campus, Lubbock. According to the agenda summary, the board will discuss reports and act on: minutes; Academic, Student, and Administrative Affairs; Finance; Campus and Building; Development and Public Affairs; Research Affairs; and Committee of the Whole.

Contact: Anne Davis, P.O. Box 42011, Lubbock, Texas 79409-2011, (806) 742-2161.

Filed: December 10, 1992, 2:19 p.m.

TRD-9216479

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Texas Tech University Health Sciences Center

Thursday, December 17, 1992, 10:30 a.m.

The Academic, Student, Clinical, and Administrative Affairs Committee of Board of Regents of the Texas Tech University Health Sciences Center met in Room 2B152, Health Sciences Center Building, Campus, Lubbock. According to the complete agenda, the committee discussed approval of the minutes of October 29, 1992, meeting; and reports.

Contact: Anne Davis, P.O. Box 42011, Lubbock, Texas 79409-2011, (806) 742-2161.

Filed: December 10, 1992, 2:17 p.m.

TRD-9216472

Thursday, December 17, 1992, 10:30 a.m. The Campus and Building Committee of Board of Regents of the Texas Tech University Health Sciences Center met in Room 2B152, Health Sciences Center Building, Campus, Lubbock. According to the complete agenda, the committee discussed approval of the minutes of October 29, 1992, meeting; considered: approve budget, designs, and proceed with documents and bids and award construction contract for expansion of E3 student parking area at Health Sciences Center building, Lubbock; award construction contracts for renovation of shell space for expansion of Psychiatry Department/Southwest Institute on first level, Pod C, of Health Sciences Center building, Lubbock, and renovation of shell space for additional laboratories and offices on fifth level, Pod C, of Health Sciences Center building, Lubbock; and reports.

Contact: Anne Davis, P.O. Box 42011, Lubbock, Texas 79409-2011, (806) 742-2161.

Filed: December 10, 1992, 2:18 p.m.

TRD-9216474

Thursday, December 17, 1992, 10:30 a.m. The Committee of the Whole of the Board of Regents of the Texas Tech University Health Sciences Center met in Room 2B152, Health Sciences Center Building, Campus, Lubbock. According to the complete agenda, the committee considered: election of officers for chair and vice chair of Board of Regents; met in executive session: Vernon's Texas Civil Statutes, Article 6252-17, consultation with president and general counsel regarding pending and contemplated litigation, settlement offers, settlement negotiations, and matters confidential pursuant to Code of Professional Responsibility of State Bar of Texas; discussed prospective gifts to the University and Health Sciences Center and contractual negotiations contemplated and those in progress; discussed concerned evaluation and duties of Texas Tech University and Texas Tech University Health Sciences Center officers and employees; and conference with various employees for the purpose of receiving information and asking questions of

employees.

Contact: Anne Davis, P.O. Box 42011, Lubbock, Texas 79409-2011, (806) 742-2161.

Filed: December 10, 1992, 2:19 p.m.

TRD-9216478

Thursday, December 17, 1992, 10:30 a.m. The Development and Public Affairs Committee of Board of Regents of the Texas Tech University Health Sciences Center met in Room 2B152, Health Sciences Center Building, Campus, Lubbock. According to the complete agenda, the committee discussed approval of the minutes of October 29, 1992, meeting; and reports.

Contact: Anne Davis, P.O. Box 42011, Lubbock, Texas 79409-2011, (806) 742-2161.

Filed: December 10, 1992, 2:18 p.m.

TRD-9216475

Thursday, December 17, 1992, 10:30 a.m. The Finance Committee of Board of Regents of the Texas Tech University Health Sciences Center met in Room 2B152, Health Sciences Center Building, Campus, Lubbock. According to the complete agenda, the committee discussed approval of the minutes of October 29, 1992, meeting; and reports.

Contact: Anne Davis, P.O. Box 42011, Lubbock, Texas 79409-2011, (806) 742-2161.

Filed: December 10, 1992, 2:17 p.m.

TRD-9216473

Thursday, December 17, 1992, 10:30 a.m. The Governmental Affairs Committee of Board of Regents of the Texas Tech University Health Sciences Center met in Room 2B152, Health Sciences Center Building, Campus, Lubbock. According to the complete agenda, the committee discussed approval of the minutes of October 29, 1992, meeting; and reports.

Contact: Anne Davis, P.O. Box 42011, Lubbock, Texas 79409-2011, (806) 742-2161.

Filed: December 10, 1992, 2:18 p.m.

TRD-9216477

Thursday, December 17, 1992, 10:30 a.m. The Research Affairs Committee of Board of Regents of the Texas Tech University Health Sciences Center met in Room 2B152, Health Sciences Center Building, Campus, Lubbock. According to the complete agenda, the committee discussed approval of the minutes of October 29, 1992, meeting; considered: appointment of individuals to the Board of Directors of the Texas Tech Research Foundation; and reports.

Contact: Anne Davis, P.O. Box 42011, Lubbock, Texas 79409-2011, (806) 742-2161.

Filed: December 10, 1992, 2:18 p.m.

TRD-9216476

Friday, December 18, 1992, 9 a.m. The Board of Regents of the Texas Tech University Health Sciences Center will meet at the Board Suite, Administration Building, Campus, Lubbock. According to the agenda summary, the board will discuss reports and act on: minutes; President's report; Academic, Student, Clinical, and Administrative Affairs; Finance; Campus and Building; Development and Public Affairs; Research Affairs; and Committee of the Whole.

Contact: Anne Davis, P.O. Box 42011, Lubbock, Texas 79409-2011, (806) 742-2161.

Filed: December 10, 1992, 2:17 p.m.

TRD-9216471

Friday, December 18, 1992, 9:55 a.m. (Revised agenda). The Board of Regents of Texas Tech University will meet at the Board Suite, Administration Building, Campus, Lubbock. According to the revised agenda summary, the board will discuss reports and possibly act on: minutes; academic, student and administrative affairs; finance; campus and building; development and public affairs; research affairs; and committee of the whole.

Contact: Anne Davis, P.O. Box 42011, Lubbock, Texas 79409-2011, (806) 742-2161.

Filed: December 14, 1992, 9:55 p.m.

TRD-9216591

Texas Department of Transportation

Tuesday, December 22, 1992, 9:30 a.m. The Texas Transportation Commission of the Texas Department of Transportation will meet at the Dewitt C. Greer Building, 125 East 11th Street, First Floor, Austin. According to the agenda summary, the commission will discuss approval of minutes; execute contract awards/rejections/defaults/assignments; discuss routine minute orders; authorize: contract claim resolution; structure and allocation program; eminent domain proceedings; IH, US, SH and FM Road projects; application for public transportation funds; right-of-way leasing; sharing of technical resources for international planning; Department participation in Interagency Abandoned Rail Corridor Committee; use of TxDOT logo; consider: aviation matters; environmental projects; previous public hearing matters; meet in executive session with legal counsel and for

realty matters; rulemaking: 43 TAC Part 1, Chapter 31; and hear staff reports, resolutions, awards and recognitions.

Contact: Myrna Klipple, 125 East 11th Street, Austin, Texas 78701, (512) 463-8576.

Filed: December 14, 1992, 11:21 a.m.

TRD-9216596

University Interscholastic League

Wednesday, December 16, 1992, 9 a.m. The State Executive Committee of the University Interscholastic League met at the Sheraton Hotel, Colorado Room, Fifth and IH-35, Austin. According to the agenda summary, the committee discussed transfer case-Dallas Hillcrest High School participating in more meets than allowed; transfer case-Mr. Camilo Rodriguez of Rowe High School for allowing students to participate on consecutive days; transfer case-Gus Zavaletta of Brownsville Porter High School for soliciting grade changes for student athletes; discussed appeal of violation of athletic code by George Rodriguez, El Paso Bel Air High School and Eddie Fortenberry, Lockney High School; and allegation that Hampton of El Paso Austin High School violated Section 1201(b)(3).

Contact: Ronnie Northcutt, 2622 Wichita Street, Austin, Texas 78705, (512) 471-5883.

Filed: December 11, 1992, 4:01 p.m.

TRD-9216561

Wednesday, December 16, 1992, 1:30 p.m. The Appellate Committee of the University Interscholastic League met at the Sheraton Hotel, Creekside Room, Fifth and IH-35, Austin. According to the agenda summary, the committee discussed a case transferred by Dr. Lionel Meno-student athlete Brandon Choate, Highland Park High School, Amarillo.

Contact: Ronnie Northcutt, 2622 Wichita Street, Austin, Texas 78705, (512) 471-5883.

Filed: December 11, 1992, 4:01 p.m.

TRD-9216560

University of Texas at Austin

Monday, December 14, 1992, 1 p.m. The Council for Intercollegiate Athletics for Women of the University of Texas at Austin met at the Ex-Students' Association, Nowotny Room, 21st and San Jacinto Streets, University of Texas, Austin. According to the agenda summary, the council called the meeting to order; discussed ap-

proval of the minutes of previous meeting; old business; new business; announcements/information reports; and adjourned.

Contact: Jody Conrath, UT Austin, 33800 BEL 718, Austin, Texas 78712, (512) 471-7693.

Filed: December 10, 1992, 10:41 a.m.

TRD-9216456

Texas Water Commission

Wednesday, December 16, 1992, 8 a.m. The Texas Water Commission held an emergency meeting at the Stephen F. Austin State Office Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the commission considered the repeal of 31 Texas Administrative Code (TAC), §§330.411-330.530 and 330.533-330.534; and the adoption of emergency rules 31 TAC Chapter 312 for sludge disposal and lifting the current moratorium on the beneficial use registration program. The emergency status was necessary as emergency addendum was required in order to correct language in the caption.

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

Filed: December 11, 1992, 4:06 p.m.

TRD-9216563

Thursday, December 17, 1992, 6 p.m. The Sayles Creek Sediment Remediation Committee of the Texas Water Commission met at the Fire Sub-station, Corner of Ross and Pritchard Road, Commerce. According to the agenda summary, the committee discussed appropriate responses to the contamination in Sayles Creek.

Contact: Barbara Ferguson, 12118 North IH-35, Room 228, 1 (800) 633-9363.

Filed: December 11, 1992, 1:51 p.m.

TRD-9216533

Tuesday, January 12, 1993, 10 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin State Office Building, 1700 North Congress Avenue, Room 1146, Austin. According to the agenda summary, the examiners will discuss an application for reimbursement of expenses by Wholesalers, Inc.

Contact: Elizabeth Bourbon, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: December 11, 1992, 9:17 a.m.

TRD-9216514

Thursday, January 21, 1993, 9 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the Erath County Courthouse, Courtroom, On the Square, Stephenville. According to the

agenda summary, the commission will consider an application for a permit to authorize disposal of waste and wastewater from a dairy by David C. Morton and Martin Van Beek.

Contact: Deborah Thomas, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: December 11, 1992, 1:50 p.m.

TRD-9216532

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Legislative Oversight Committee on Worker's Compensation

Friday, December 18, 1992, 10 a.m. The Legislative Oversight Committee on Worker's Compensation will meet at the Reagan Building, Room 101, Austin. According to the complete agenda, the committee will call the meeting to order; discuss approval of minutes; hear presentation by Texas Punishment Standards Commission staff; discuss and possibly act on the 1993 report of the Legislative Oversight Committee on Worker's Compensation; and adjourn.

Contact: June L. Karp, P.O. Box 12068, Austin, Texas 78711, (512) 475-4991.

Filed: December 10, 1992, 10:11 a.m.

TRD-9216452

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Texas Workers' Compensation Insurance Fund

Friday, December 18, 1992, 10:30 a.m. The Board of Directors of the Texas Workers' Compensation Insurance Fund will meet at the Stouffer-Austin Hotel, Arboretum Boulevard, Austin. According to the agenda summary, the board will call the meeting to order; take roll call; discuss approval of minutes; public participation; fund activity reports; meet in executive session; present annual review (action item); consider budget for 1993 (action item); consider strategic plan; consider contract for MCM software; consider investment policy; hear president's report; discuss action items resulting from executive session deliberations; hear announcements; and adjourn.

Contact: Jodie Bowen, 100 Congress Avenue, Suite 300, Austin, Texas 78701, (512) 322-3851.

Filed: December 11, 1992, 4:29 p.m.

TRD-9216565

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Regional Meetings

Meetings Filed December 10, 1992

The Andrews Center Board of Trustees met at 2323 West Front Street, Board Room, Tyler, December 17, 1992, at 4 p.m. Information may be obtained from Dick DeSanto, P.O. Box 4730, Tyler, Texas 75712, (903) 597-1351. TRD-9216488.

The Brazos Valley Solid Waste Management Agency Board of Trustees met at the College Station Council Chambers, 1101 Texas Avenue, College Station, December 15, 1992, at 1:15 p.m. Information may be obtained from Cathy Locke, 1101 Texas Avenue, College Station, Texas 77840, (409) 764-3507. TRD-9216487.

The Burnet County Appraisal District Board of Directors met at 223 South Pierce, Burnet, December 17, 1992, at 6:30 p.m. Information may be obtained from Barbara Ratliff, P.O. Drawer E, Burnet, Texas 78611, (512) 756-8291. TRD-9216455.

The Cass County Appraisal District Board of Directors met at the Cass County Appraisal District, 502 North Main Street, Linden, December 14, 1992, at 7 p.m. Information may be obtained from Janelle Clements, 502 North Main Street, Linden, Texas 75563, (908) 756-7545. TRD-9216470.

The Colorado River Municipal Water District Board of Directors met at 400 East 24th Street, Big Spring, December 16, 1992, at 10 a.m. Information may be obtained from O. H. Ivie, Box 869, Big Spring, Texas 79721, (915) 267-6341. TRD-9216468.

The Coryell City Water Supply District Board of Directors held an emergency meeting at Andy's Restaurant, 2218 East Main, Gatesville, December 10, 1992, at 6:30 p.m. The emergency meeting was necessary due to allow work to begin on tank construction. Information may be obtained from Helen Swift, Route 2, Box 93, Gatesville, Texas 76528, (817) 865-6089. TRD-9216454.

The Deep East Texas Council of Governments Building Committee met at the First United Methodist Church, 329 Bowie, Jasper, December 17, 1992, at 10 a.m. Information may be obtained from Joan Draper, 274 East Lamar, Jasper, Texas 75951, (409) 384-5704. TRD-9216466.

The Deep East Texas Council of Governments Board of Directors met at the First United Methodist Church, 329 Bowie, Jasper, December 17, 1992, at 1 p.m. Information may be obtained from Joan Draper, 274 East Lamar, Jasper, Texas 75951, (409) 384-5704. TRD-9216467.

The Ellis County Appraisal District Board of Directors met at 406 Sycamore Street, Waxahachie, December 17, 1992, at 7 p.m. Information may be obtained from Richard Rhodes, Jr., P.O. Box 878,

Waxahachie, Texas 75165, (214) 937-3552. TRD-9216461.

The Hunt County Appraisal District Hunt County Appraisal Review Board will meet at the Hunt County Appraisal District, Board Room, 4801 King Street, Greenville, December 21, 1992, at 2 p.m. Information may be obtained from Shirley Gregory, 4801 King Street, Greenville, Texas 75403, (903) 454-3510. TRD-9216458.

The Mental Health and Mental Retardation of Brazos Valley Board of Trustees met at 804 Texas Avenue, Conference Room A, Bryan, December 15, 1992, at 1:30 p.m. Information may be obtained from Leon Bawcom, P.O. Box 4588, Bryan, Texas 77805, (409) 822-6467. TRD-9216460.

The Palo Pinto County Education District met at the Palo Pinto County Court House, Palo Pinto, December 17, 1992, at 6 p.m. Information may be obtained from Ron Munday, 102 N.W. 6th Avenue, Mineral Wells, Texas 76067, (817) 325-6404. TRD-9216489.

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Meetings Filed December 11, 1992

The Bexar Appraisal District Appraisal Review Board will meet at 535 South Main, San Antonio, December 18, 1992, at 9 a.m. Information may be obtained from Beverly Houston, 535 South Main, San Antonio, Texas 78204, (512) 224-8511. TRD-9216525.

The Concho Valley Quality Work Force Planning Committee met at the COG Regional Training Center, 5014 Knickerbocker, San Angelo, December 17, 1992, at 3 p.m. Information may be obtained from Joan Allen, 5002 Knickerbocker, San Angelo, Texas 76906, (915) 944-9666. TRD-9216567.

The Dallas Area Rapid Transit HOV Planning and Development Committee met at DART Headquarters, 1401 Pacific Avenue, Dallas, December 15, 1992, at 11:30 a.m. Information may be obtained from Nancy McKethan, 1401 Pacific Avenue, Dallas, Texas 75202, (214) 749-3347. TRD-9216569.

The Dallas Area Rapid Transit Customer and Community Relations met at DART Headquarters, 1401 Pacific Avenue, Dallas, December 15, 1992, at noon. Information may be obtained from Nancy McKethan, 1401 Pacific Avenue, Dallas, Texas 75202, (214) 749-3347. TRD-9216570.

The Dallas Area Rapid Transit Mobility Impaired Committee met at DART Headquarters, 1401 Pacific Avenue, Dallas, December 15, 1992, at 1 p.m. Information may be obtained from Nancy McKethan, 1401

Pacific Avenue, Dallas, Texas 75202, (214) 749-3347. TRD-9216568.

The Dallas Area Rapid Transit Bus Planning, Development and Operations Committee met at DART Headquarters, 1401 Pacific Avenue, Dallas, December 15, 1992, at 2 p.m. Information may be obtained from Nancy McKethan, 1401 Pacific Avenue, Dallas, Texas 75202, (214) 749-3347. TRD-9216571.

The Dallas Area Rapid Transit Rail Planning and Development Committee met at DART Headquarters, 1401 Pacific Avenue, Dallas, December 15, 1992, at 3 p.m. Information may be obtained from Nancy McKethan, 1401 Pacific Avenue, Dallas, Texas 75202, (214) 749-3347. TRD-9216572.

The Deep East Texas Council of Governments Grants Application Review Committee met at the First United Methodist Church, 329 North Bowie Street, Jasper, December 17, 1992, at 11 a.m. Information may be obtained from Rusty Phillips, 274 East Lamar, Jasper, Texas 75951, (409) 384-5704. TRD-9216535.

The Deep East Texas Regional Mental Health and Mental Retardation Services Board of Trustees met at the Ward R. Burke Community Room-Administration Facility, 4101 South Medford Drive, Lufkin, December 15, 1992, at 3 p.m. Information may be obtained from Sandra J. Vann, 4101 South Medford Drive, Lufkin, Texas 75901, (409) 639-1141. TRD-9216531.

The Education Service Center, Region 10 Board of Directors will meet at the Region 10 Board Room, 400 East Spring Valley Road, Richardson, December 18, 1992, at 9:30 a.m. Information may be obtained from Joe Farmer, 400 East Spring Valley Road, Richardson, Texas 75081, (214) 231-6301. TRD-9216537.

The Jack County Appraisal District Board of Directors met at 210 North Church Street, Jacksboro, December 15, 1992, at 7 p.m. Information may be obtained from Gary L. Zeitler or Donna Hartzell, P.O. Box 958, Jacksboro, Texas 76458, (817) 567-6301. TRD-9216527.

The Lampasas County Appraisal District Board of Directors met at 109 East Fifth Street, Lampasas, December 17, 1992, at 7 p.m. Information may be obtained from Janice Henry, P.O. Box 175, Lampasas, Texas 76550, (512) 556-8058. TRD-9216539.

The Lampasas County Appraisal District Board of Directors met at 109 East Fifth Street, Lampasas, December 17, 1992, at 6:30 p.m. Information may be obtained from Janice Henry, P.O. Box 175, Lampasas, Texas 76550, (512) 556-8058. TRD-9216540.

The Lometa Rural Water Supply Corporation Board of Directors met at the Lometa Rural Water Supply Corporation Office, 506 West Main Street, Lometa, December 14, 1992, at 7 p.m. Information may be obtained from Tina Hodge and/or Levi Cash, P.O. Box 158, Lometa, Texas 76853, (512) 752-3505. TRD-9216528.

The Lower Colorado River Authority Audit and Budget Committee met at 3701 Lake Austin Boulevard, Hancock Building, Austin, December 16, 1992, at 9 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3283. TRD-9216559.

The Lower Colorado River Authority Finance and Administration Committee met at 3701 Lake Austin Boulevard, Hancock Building, Austin, December 16, 1992, at 9 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3283. TRD-9216558.

The Lower Colorado River Authority Energy Operations Committee met at 3701 Lake Austin Boulevard, Hancock Building, Austin, December 16, 1992, at 9 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3283. TRD-9216557.

The Lower Colorado River Authority Natural Resources Committee met at 3701 Lake Austin Boulevard, Hancock Building, Austin, December 16, 1992, at 9 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3283. TRD-9216556.

The Lower Colorado River Authority Planning and Public Policy Committee met at 3701 Lake Austin Boulevard, Hancock Building, Austin, December 16, 1992, at 9 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3283. TRD-9216555.

The Lower Colorado River Authority Board of Directors met at 3701 Lake Austin Boulevard, Hancock Building, Austin, December 16, 1992, at 9 a.m. and reconvene December 17, 1992 at 9 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3283. TRD-9216554.

The Lower Rio Grande Valley Development Council Board of Directors met at 311 East Tyler, Harlingen, December 17, 1992, at 1:30 p.m. Information may be obtained from Kenneth N. Jones, Jr., 4900 North 23rd Street, McAllen, Texas 78504, (210) 682-3481. TRD-9216534.

The Middle Rio Grande Development Council The Private Industry Council met at the Holiday Inn, 920 East Main Street, Uvalde, December 16, 1992, at 1 p.m. Information may be obtained from Michael

M. Patterson, P.O. Box 1199, Carrizo Springs, Texas 78834, (512) 876-3533. TRD-9216515.

The North Central Texas Council of Governments Executive Board met at Centerpoint Two, 616 Six Flags Drive, Second Floor, Arlington, December 17, 1992, at 12:45 p.m. Information may be obtained from Edwina J. Shires, P.O. Box 5888, Arlington, Texas 76005, (817) 640-3300. TRD-9216513.

The Panhandle Ground Water Conservation District Number Three Board of Directors met at the Water District Office, 300 South Omohundro Street, White Deer, December 16, 1992, at 7:30 p.m. Information may be obtained from C. E. Williams, P.O. Box 637, White Deer, Texas 79097, (806) 883-2501. TRD-9216566.

The Parmer County Appraisal District Board of Directors will meet at 305 Third Street, Bovina, January 14, 1993, at 7 p.m. Information may be obtained from Ron Procter, P.O. Box 56, Bovina, Texas 79009, (806) 238-1405. TRD-9216536.

The Sharon Water Supply Corporation Board of Directors met at the Office of Sharon Water Supply, Route 5, Box 25-C-10, Winnsboro, December 14, 1992, at 7 p.m. Information may be obtained from Gerald Brewer, Route 5, Box 25-C-10, Winnsboro, Texas 75457, (903) 342-3525. TRD-9216512.

The Tax Appraisal District of Bell County Board of Directors met at the Tax Appraisal District Building, 411 East Central Avenue, Belton, December 16, 1992, at 7 p.m. Information may be obtained from Mike Watson, P.O. Box 390, Belton, Texas 76513-0390, (817) 939-5841, ext. 29. TRD-9216541.

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Meetings Filed December 14,
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The Bosque Central Appraisal District Board of Directors will meet at the Bosque Central Appraisal District Office, 104 West Morgan Street, Meridian, December 18, 1992, at 10 a.m. Information may be obtained from Don Whitney, P.O. Box 393, Meridian, Texas 76665-0393, (817) 435-2304. TRD-9216590.

The Central Appraisal District of Johnson County Appraisal Review Board will meet at 109 North Main Street, Suite 201, Room 202, Cleburne, December 18, 1992, at 9 a.m. Information may be obtained from Jim Hudspeth, 109 North Main Street, Cleburne, Texas 76031, (817) 645-3986. TRD-9216584.

The Deep East Texas Private Industry Council, Inc. will meet at Room 102, City Hall, Lufkin, January 6, 1993, at 1 p.m.

(Rescheduled from December 16, 1992). Information may be obtained from Charlene Meadows, P.O. Box 1463, Lufkin, Texas 75901, (409) 634-2247. TRD-9216595.

The 50th Judicial District Juvenile Board will meet at the District Courtroom, Baylor County Courthouse, Seymour, December 21, 1992, at noon. Information may be obtained from David Hajek, P.O. Box 508, Seymour, Texas 76380, (817) 888-2852. TRD-9216609.

The Jasper County Appraisal District CAD Board of Directors will meet at the Jasper County Appraisal District, 137 North Main Street, Jasper, December 18, 1992, at noon. Information may be obtained from David W. Luther, 137 North Main Street, Jasper, Texas 75951, (409) 384-2544. TRD-9216600.

The Lavaca County Central Appraisal District Board of Directors met at the Lavaca County Central Appraisal District, 113 North Main Street, Hallettsville, December 17, 1992, at 8:30 a.m. (Rescheduled from December 9, 1992). Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396. TRD-9216585.

The Middle Rio Grande Development Council Texas Review and Comment System held an emergency meeting at the Holiday Inn, Rose Room, 920 East Main Street, Uvalde, December 16, 1992, at 4 p.m. The emergency status was necessary due for need to review applications before the end of December, 1992. Information may be obtained from Dora T. Flores, P.O. Box 1199, Carrizo Springs, Texas 78834, (512) 876-3533. TRD-9216577.

The Nueces River Authority Board of Directors will meet at the Marriott Corpus Christi Bayfront Hotel, 900 North Shoreline Boulevard, Corpus Christi, December 18, 1992, at 10 a.m. Information may be obtained from Con Mims, P.O. Box 349, Uvalde, Texas 78802, (210) 278-6810. TRD-9216589.

The Region One Education Service Center Board of Directors will meet at the Doubletree Club Hotel, 101 North Main Street, McAllen, December 18, 1992, at 8 p.m. Information may be obtained from Lauro R. Guerra, 1900 West Schunior, Edinburg, Texas 78539, (210) 383-5611. TRD-9216615.

The Region V Education Service Center Board of Directors will meet at the ESC Boardroom, Delaware Street, Beaumont, December 18, 1992, at 10 a.m. Information may be obtained from Robert E. Nicks, 2295 Delaware Street, Beaumont, Texas 77703, (409) 835-5212. TRD-9216599.

The Rio Grande Valley Municipal Water Authority Board will meet at the Palmaire Motor Inn, VIP Room, 415 South International Boulevard, Weslaco, January 5, 1993, at noon. Information may be obtained from John S. Bruciak, 1424 Robinhood Drive, Brownsville, Texas 78520, (210) 982-6218. TRD-9216598.

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**Meetings Filed December 15,
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The Hays County Appraisal District Appraisal Review Board will meet at 632 A. East Hopkins, Municipal Building, San Marcos, December 21, 1992, at 9 a.m. Information may be obtained from Lynnell Sedlar, 632 A. East Hopkins, San Marcos, Texas 78666, (512) 754-7400. TRD-9216623.

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In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

State Banking Board

Notice of Hearing

The State Banking Board has accepted a trust company charter application for the Trust Company of America to be located in Dallas. The proposed site of the bank is 4455 LBJ Freeway, Suite 411.

The hearing officer of the Board will conduct a public hearing on this application on February 23, 1993, in Austin. Anyone who desires to become a party to the application must file a written notice of intent to appear, including a brief statement of position, with the State Banking Board, 2601 North Lamar, Austin, Texas 78705, no later than February 15, 1993. A copy of this notice and any other correspondence must be sent to the representative of the applicants, John W. Peavy, III, 10102 Woodlake Drive, Dallas, Texas 75243.

Issued in Austin, Texas, on December 8, 1992.

TRD-9216418 William F. Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: December 9, 1992

Employees Retirement System of Texas Request for Proposal

In accordance with Texas Insurance Code, Article 3.50-2, §4, as amended, the Employees Retirement System of Texas (ERS) announces a Request for Proposal (RFP) for Health Maintenance Organizations (HMOs) to provide prepaid health benefits for the Texas Employees Uniform Group Insurance Program (UGIP). Such proposals will provide benefits for the UGIP during the next Fiscal Year 1994, beginning September 1, 1993. Proposals will provide the level of benefits as required in the RFP.

Health Maintenance Organizations wishing to respond to this request must be Federally approved, State approved, must have been in operation for at least 12 months prior to February 1, 1993, and have at least 25 State employees within the service area.

The RFP is available upon request from the ERS.

The deadline for receipt of the proposals in response to this request will be 4 p.m. on February 1, 1993.

The ERS reserves the right to accept or reject any proposals submitted. The ERS is under no legal requirement to execute a resulting contract on the basis of this advertisement.

The ERS will base its choice of HMOs on demonstrated competence, superior qualifications, and evidence of conformance with the RFP criteria.

This RFP does not commit the ERS to pay any costs incurred prior to execution of a contract. Issuance of this material in no way obligates the ERS to award a contract or to pay any costs incurred in the preparation of a response. The ERS specifically reserves the right to vary all provisions set forth at any time prior to execution of a contract where the ERS deems it to be in the best interest of the State of Texas.

For further information regarding this notice, or to obtain copies of the RFP instructions, please contact James W. Sarver, Employees Retirement System of Texas, Group Insurance Division, 18th and Brazos, P.O. Box 13207, Austin, Texas 78711-3207, (512) 867-3217.

Issued in Austin, Texas, on December 11, 1992.

TRD-9216548 Charles D. Travis
Executive Director
Employees Retirement System of Texas

Filed: December 11, 1992

Governor's Energy Office Consultant Proposal Request

This request for consulting services is filed pursuant to the provisions of Texas Civil Statutes, Article 6252-11c.

Notice of Invitation. The Governor's Energy Office (GEO) invites proposals from qualified engineering firms, public agencies, institutions of higher education, or individuals to provide on-site energy assistance to Texas school districts and to train and supervise approximately 25 school energy managers who will be selected for the School Energy Manager Partnership Program.

Services To Be Performed. The contractor will be expected to perform, at a minimum, the following tasks: provide on-site assistance to school districts in the following areas: energy accounting; building operator training; identifying and implementing no-cost operational procedures and lower-cost energy projects; and identifying capital energy retrofit projects which have a simple payback of four years or less; provide technical training and support for approximately 25 new school energy managers and monitor their progress in setting up and implementing energy management programs; and coordinate and conduct regional network meetings for energy managers and provide other energy-related assistance to schools, as authorized by the GEO.

Contact Person. Proposals must be submitted according to the format in the On-Site Energy Assistance Proposal Information Packet. A complete copy of the packet may be obtained by contacting Richard Taylor, Governor's Energy Office, P.O. Box 12428, Austin, Texas 78711, (512) 463-1931.

Closing Date. Seven copies of the proposal should be sent

to Booker White, Governor's Energy Office, P.O. Box 12428, Austin, Texas 78711. Proposals should be sent by registered mail or by courier and must be received or postmarked by January 22, 1993. Late proposals and proposals submitted by fax will not be considered.

All potential proposers are encouraged to attend a pre-proposal conference to be held in Room 106 of the John H. Reagan Building (corner of Congress Avenue and 15th Street) in Austin on Thursday, January 7, 1993 from 9:30 to 11:30 a.m.

Selection Criteria. In order to be considered, proposers must offer personnel with expertise in energy accounting, utility rate schedule analysis, energy systems found in K-12 facilities, and school facility operation. Proposers must also have expertise in conducting energy audits on institutional facilities, and must offer a minimum of one registered professional engineer. Persons employed by the Governor's Office within the past 12 months are not eligible to participate in GEO contracts.

Selection of the contractor will be based on the following criteria and weighting: proposer's knowledge of utility bill components, rate schedules available to school districts, and energy accounting systems appropriate for schools (20%); proposer's familiarity with energy using systems found in Texas school facilities (10%); proposer's familiarity with the operational patterns and special needs of Texas school districts (15%); proposer's knowledge of the range of technical capabilities found among school maintenance and operations personnel in Texas school districts (10%); proposer's experience in performing on-site energy analyses for commercial or institutional facilities, particularly school facilities (30%); and proposer's ability to assign an adequate number of qualified personnel to serve the proposed service area in a timely manner (15%).

The GEO anticipates awarding contracts to several firms, and prospective contractors should specify the section of the state they propose to serve. One firm may be assigned overall program coordination responsibilities.

Final selection of a contractor will be based on the recommendations of a proposal review and interview committee selected by the Governor's Energy Office. The committee will require the eight finalists to meet with the GEO in Austin for a formal interview prior to the selection of contractors.

Selection for interviews will be based on the proposer's ability to satisfy the six criteria listed previously. The interviews will focus on the published selection criteria, and final selection of contractors will be based on the results of the interviews.

Contractor selection will be made on or before February 26, 1993, and the contract periods will extend from the date of signing through August 31, 1994.

The GEO reserves the right to negotiate both scope of work and budget with the contractors. The GEO also reserves the right to reject any or all proposals and is under no legal obligation to execute contracts on the basis of this consultant proposal request.

Issued in Austin, Texas, on December 10, 1992.

TRD-9216530 Harris E. Worcester
Director
Governor's Energy Office

Filed: December 11, 1992

Contract Award Notice

In compliance with the provisions of Texas Civil Statutes, Article 6252-11c, the Governor's Energy Office furnishes this Notice of Contracts Awarded through the Public-Private Partnership Program (Stripper-Well Funds).

Publication Date. The Request for Proposals was published in the May 29, 1992, issue of the *Texas Register* (17 TexReg 7132).

Description of Services. Projects and programs funded through the Public-Private Partnership Program must at a minimum achieve the following: promote the efficient use of energy by nonprofit organizations or their low- to moderate-income clients through technical assistance, training, and building or equipment modifications; and form a public-private partnership by matching funds in addition to oil overcharge funds from sources such as private and corporate foundations; direct grants, or in-kind professional services from local governments, utilities, private businesses, or individuals; the applicant's own resources; or a combination of sources.

Name and Address. The contracts have been awarded to the following: East Texas Human Development Corporation, \$51,601, 510 North Washington, Marshall, Texas 75670; Wheeler Avenue Baptist Church, \$198,344, 3826 Wheeler Avenue, Houston, Texas 77004; People for Progress, Incorporated, \$150,490, 301 West Arkansas, Sweetwater, Texas 79556; Austin Area Urban League, Incorporated, \$200,000, 1825 East 38 1/2 Street, Austin, Texas 78722; Greater El Paso S. E. R., \$200,000, 4838 Montana Avenue, El Paso, Texas 79903; Women's Chamber of Commerce of Texas, \$150,514, 505 East Huntland, Suite 270, Austin, Texas 78752; Golden Gate Missionary Baptist Church, \$194,901.50, 1101 Sabine Street, Dallas, Texas 75203; Nueces County Community Action Agency, \$80,768, 2590 Morgan, Corpus Christi, Texas 78405; Dallas Habitat for Humanity, \$295,000, P. O. Box 64530, Dallas, Texas 75206; The Chinese Community Center, \$138,500, 11596 Beechnut, Houston, Texas 77072; Community Services-Project Help, \$59,875, P.O. Box 2000, Lubbock, Texas 79457.

Value and Dates of Contract. The total dollar value of the contract is \$1,719,993.50. The contract periods extend through December 1993.

Issued in Austin, Texas, on December 9, 1992.

TRD-9216457 Harris Worcester
Director
Governor's Energy Office

Filed: December 10, 1992

Governor's Office of Immigration and Refugee Affairs

Announcement of Available Funds and Request for Proposals

Summary. The Governor's Office of Immigration and Refugee Affairs is pleased to announce the availability of Targeted Assistance funds the federal Office of Refugee Resettlement has designated to provide services in areas with high concentrations of refugees. For federal fiscal year 1993 (FFY93) Targeted Assistance grant funds are designated for use in Harris County. The total amount of funding available is \$325,448.

The Refugee Act of 1980, as amended (Public Law 96-212), gives the State the authority to contract with public or private service providers to deliver social services to refugees with designated Targeted Assistance funds. In Texas, the Governor's Office of Immigration and Refugee Affairs is responsible for the administration of the refugee Targeted Assistance funds.

Funds will be awarded on a competitive basis to those applicants that can demonstrate the greatest aptitude for effectively serving the desired clients. All contracts will be on a cost reimbursement basis. Applicants shall propose a comprehensive Plan of Operation that addresses all areas of the refugee's needs as defined in this announcement.

All public or private agencies and organizations that can demonstrate the expertise necessary to carry out the described services are encouraged to submit proposals. Proposals must be typewritten or printed, and five copies submitted to: Debbie Desmond, Refugee Program Manager, Governor's Office of Immigration and Refugee Affairs, 9101 Burnet Road #216, Austin, Texas 78758.

Application Deadline Date. All proposals must be RECEIVED in the Governor's Office of Immigration and Refugee Affairs by 4 p.m. CST on January 8, 1993. No proposal received after that deadline will be considered.

Evaluation of Proposal and Award. The final selection of grantees for award shall be made by the Governor's Office of Immigration and Refugee Affairs after careful evaluation of each proposal according to the attached evaluation criteria and in accordance with applicable state and federal laws and regulations.

A copy of the complete RFP package including a detailed explanation of the RFP and the evaluation criteria will be sent upon written request. Please contact Debbie Desmond at the previous address.

Issued in Austin, Texas, on December 10, 1992.

TRD-9216538 David A. Tabot
General Counsel
Office of the Governor

Filed: December 11, 1992

◆ ◆ ◆
Texas Department of Health
Advanced Notice of Proposed
Rulemaking

The Texas Department of Health (department) is considering adoption of rules to protect employees of public agencies from adverse health effects which may result from exposure to human blood in occupational settings. The need for this type of standard is acknowledged through adoption by the Federal Occupational Safety and Health Administration (OSHA) of a Bloodborne Pathogens standard (29 Code of Federal Regulations (CFR), 1910.1030, December 6, 1991). This standard provides for exposure control through engineering and work practices, personal protection equipment, housekeeping, vaccination, post-exposure follow-up, training, and record-keeping. Since public employees are covered by some state laws relating to HIV and certain other bloodborne pathogens, some of the provisions are currently in place. Absence of other prevention and treatment requirements contained in the OSHA standard, however, may subject public employees to increased risk of infection by or transmission of bloodborne pathogens.

Therefore, to further assist in the reduction of preventable disease, the department solicits comments from affected public agencies, public employees, and other interested persons about the advisability of adopting a rule for the stated purpose. Comments on the following questions are also specifically solicited: Are employees in public workplaces exposed to contact with blood which may result in transmission of pathogens? Are public employees currently protected adequately from bloodborne pathogens? and What additional costs would be incurred by imposition of a standard similar to 29 CFR, 1910.1030, especially with respect to the following categories: Vaccination/Post Exposure Follow-up; Exposure Control Plan; Housekeeping; Personal Protection Equipment; Training; Record-keeping; and Engineering Controls?

Community meetings have been scheduled to encourage public comment. On Tuesday, January 5, 1993, at 9 a.m., a public meeting will be held at the Texas Department of Health, Main Auditorium, 1100 West 49th Street, Austin, Texas 78756. On Wednesday, January 6, 1993, at 9 a.m., a public meeting will be held at the University of Texas at Arlington, 416 Yates Street, Nederman Hall-Engineering II Building, Room 100, Arlington, Texas 76015. The final public meeting will be held on Thursday, January 7, 1993, at 9 a.m., at the Texas Department of Health, Public Health Region 4 Office, 3rd Floor Conference Room, 105 Forum Place, Houston, Texas. For more information, contact Mr. John Lyles at (512) 834-6600. Written comments may be submitted to Mr. John Lyles, P.E., Division of Occupational Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

Issued in Austin, Texas, on December 10, 1992.

TRD-9216498 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: December 10, 1992

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Notice of Intent to Revoke Certificates
of Registration

Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13, (25 Texas Administrative Code §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed a complaint against the following registrants: Electronics in Medicine, Inc., Houston, R14879; Maxfield Radiological Center, Dallas, R03840; Grapevine Chiropractic Clinic, P. C., Grapevine, R17187; James H. Thomas, Jr., M.D., P.A., La Porte, R14446; Wayne Eastman, D.C., Bedford, R17613; Mark W. Crawford, D.C., Kingwood, R11526.

The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation machine(s); order the registrants to divest themselves of such equipment; and order the registrants to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written

request must be filed with David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, the Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8 a.m. to 5 p.m. (except holidays).

Issued in Austin, Texas, on December 11, 1992.

TRD-9216551 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: December 11, 1992

◆ ◆ ◆ Notice of Intent to Revoke Radioactive Material Licenses

Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13, (25 Texas Administrative Code §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed a complaint against the following licensees: Bobcat Racing, Inc., Corpus Christi, L04334; Memphis Testing Services, Humble, L04338.

The department intends to revoke the radioactive material licenses; order the licensees to cease and desist use of such radioactive materials; order the licensees to divest themselves of the radioactive material; and order the licensees to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the licensees for a hearing to show cause why the radioactive material licenses should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the radioactive material licenses will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, the Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8 a.m. to 5 p.m. (except holidays).

Issued in Austin, Texas, on December 11, 1992.

TRD-9216550 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: December 11, 1992

◆ ◆ ◆ Notice of Revocation of Certificates of Registration

The Texas Department of Health, having duly filed complaints pursuant to Texas Regulations for Control of Radiation, Part 13 (25 Texas Administrative Code §289.112),

has revoked the following certificates of registration: Boenig Animal Clinic, Portland, R12347, November 13, 1992; Douglas E. Pierce, D.C., Denton, R17232, November 13, 1992; Mark D. Barnett, D.D.S., Dallas, R10866, November 13, 1992; Arlington Chiropractic Center, Arlington, R11564, November 13, 1992.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, the Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8 a.m. to 5 p.m. (except holidays).

Issued in Austin, Texas, on December 11, 1992.

TRD-9216549 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: December 11, 1992

◆ ◆ ◆ Notice of Revocation of Radioactive Material Licenses

The Texas Department of Health, having duly filed a complaint pursuant to Texas Regulations for Control of Radiation, Part 13 (25 Texas Administrative Code §289.112), has revoked the following radioactive material license: Tracer Laboratory of Midland, Inc., Midland, L03298, November 25, 1992.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, the Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8 a.m. to 5 p.m. (except holidays).

Issued in Austin, Texas, on December 11, 1992.

TRD-9216552 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: December 11, 1992

◆ ◆ ◆ Texas Department of Human Services Correction of Error

The Texas Department of Human Services adopted the repeal of 40 TAC §41.102 and adopted new §41.102 and adopted amendments to §§41.103, 41.104, 41.106-41.110, and 41.112. The rules appeared in the December 4, 1992, *Texas Register* (17 TexReg 8457).

Due to an error in the agency's submission which was overlooked by the *Texas Register*, on page 8457, the proposal publication dates following all three of the certification and signature blocks should read October 16, 1992, instead of October 6, 1992.

◆ ◆ ◆ Notice of Public Hearing

The Texas Department of Human Services (TDHS) will conduct a public hearing to receive comments on the department's proposed reimbursement rates for the Intermediate Care Facilities for the Mentally Retarded (ICF-MR) State Schools program. The hearing is held in compliance with 40 TAC §24.102(j), which requires a public hearing on proposed reimbursement rates for medical assistance programs. The public hearing will be held on January 7, 1993, at 9 a.m. in the department's public

hearing room of the John H. Winters Center (701 West 51st Street, Austin, First Floor, East Tower). Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed reimbursement rates on or after December 21, 1992, by contacting Kathy E. Hall, MC E-601, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3702.

Issued in Austin, Texas, on December 14, 1992.

TRD-9216576 Nancy Murphy
Agency Liaison, Policy and Document
Support
Texas Department of Human Services

Filed: December 14, 1992



Public Notice of Closed Solicitation Pursuant to the Human Resources Code, Title 2, Chapters 22 and 32, and 40 TAC §19.2004, in the September 11, 1990, issue of the *Texas Register* (15 TexReg 5315), the Texas Department of Human Services (TDHS) is closing the solicitation for new Medicaid beds in Crockett County, County Number 053, which appeared in the May 1, 1992, issue of the *Texas Register* (17 TexReg 3185), Donley County, County Number 065, and Zapata County, County Number 253, which appeared in the July 14, 1989, issue of the *Texas Register* (14 TexReg 3427). The solicitation is being closed effective the date of this public notice.

Issued in Austin, Texas, on December 10, 1992.

TRD-9216465 Nancy Murphy
Agency Liaison, Policy and Document
Support
Texas Department of Human Services

Filed: December 10, 1992



County Number	County Name	Number of Months Over	Number of Months Over					
			May	June	July	Aug	Sep	Oct
154	Madison	5	87.3	91.7	94.0	93.6	95.3	94.8

Issued in Austin, Texas, on December 10, 1992.

TRD-9216464 Nancy Murphy
Agency Liaison, Policy and Document
Support
Texas Department of Human Services

Filed: December 10, 1992



Department of Information Resources Notice of Consultant Contract Award

Description. This notice is filed pursuant to Texas Civil Statutes, Article 6252-11c. After publication of a notice of intent to contract in the May 8, 1992, issue of the *Texas Register* (17 TexReg 3402), the Department of Information Resources on August 31, 1992, executed a contract

Public Notice Open Solicitation

Pursuant to of the Human Resources Code, Title 2, Chapters 22 and 32, and 40 TAC §19.2004, in the September 11, 1990, issue of the *Texas Register* (15 TexReg 5315), the Texas Department of Human Services (TDHS) is announcing an open solicitation period of 30 days, effective the date of this public notice, for the following county where Medicaid contracted nursing facility occupancy rates exceed the threshold (90% occupancy) in each of five months in the continuous May-October, six-month period. Potential contractors seeking to contract for existing beds which are currently licensed as nursing home beds or hospital beds in the county identified in this public notice must submit a written reply (as described in 40 TAC §19.2004) to TDHS, Gary L. Allen, Institutional Program Section, Long Term Care Department, Mail Code W-519, Post Office Box 149030, Austin, Texas 78714-9030. The written reply must be received by TDHS by 5 p.m., January 18, 1993, the last day of the open solicitation period. Potential contractors will be placed on a waiting list for the primary selection process in the order in which the Texas Department of Health originally licensed the beds that are being proposed for Medicaid participation. The primary selection process will be completed on January 29, 1993. If there are insufficient available beds after the primary selection to reduce occupancy rates to less than 80%, TDHS will place a public notice in the *Texas Register* announcing an additional open solicitation period for those individuals wishing to construct a facility.

with Deloitte and Touche, 700 Lavaca Street, Suite 1501, Austin, Texas 78701, for the development of a detailed system design for the integration of the licensing systems which are currently in operation at the Texas Department of Agriculture.

Cost and Dates. The total amount of the contract is \$445,400. The beginning date of the contract is August 31, 1992, and the ending date is August 31, 1993.

Due Date of Deliverables. The detailed implementation plan is to be delivered to the Department of Information Resources no later than December 28, 1992. Implementation oversight will continue through August 31, 1993.

Issued in Austin, Texas, on December 11, 1992.

TRD-9216529 Ann S. Fueberg
Executive Director
Department of Information Resources

Filed: December 11, 1992

◆ ◆ ◆
**Texas Department of Insurance
Company Licensing**

The following applications have been filed with the Texas Department of Insurance and are under consideration.

1. Application for name change in Texas for Aegon Reinsurance Company of America, a foreign fire insurance company. The home office is in New York, New York. The proposed new name is Corpa Reinsurance Company.
2. Application for name change in Texas for National Teacher Associates Life Insurance Company, a domestic life insurance company. The home office is in Dallas, Texas. The proposed new name is National Teachers Associates Life Insurance Company.
3. Application for Admission in Texas for United Security Life of Mississippi (Assumed name for United Security Life Insurance Company), a foreign life insurance company. The home office is in Flowood, Mississippi.

Issued in Austin, Texas, on December 14, 1992.

TRD-9216593 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Filed: December 14, 1992

◆ ◆ ◆
**Texas State Library and Archives
Commission
Local Government Records Committee**

Notice is hereby given, pursuant to the Texas Government Code, §441.163, for the purpose of accepting nominations for appointment to the Local Government Records Committee.

Nominations will be accepted through January 14, 1993, for the following officers: a county judge or commissioner; a county clerk; a district clerk; a county auditor; a county attorney; a district attorney; a county sheriff; a county tax assessor-collector; a county treasurer; a justice of the peace or municipal court judge; a mayor or other member of the governing body of a municipality; a city manager; three municipal clerks or secretaries, one from a municipality with a population of less than 5,000, one from a municipality with a population of 5,000 to 49,999, and one from a municipality with a population of 50,000 or more; a municipal attorney; a municipal finance officer; a municipal personnel officer; three police chiefs, one from a municipality with a population of less than 5,000, one from a municipality with a population of 5,000 to 49,999, and one from a municipality with a population of 50,000 or more; a fire chief; a municipal tax collector; a director or superintendent of a municipal public works program, a municipal utility, or a municipal building inspection department; an executive director of a hospital district or a health district or authority; two executive directors of water districts; two chief appraisers of appraisal districts; three public school representatives, one of whom must represent school districts with an average daily attendance of less than 1,000; one of whom must represent school districts with an average daily attendance of 1,000 to 9,999; and one of whom must represent school

districts with an average daily attendance of 10,000 or more; and two local government records management officers other than elected county officers.

A nomination for appointment may be made by an organization representing officers of the type to be appointed that has as members at least 50 of those officers. In choosing between two or more nominees, the director and librarian will give preference to a nomination or nominations received from organizations whose membership consists primarily of the type of officer to be nominated.

All appointments to the committee will be for terms ending February 1, 1995. To remain eligible to serve on the committee, a person must continue to hold the office or position the person was appointed to represent.

Nominations should be sent to William D. Gooch, Director and Librarian, Texas State Library, P.O. Box 12927, Austin, Texas 78711.

Issued in Austin, Texas, on December 7, 1992.

TRD-9216448 Raymond Hitt
Assistant State Librarian
Texas State Library and Archives
Commission

Filed: December 10, 1992

◆ ◆ ◆
**Public Utility Commission of Texas
Notice of Proceeding for Approval of
Extended Area Service**

Notice is given to the public of the filing with the Public Utility Commission of Texas of a joint petition on July 23, 1992, seeking approval of extended area service pursuant to §23.49(i) of the Public Utility Commission of Texas substantive rules. The following is a summary of the joint petition.

Docket Title and Number. Petition of the Hallsville Exchange for extended area service to the Longview Exchange, Docket Number 10019, before the Public Utility Commission of Texas.

The Joint Petition. In Docket Number 10019, GTE Southwest, Inc., Southwestern Bell Telephone Company, and a representative for the incorporated and unincorporated areas of the Hallsville exchange seek approval of a joint petition to offer customers located in the Hallsville exchange one of three new extended area service (EAS) calling plans: optional one-way, discounted, measured EAS to Longview; optional one-way flat-rate EAS; and optional two-way, flat-rate EAS.

The optional one-way, discounted, measured EAS (Community Calling Plan or CCP) offering will be made available to all single-party residential and business customers residing within the Hallsville exchange. A \$1.00 monthly subscription fee shall be charged to each customer subscribing to this option. For example, Hallsville to Longview would be in Rate Band B. The charges for calls to Longview would be \$.042 for the first minute and \$.021 for each additional minute. This represents approximately a 65% reduction from the current long distance rates. The following EAS usage rates for this option are: Rate Band A at a distance of 0-7 miles is \$.030 for the first minute and \$.015 for each additional minute. Rate Band B at a distance of 8-14 miles is \$.042 for the first minute and \$.021 for each additional minute. Rate Band C at a distance of 15-21 miles is \$.060 for the first minute and \$.030

resources (such as renewable resources or demand-side resources)? Why or why not? Are standard contracts of small-scale renewable resources (less than 10 megawatts) appropriate?

Should the commission encourage utilities to participate in research and development or demonstration projects involving renewable resources? If so, how? Should the commission require utilities to deploy a minimum level of renewable resources? If so, how much is reasonable? Should the commission reward utilities for the deployment of renewable resources? If so, what would be a reasonable amount and regulatory mechanism for a reward? How will the incentives for renewables in the 1992 National Energy Legislation affect the economics of renewable resources? What should the commission do to complement this Act regarding renewable resources?

Issued in Austin, Texas, on December 9, 1992.

TRD-9216494 John M Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: December 10, 1992

Texas Racing Commission Correction of Errors

The Texas Racing Commission proposed amendments to 16 TAC §§309.51, 309.56, and 311.171 and adopted new 16 TAC §303.43. The rules appeared in the November 27, 1992, *Texas Register* (17 TexReg 8260, 8261, and 8292).

Due to typographical errors by the *Texas Register* corrections are noted as follows.

In §309.51, page 8260, paragraph three of the preamble, fifth line, "... assurance that commission is informed..." should read "...assurance that *the* commission is informed...."

In §309.51, following subsection (a)(3), the next line should read "(b) -(d) (No change.)" instead of "(a)-(b) (No change.)"

In §309.56(a) the third sentence "display" and "person's" were misspelled. The sentence should read: "A person to whom a visitor's pass has been issued shall display the pass on the person's clothing at all times that the person is in the stable or kennel area...."

In §309.56(b)(3)" "assistance trainer" should read "assistant trainer".

In §311.171(j), page 8261, the first sentence should read "... a kennel owner shall submit a completed..." instead of "... a kennel owner shall submit as completed...."

In §303.43(b), page 8292, the sentence should read "...live thoroughbred racing and..." instead of "...live thoroughbred racing...."

Texas Water Commission Enforcement Order

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day

after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to Elf Atochem North America, SWR Number 31695, on December 2, 1992, assessing \$2,500,000 in administrative penalties with \$1 million in performance contingency.

Information concerning any aspect of this order may be obtained by contacting Glenn Hall, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 908-2057.

Issued in Austin, Texas, on December 8, 1992.

TRD-9216422 Gloria A. Vasquez
Notices Coordinator
Texas Water Commission

Filed: December 9, 1992

Notice of Application For Waste Disposal Permit

Notice is given by the Texas Water Commission of public notices of waste disposal permit applications issued during the period of December 7-December 11, 1992.

No public hearing will be held on these applications unless an affected person has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester, would be adversely affected by the granting of the application. If the commission determines that the request sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public interest, the commission shall conduct a public hearing, after the issuance of proper and timely notice of the hearing. If no sufficient request for hearing is received within 30 days of the date of publication of notice concerning the applications, the permit will be submitted to the commission for final decision on the application.

Information concerning any aspect of these applications may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

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; the wastewater treatment facilities; the plant site is approximately 5,800 feet northwest of the intersection of U.S. Highway 183 and Anderson Mill Road and 1,700 feet southwest of the intersection of U.S. Highway 183 and FM 620 in Williamson County; amendment; 11459-01.

Azteca Milling Company; a corn milling operation; the plant site is south of U.S. Highway 87 (State Highway 27), approximately one half mile east of FM Road 2337 and five miles southwest of the City of Plainview, Hale County; amendment; 03111.

B & B Sewer Company; wastewater treatment facility; the plant site is approximately 1,000 feet southeast of Kuykendahl Road crossing of Willow Creek and 800 feet east of Willow Creek, 26.5 miles northwest of downtown Houston in Harris County; new; 13619-01.

Baker Hughes Incorporated; the wastewater treatment facilities; are at 10015 Aldine-Westfield Road, at a point approximately 500 feet North of Rankin Road in Harris County; renewal; 12118-01.

W. C. Barton; a dairy; the dairy is at a point approximately 0.5 mile south of the intersection of FM Road 4 and FM Road 417, approximately five miles east-southeast of the City of Cleburne, in Johnson County; new; 03513.

Beazer West, Inc.; a sand and gravel mine on 150 acres at Ferris Plant Number 19; the plant site is approximately eight miles east of the City of Ferris, near the old settlement of Walnut Springs, Ellis County; renewal; 02519.

Blue Bell Manor Utility Company, Inc.; the wastewater treatment facilities; the plant site is on the north bank of Halls Bayou, approximately 1,200 feet north-northeast of the intersection of FM Road 149 with Stuebner Airline Road in Harris County; renewal; 11473-01.

Boring Specialties, Inc.; the wastewater treatment facilities; is at 14730 Yarberry Street; approximately 0.5 mile southeast of the intersection of Hardy Road and Aldine-Bender Road (FM Road 525) in Harris County; renewal; 12484-01.

Boys Country of Houston, Inc.; the wastewater treatment facilities; are at a point approximately 1.7 miles north of the intersection of U.S. Highway 290 and Roberts Road, approximately 2.0 miles northeast of the City of Hockley in Harris County; renewal; 11814-01.

Brushy Creek Municipal Utility District; the Brushy Creek Municipal Utility District South Wastewater Treatment Facilities; the plant site is at the intersection of County Road 174 (Brushy Creek Road) and Great Oaks Drive in Williamson County; renewal; 11865-01.

City of Bryson; domestic wastewater treatment facility; the plant site for the existing facility in the Interim phase is located on the east side of a gravel road known as Lovers Lane, 1/2 mile south of the intersection with U.S. Highway 380 in Jack County; amendment; 10135-01.

Cactus Feeders, Inc.; a feedlot; is on the north side of FM Road 2698, approximately 1 1/2 miles east of intersection FM Road 2698 and U.S. Highway 87 in Swisher County; amendment; 01755.

Castlewood Municipal Utility District; the Castlewood Regional Wastewater Treatment Facilities; the plant site is on the north side of the Interstate Highway 10, approximately 4,700 feet east of the Interstate Highway 10 crossing of Mason Creek, 1,500 feet west of the intersection of Interstate Highway 10 and Fry Road in Harris County; renewal; 11883-01.

Champion International Corporation; a lumber, chip, and plywood manufacturing plant; the plant site is on the south side of the intersection of FM 942 and FM 62 in the Town of Camden, Polk County; amendment; 01598.

City of Cleveland; the East Wastewater Treatment Facilities; the plant site is east of the City of Cleveland, approximately 1.8 miles northeast of the intersection of United States Highway 59 and State Highway 321/105 in Liberty County; renewal; 10766-02.

Coastal Refining and Marketing, Inc.; a coke sizing, storage, and shipping facility; the plant site is on the north side of Corpus Christi Inner Harbor, approximately one mile west of the lift bridge over the channel on Navigation Boulevard near the City of Corpus Christi, Nueces County; renewal; 02540.

Pete Degroot, Jr. and Jack Tuls; a dairy; the dairy is on the east side of U.S. Highway 277, approximately 14 miles north of the City of El Dorado in Schleicher County; new; 03506.

Dynamic Products, Inc.; the wastewater treatment facilities; is approximately 2.0 miles south of Interstate Highway 10 and approximately 0.75 mile east of the intersection of Sheldon Road and Peninsula on the south side of Jacintoport Slip and 0.25 mile north of the Houston Ship Channel in Harris County; renewal; 11841-01.

City of Ector; the wastewater treatment facilities; are approximately 4,700 feet north of U.S. Highway 82 and 800 feet west of FM Road 898 in Fannin County; renewal; 10552-01.

City of Elgin; the wastewater treatment facilities; are located approximately 1/4 mile south of U.S. Highway 290 at 611 Cleveland Street in Elgin, Bastrop County; renewal; 10100-01.

City of Farmersville; the Farmersville Wastewater Treatment Plant Number 2 Facilities; the plant site is approximately 1/4 mile southeast of the intersection of U.S. Highway 380 and State Highway 78; southwest of the City of Farmersville in Collin County; renewal; 10442-02.

Thomas S. Gillis, Jr.; the wastewater treatment facilities; are approximately 1,000 feet southeast of the intersection of Aldine Westfield Road and Aldine Mail Road, between Aldine Mail Road and Isom Street in Harris County; renewal; 11831-01.

Gold Fields Mining Company, a Division of Hansen Natural Resources Division; a silver mine; the plant site is in the Big Bend region, 43 miles south of the City of Marfa on U.S. Highway 67 and 19 miles north of the City of Presidio, Presidio County; renewal; 02297.

City of Goree; the wastewater treatment facilities; are approximately 500 feet east of United States Highway 277 and east of the City of Goree in Knox County; renewal; 10102-01.

City of Grand Saline; the wastewater treatment facilities; are east of the intersection of the T&P Railroad and State Highway 110, approximately 0.5 mile east-southeast of the intersection of U.S. Highway 80 and State Highway 110 in the City of Grand Saline in Van Zandt County; renewal; 10179-01.

Harris County F.W.S.D. Number 6; the wastewater treatment facilities; are at the intersection of DeZavalla Road and Elsbeth Road in the City of Channelview in Harris County; renewal; 10184-01.

Harris County Municipal Utility District Number 221; the wastewater treatment facilities; are approximately 3,000 feet northeast of the intersection of Richey Road and Imperial Valley Drive and approximately 3,000 feet northwest of the intersection of Richey Road and Hardy Road in Harris County; renewal; 12470-01.

Harris County Municipal Utility District #149; the Sommerall Subdivision Wastewater Treatment Facilities; the plant site is at 16427 Skyblue Lane which is approximately 1/2 mile west of State Highway 6 and North of Spencer Road in northwest Harris County; renewal; 11836-01.

Harris County Water Control and Improvements District Number 133; the wastewater treatment facilities; are at 7415 Smiling Wood Lane and the intersection of Bauerlein Drive in Harris County; renewal; 11153-01.

Hunt County Oil Company; the wastewater treatment facilities; are located approximately 500 feet southeast of the intersection of Interstate Highway 30 and FM Road 1903 and five miles southwest of the City of Greenville in Hunt County; renewal; 11721-01.

Lakeway Municipal Utility District; the World of Tennis Wastewater Treatment Facilities; the plant site is approximately 2.0 miles northwest of the intersection of Ranch Road 620 and Lohmans Crossing in Travis County; renewal; 11495-03.

Lanco-Continental Plaza, Inc.; the Continental Plaza Wastewater Treatment Facilities; the plant site is approximately 250 feet north of Atascocita Road and 300 feet northeast of the crossing of Williams Gully by Atascocita Road in Harris County; renewal; 12591-01.

Lazy River Improvement District; the wastewater treatment facilities; are approximately 7,500 feet southeast of the intersection of Interstate Highway 45 and FM road 1488, south of the City of Conroe in Montgomery County; renewal; 11820-01.

City of Lone Star; the Lone Star Wastewater Treatment Facilities; the plant site is approximately 1,500 feet east of United States Highway 259 and approximately 4,000 feet south of the intersection of United States Highway 259 and FM Road 729 in Morris County; renewal; 12411-01.

City of Manor; the wastewater treatment facilities; are approximately 0.25 mile west of State Highway 212 and 0.5 mile south of U.S. Highway 290 on the Old Austin Road in Travis County; renewal; 11003-01.

Theron L. Moore, Sr.; the Kalita Point Wastewater Treatment Facilities; the plant site is approximately 1,250 feet north of FM Road 2457, at a point approximately three miles west of the intersection of FM Road 2457 and U.S. Highway 190, near the east shore of Lake Livingston in Polk County; renewal; 11465-01.

Orange County Water Control and Improvement District Number 1; the Heritage Park Wastewater Treatment Facilities; the plant site is approximately 8,300 feet southeast of the intersection of FM Road 105 and Interstate Highway 10 and approximately 500 feet northwest of the intersection of Heritage Drive and Orange Street in the City of Vidor, Orange County; renewal; 10875-02.

City of Penelope; wastewater treatment facilities will serve the City of Penelope; the plant site is approximately 2,000 feet southeast of the intersection of FM Road 308 and FM Road 2114; adjacent to the northerly side of FM Road 2114; at the southeast edge of the City of Penelope in Hill County; new; 13621-01.

Pine Tree Mobile Home Park Landowners Association; the wastewater treatment facilities; are approximately one mile west of the City of Keller and approximately one mile southwest of the intersection of Keller-Hicks Road and U.S. Highway 377 in Tarrant County; renewal; 13036-01.

City of Port Arthur; the Pleasure Island Number 1 Wastewater Treatment Facilities; the plant site is on Pleasure Island, adjacent to the Sabine-Neches Waterway, approximately 1.6 miles northeast of the Gulfgate Bridge in Jefferson County; renewal; 10364-09.

San Antonio Water System; the City's wastewater treatment system, but because it was once used as a wastewater treatment pond; Mitchell Lake is approximately one mile

south of Loop 410 and east of Pleasanton Road, south of the City of San Antonio in Bexar County; renewal; 10137-04.

San Antonio Water System; the Salado Creek Wastewater Treatment Facilities; the plant site is on Blue Wing Road, approximately 1.5 miles south of the intersection of Southton Road and Blue Wing Road in Bexar County; amendment; 10137-08.

San Patricio County Municipal Utility District Number 1; wastewater treatment facilities will serve the City of Edroy; the plant site is approximately 3,700 feet south of the intersection of Interstate Highway 37 and State Highway 234, on Main Avenue in Edroy in San Patricio County; new; 13644-01.

Danny Schenk; a dairy; the dairy is on the south side of FM Road 172, approximately one mile east of the intersection of U.S. Highway 281 and FM Road 172 in Archer County; new; 03507.

Shell Oil Company, Deer Park Manufacturing Complex; the plant site is at 5900 State Highway 225 in the City of Deer Park in Harris County; renewal; 00401.

Clifford A. Skiles; a feedlot; the feedlot is approximately four miles northeast of the intersection of FM Road 1062 and State Highway 385 in Deaf Smith County; new; 03475.

Southern Clay Products, Inc.; the Muldoon Operations Clay Mine; the plant site is four miles north of the community of Muldoon; 2.5 miles west of the community of Marly and FM Road 154 in Fayette County; renewal; 01926.

Southwestern Electric Power Company, Lone Star Power Plant; a steam electric generating station; the plant site is on the east side of Ellison Creek Reservoir at a point approximately 0.5 mile north of the dam, and approximately one mile southwest of the City of Lone Star, Morris County; renewal; 01464.

The Stroh Brewery Company; a can manufacturing plant owned by American National Can Company; located at 1001 Fisher Road and a wastewater treatment plant located on FM Road 1845 adjacent to the City of Longview wastewater treatment plant. All the facilities are located in the City of Longview, Gregg County; renewal; 01703.

Tapia Brothers, Inc.; a dairy; the dairy is on the north side of FM Road 1692, approximately six miles southwest of the intersection of FM Road 1692 and FM Road 1929 in Tom Green County; new; 03486.

Robert J. Tate; the Preston Club, Limited Wastewater Treatment Facilities; The plant site is approximately four miles west of the intersection of United States Highway 82 and FM Road 1417 and 1/2 mile south of United States Highway 82 in Grayson County; renewal; 13309-01.

Tenneco Gas (formerly Tenneco Incorporated); The wastewater treatment facilities are located on the Tennwood Recreational property, which is approximately 2.5 miles north of the intersection of Hegar Road and FM Road 2920 in Waller County; renewal; 12402-01.

City of Vernon; The wastewater treatment facilities; are approximately 0.8 mile northeast of the intersection of U.S. Highway 283 and Fort Worth and Denver Railroad in the City of Vernon in Wilbarger County; renewal; 10377-01.

West Harris County Municipal Utility District Number 17; wastewater treatment facilities; the plant site is approximately 5.0 miles west-northwest of the intersection of State Highway 6 and Interstate Highway 10 on the north bank of the South Mayde Creek in Harris County; amendment; 12247-01.

West Park Municipal Utility District; The wastewater treatment facilities; is approximately 800 feet north of Interstate Highway 10 and approximately 3,200 feet east of Fry Road at the south termination of Harris County Flood Control District Ditch in Harris County; renewal; 12346-01.

West Texas Utilities Company; Oak Creek Steam Electric Station; the plant site is adjacent to Oak Creek Reservoir, approximately 10 miles north of the City of Bronte, Coke County; amendment; 00997.

Issued in Austin, Texas, on December 11, 1992.

TRD-9216583 Gloria A. Vasquez
 Chief Clerk
 Texas Water Commission

Filed: December 14, 1992

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1992 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the September-December 1992 issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. No issues will be published on February 28, November 6, December 1, and December 29. A bullet beside a publication date indicated that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
93 Tuesday, December 15	Wednesday, December 9	Thursday, December 10
94 Friday, December 18	Monday, December 14	Tuesday, December 15
95 Tuesday, December 22	Wednesday, December 16	Thursday, December 17
96 Friday, December 25	Monday, December 21	Tuesday, December 22
Tuesday, December 29	NO ISSUE PUBLISHED	
1 Friday, January 1, 1993	Monday, December 28	Tuesday, December 29

1993 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the January-December 1993 issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. No issues will be published on July 30, November 5, November 30, and December 28. An asterisk beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
1 Friday, January 1	Monday, December 28	Tuesday, December 29
2 Tuesday, January 5	Wednesday, December 30	Thursday, December 31
3 Friday, January 8	Monday, January 4	Tuesday, January 5
4 Tuesday, January 12	Wednesday, January 6	Thursday, January 7
5 Friday, January 15	Monday, January 11	Tuesday, January 12
6 Tuesday, January 19	Wednesday, January 13	Thursday, January 14
Friday, January 22	1991 ANNUAL INDEX	
7 Tuesday, January 26	Wednesday, January 20	Thursday, January 21
8 Friday, January 29	Monday, January 25	Tuesday, January 26
9 Tuesday, February 2	Wednesday, January 27	Thursday, January 28
10 Friday, February 5	Monday, February 1	Tuesday, February 2
11 Tuesday, February 9	Wednesday, February 3	Thursday, February 4
12 Friday, February 12	Monday, February 8	Tuesday, February 9
13 Tuesday, February 16	Wednesday, February 10	Thursday, February 11
4 *Friday, February 19	Friday, February 12	Tuesday, February 16
15 Tuesday, February 23	Wednesday, February 17	Thursday, February 18
16 Friday, February 26	Monday, February 22	Tuesday, February 23
17 Tuesday, March 2	Wednesday, February 24	Thursday, February 25
18 Friday, March 5	Monday, March 1	Tuesday, March 2
19 Tuesday, March 9	Wednesday, March 3	Thursday, March 4
20 Friday, March 12	Monday, March 8	Tuesday, March 9
21 Tuesday, March 16	Wednesday, March 10	Thursday, March 11
22 Friday, March 19	Monday, March 15	Tuesday, March 16
23 Tuesday, March 23	Wednesday, March 17	Thursday, March 18
24 Friday, March 26	Monday, March 22	Tuesday, March 23
25 Tuesday, March 30	Wednesday, March 24	Thursday, March 25
26 Friday, April 2	Monday, March 29	Tuesday, March 30
27 Tuesday, April 6	Wednesday, March 31	Thursday, April 1
28 Friday, April 9	Monday, April 5	Tuesday, April 6
29 Tuesday, April 13	Wednesday, April 7	Thursday, April 8
Friday, April 16	FIRST QUARTERLY INDEX	
30 Tuesday, April 20	Wednesday, April 14	Thursday, April 15

31 Friday, April 23	Monday, April 19	Tuesday, April 20
32 Tuesday, April 27	Wednesday, April 21	Thursday, April 22
33 Friday, April 30	Monday, April 26	Tuesday, April 27
34 Tuesday, May 4	Wednesday, April 28	Thursday, April 29
35 Friday, May 7	Monday, May 3	Tuesday, May 4
36 Tuesday, May 11	Wednesday, May 5	Thursday, May 6
37 Friday, May 14	Monday, May 10	Tuesday, May 11
38 Tuesday, May 18	Wednesday, May 12	Thursday, May 13
39 Friday, May 21	Monday, May 17	Tuesday, May 18
40 Tuesday, May 25	Wednesday, May 19	Thursday, May 20
41 Friday, May 28	Monday, May 24	Tuesday, May 25
42 Tuesday, June 1	Wednesday, May 26	Thursday, May 27
43 *Friday, June 4	Friday, May 28	Tuesday, June 1
44 Tuesday, June 8	Wednesday, June 2	Thursday, June 3
45 Friday, June 11	Monday, June 7	Tuesday, June 8
46 Tuesday, June 15	Wednesday, June 9	Thursday, June 10
47 Friday, June 18	Monday, June 14	Tuesday, June 15
48 Tuesday, June 22	Wednesday, June 16	Thursday, June 17
49 Friday, June 25	Monday, June 21	Tuesday, June 22
50 Tuesday, June 29	Wednesday, June 23	Thursday, June 24
51 Friday, July 2	Monday, June 28	Tuesday, June 29
52 Tuesday, July 6	Wednesday, June 30	Thursday, July 1
53 Friday, July 9	Monday, July 5	Tuesday, July 6
Tuesday, July 13	SECOND QUARTERLY ININDEX	
54 Friday, July 16	Monday, July 12	Tuesday, July 13
55 Tuesday, July 20	Wednesday, July 14	Thursday, July 15
56 Friday, July 23	Monday, July 19	Tuesday, July 20
57 Tuesday, July 27	Wednesday, July 21	Thursday, July 22
Friday, July 30	NO ISSUE PUBLISHED	
58 Tuesday, August 3	Wednesday, July 28	Thursday, July 29
59 Friday, August 6	Monday, August 2	Tuesday, August 3
60 Tuesday, August 10	Wednesday, August 4	Thursday, August 5
61 Friday, August 13	Monday, August 9	Tuesday, August 10
62 Tuesday, August 17	Wednesday, August 11	Thursday, August 12
63 Friday, August 20	Monday, August 16	Tuesday, August 17
64 Tuesday, August 24	Wednesday, August 18	Thursday, August 19
65 Friday, August 27	Monday, August 23	Tuesday, August 24
66 Tuesday, August 31	Wednesday, August 25	Thursday, August 26
67 Friday, September 3	Monday, August 30	Tuesday, August 31
68 Tuesday, September 7	Wednesday, September 1	Thursday, September 2
69 *Friday, September 10	Friday, September 3	Tuesday, September 7

70 Tuesday, September 14	Wednesday, September 8	Thursday, September 9
71 Friday, September 17	Monday, September 13	Tuesday, September 14
72 Tuesday, September 21	Wednesday, September 15	Thursday, September 16
73 Friday, September 24	Monday, September 20	Tuesday, September 21
74 Tuesday, September 28	Wednesday, September 22	Thursday, September 23
75 Friday, October 1	Monday, September 27	Tuesday, September 28
76 Tuesday, October 5	Wednesday, September 29	Thursday, September 30
77 Friday, October 8	Monday, October 4	Tuesday, October 5
Tuesday, October 12	THIRD QUARTERLY INDEX	
78 Friday, October 15	Monday, October 11	Tuesday, October 12
79 Tuesday, October 19	Wednesday, October 13	Thursday, October 14
80 Friday, October 22	Monday, October 18	Tuesday, October 19
81 Tuesday, October 26	Wednesday, October 20	Thursday, October 21
82 Friday, October 29	Monday, October 25	Tuesday, October 26
83 Tuesday, November 2	Wednesday, October 27	Thursday, October 28
Friday, November 5	NO ISSUE PUBLISHED	
84 Tuesday, November 9	Wednesday, November 3	Thursday, November 4
85 Friday, November 12	Monday, November 8	Tuesday, November 9
86 Tuesday, November 16	Wednesday, November 10	Thursday, November 11
87 Friday, November 19	Monday, November 15	Tuesday, November 16
88 Tuesday, November 23	Wednesday, November 17	Thursday, November 18
89 Friday, November 26	Monday, November 22	Tuesday, November 23
Tuesday, November 30	NO ISSUE PUBLISHED	
90 Friday, December 3	Monday, November 29	Tuesday, November 30
91 Tuesday, December 7	Wednesday, December 1	Thursday, December 2
92 Friday, December 10	Monday, December 6	Tuesday, December 7
93 Tuesday, December 14	Wednesday, December 8	Thursday, December 9
94 Friday, December 17	Monday, December 13	Tuesday, December 14
95 Tuesday, December 21	Wednesday, December 15	Thursday, December 16
96 Friday, December 24	Monday, December 20	Tuesday, December 21
Tuesday, December 28	NO ISSUE PUBLISHED	

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