

Texas Register

Volume 16, Number 84, November 12, 1991

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The *Texas Register* (ISSN 362-4781) is published semi-weekly 100 times a year except January 4, July 9, September 6, December 3, December 31, 1991. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78711.

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

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Withdrawn Sections-sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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

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Texas Administrative Code

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Texas Register Publications

a section of the
Office of the Secretary of State
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Austin, Texas 78711-3824

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Subscriptions-one year (96 regular issues), \$90; six months (48 regular issues and two index issues), \$70. Single copies of most issues are available at \$4 per copy.

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TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

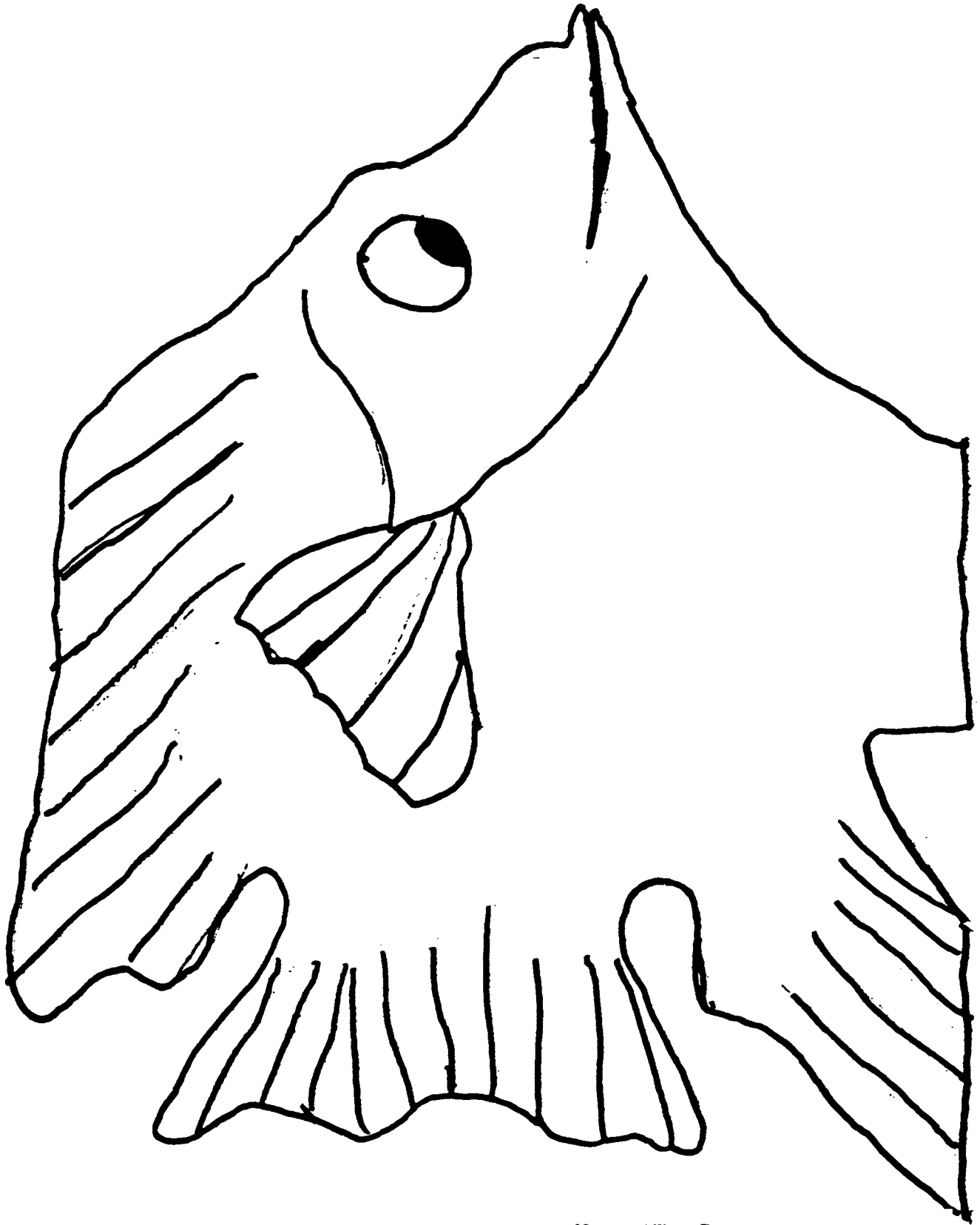
43 TAC §§1.200-1.203—6246, 6278

43 TAC §17.51—6247, 6278

43 TAC §21.441, §21.561—6436

43 TAC §§21.441, 21.561, 21.572—6437

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Name: Allison Burns

School: RISD Summer School, Richardson ISD

The Governor

As required by Texas Civil Statutes, Article 6252-13a, §6, the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in Chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1814.

Appointments Made October 29, 1991

To be Chairman of the Texas Alcoholic Beverage Commission for a term at the pleasure of the Governor: Ms. Higginbotham-Brooks will be replacing Louis M. Pearce, Jr. as Chairman.

To be a member of the Texas Committee for the Humanities for a term to expire December 31, 1992: Diana S. Natalicio, 711 Cincinnati Avenue, El Paso, Texas 79902. Ms. Natalicio will be replacing Ann Willefore of Austin, whose term expired.

To be a member of the Texas Committee for the Humanities for a term to expire December 31, 1992: Diana S. Natalicio, 711 Cincinnati Avenue, El Paso, Texas 79902. Ms. Natalicio will be replacing Ann Willeford of Austin, whose term expired.

To be a member of the Interagency Council on Autism and Pervasive Developmental Disorders for a term to expire February 1, 1993: Anne Groves Russell, 3629 Norcross Lane, Dallas, Texas 75229. Ms. Russell will be replacing Dr. Ben Harold Moore, Jr. of San Antonio, whose term expired.

Appointments Made October 30, 1991

To be a member of the Governing Board of the International Trade Commission for a term to expire February 1, 1993: Patricia J. Smothers, 114 Geneseo, San Antonio, Texas 78209. Ms. Smothers is being appointed to a new position pursuant to House Bill Number 1029, 72nd Legislature, Regular Session.

To be a member of the Governing Board of the International Trade Commission for a term to expire February 1, 1993: Dominic Man-Kit Lam, 4000 Research Forest Drive, The Woodlands, Texas 77381. Dr. Lam is being appointed to a new position pursuant to House Bill 1029, 72nd Legislature, Regular Session.

To be a member of the Governing Board of the International Trade Commission for a term to expire February 1, 1995: Curtis George Goetz, Jr., 200 Planters, San Augustine, Texas 75972. Mayor Goetz is being appointed to a new position pursuant to House Bill Number 1029, 72nd Legislature, Regular Session.

To be a member of the Governing Board of the International Trade Commission for a term to expire February 1, 1997: Philip S. Shinoda, 9514 Hill View Drive, Dal-

las, Texas 75231. Dr. Shinoda is being appointed to a new position pursuant to House Bill 1029, 72nd Legislature, Regular Session.

Appointments Made October 31, 1991

To be a member of the Texas Motor Vehicle Commission for a term to expire January 31, 1997: Robyn Elizabeth Ray, 512 East Young, Longview, Texas 75602. Ms. Ray is being appointed to a new position pursuant to House Bill Number 524, 72nd Legislature, Regular Session.

Appointments Made November 1, 1991

To be a member of the School Land Board for a term to expire August 29, 1993: Richard M. Landsman, 430 Morningside Drive, San Antonio, Texas 78209. Mr. Landsman will be replacing Gaylord Hughey of Tyler, whose term expired.

To be Justice of the Court of Appeals, Thirteenth Supreme Judicial District until the next General Election and until his successor shall be duly elected and qualified: Federico G. Hinojosa, Jr., 2012 Pelican Avenue, McAllen, Texas 78504. Mr. Hinojosa will be replacing Fortunato P. Benavides who was elevated to the position of Judge of the Court of Criminal Appeals.

To be a member of the Evergreen Underground Water Conservation District Board of Directors for a term to expire February 1, 1995: William Oren Lamb, Route W, Box 125, Pleasanton, Texas 8604. Mr. Lamb will be replacing Carl Hoefelmeyer of Poth, whose term expired.

To be a member of the Sulphur River Basin Authority Board of Directors for a term to expire February 1, 1997: Mike Huddleston, 219 Quail Lane, Wake Village, Texas 75501. Mr. Huddleston will be replacing Carroll Wheeler of Texarkana, whose term expired.

To be a member of the Trinity River Authority of Texas Board of Directors for a term to expire March 15, 1997: Carol N. Magee, 8531 San Benito Way, Dallas, Texas 75218. Ms. Magee will be replacing Melvin W. Jackson, Jr. of Dallas, whose term expired.

To be a member of the Trinity River Authority of Texas Board of Directors for a term to expire March 15, 1997: Mellie Rendon Howard, 1800 North 26th Street, Corsicana, Texas 75110. Ms. Howard will be replacing Blake Gillen of Corsicana, who is deceased.

To be a member of the Trinity River Authority of Texas Board of Directors for a term to expire March 15, 1997: Joycie L. Burns, 218 West Eighth Street, Teague, Texas 75860. Ms. Burns will be replacing Robert A. Estrada of Dallas, whose term expired.

To be a member of the Texas Commission on the Arts for a term to expire August 31, 1997: Timothy J. Crowley, Route 5, Box 1172A, College Station, Texas 77845. Mr. Crowley will be replacing Kenneth E. Bentson of Houston, whose term expired.

To be a member of the Texas Commission on the Arts for a term to expire August 31, 1997: Carolyn H. Grinstein, 500 Alta Drive, Fort Worth, Texas 76107. Ms. Grinstein will be replacing Dr. Kenneth Carlile of Marshall, whose term expired.

To be a member of the Texas Commission on the Arts for a term to expire August 31, 1997: Laurence D. Miller III, 502 West 33rd Street, Austin, Texas 78704. Mr. Miller will be replacing Henry S. Miller, Jr. of Dallas, whose term expired.

To be a member of the Texas Commission on the Arts for a term to expire August 31, 1997: Dr. David Montejano, 709 Carolyn, Austin, Texas 78705. Dr. Montejano will be replacing Margaret S. Mills of Waco, whose term expired.

To be a member of the Texas Commission on the Arts for a term to expire August 31, 1997: Matilda Robinson, 9949 Strait Lane, Dallas, Texas 75220. Ms. Robinson will be replacing Aaronetta H. Pierce of San Antonio, whose term expired.

To be a member of the Texas Commission on the Arts for a term to expire August 31, 1997: Marie Swartz, 204 Crescent, San Antonio, Texas 78209. Ms. Swartz will be replacing Jeffrey Weiss of Dallas, whose term expired.

To be a member of the Texas Advisory Board of Occupational Therapy for a term to expire February 1, 1995: Kikujo Ford, 1124 Judy Avenue, Benbrook, Texas 76126. Ms. Ford will be filling the unexpired term of Lewis Randy Strickland of Galveston, who resigned.

To be a member of the Texas Optometry Board for a term to expire January 31, 1997: William D. Pittman, O.D., 710 North Kaufman Street, Mexia, Texas 76667. Dr. Pittman is being reappointed.

To be a member of the Texas Optometry Board for a term to expire January 31, 1997: Stanley C. Pearle, O.D., 9929 Strait

Lane, Dallas, Texas 75220. Dr. Pearle is being reappointed.

Appointments Made November 5, 1991

To be a member of the Texas Diabetes Council for a term to expire February 1, 1995: Charmazel Dudt, 2000 Sixth Avenue, Canyon, Texas 79015. Dr. Dudt will be replacing Charles R. Gregg of Houston, whose term expired.

To be a member of the Texas Diabetes Council for a term to expire February 1, 1995: Elizabeth Diane Limon, 600 Elizabeth Road, San Antonio, Texas 78209. Ms. Limon will be replacing Michelle C. Cross of Austin, whose term expired.

To be a member of the Interagency Council on Autism and Pervasive Developmental Disorders for a term to expire February 1, 1993: Vicki Delois Mitchell Fleming, 11261 Misty Valley Drive, Houston, Texas 77066. Ms. Fleming will be replacing Jan Lynn Newsom of Dallas, whose term expired.

Issued in Austin, Texas, on November 5, 1991.

TRD-9113845

Ann W. Richards
Governor of Texas



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 10. COMMUNITY DEVELOPMENT

Part I. Texas Department of Housing and Community Affairs

Chapter 9. Texas Community Development Program

Subchapter A. Allocation of Program Funds

• 10 TAC §§9.1, 9.3, 9.7

The Texas Department of Housing and Community Affairs (TDHCA) adopts on an emergency basis new program rules concerning application procedures and eligible activities for 1991 community development block grant funds under the Texas Capital Fund Program and the Governor's Special Assistance Fund for Small and Minority Businesses Program. The program rules outline application procedures and augment activities for eligible nonentitlement cities and counties.

The program rules are adopted on an emergency basis to immediately implement application procedures and additional eligible activities thus ensuring easier access to the Texas Capital Fund Program and the Governor's Special Assistance Fund for Small and Minority Businesses Program, and for the purpose of more timely awards to eligible nonentitlement cities and counties.

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 4413(501), §2.07 which provide TDHCA with the authority to allocate community development block grant nonentitlement area funds to eligible counties and municipalities according to department rules.

§9.1. General Provisions.

(a) Definitions and abbreviations. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Applicant—A unit of general local government which is preparing to submit or has submitted an application for Texas Community Development funds to the department.

(2) Application—A written request for Texas Community Development Program funds in the format required by the department.

(3) Community Development Block Grant nonentitlement area funds—The funds awarded to the State of Texas pursuant to the Housing and Community Development Act of 1974, Title I, as amended, (42 United States Code, §5301 et seq) and the regulations promulgated thereunder in 24 Code of Federal Regulations, Part 570.

(4) Community—A unit of general local government.

(5) Contract—A written agreement, including all amendments thereto, executed by the department and contractor which is funded with community development block grant nonentitlement area funds.

(6) Contractor—A unit of general local government with which the department has executed a contract.

(7) Department—The Texas Department of Housing and Community Affairs.

(8) Local government—A unit of general local government.

(9) Low-and moderate-income person—A member of a family which earns less than 80% of the area median family income, as defined under the United States Department of Housing and Urban Development Section 8 Assisted Housing Program.

(10) Nonentitlement area—An area which is not a metropolitan city or part of an urban county as defined in 42 United States Code, §5302.

(11) Permanent job—A job for which continuation of employment is not dependent on funds provided through the Texas Community Development Program.

(12) Poverty—The current official poverty line established by the director of the Federal Office of Management and Budget.

(13) Primary beneficiary—A low-or moderate-income person.

(14) Regional review committee—A regional community development review committee, one which is established in each of the 24 state planning regions established by the governor pursuant to Texas Local Government Code, §391.003.

(15) State review committee—The State Community Development Review Committee established pursuant to

Texas Civil Statutes, Article 4413(501), §2.10.

(16) Underemployed person—A person who works less than 40 hours per week not by choice, at a salary that is not commensurate with his skills and experience.

(17) Unemployed person—A person between the ages of 16 and 64, inclusive, who is not presently working but is seeking employment.

(18) Unit of general local government—An entity defined as a unit of general local government in 42 United States Code §5302(a)(1), as amended.

(b) Overview—Community development block grant nonentitlement area funds. Overview—Community development blockgrant nonentitlement area funds are distributed by the Texas Community Development Program to eligible units of general local government in the following program areas:

- (1) community development fund;
- (2) Texas capital fund;
- (3) planning/capacity building fund;
- (4) emergency fund;
- (5) urgent need fund;
- (6) governor's special assistance fund for small and minority businesses;
- (7) colonia fund.

(c) Types of applications.

(1) Single jurisdiction applications. An applicant may submit one application per Texas Community Development Program fund, as outlined in subsection (b) of this section, on its own behalf per funding cycle (except as specified for the Texas capital fund, the governor's special assistance fund for small and minority businesses, and the governor's small business special assistance fund). A city may include beneficiaries who reside in the extraterritorial jurisdiction of the city provided that at least 30% of the beneficiaries of the project reside within the corporate limits of the jurisdiction and, if funded, the city will be required to annex the area in its extraterritorial jurisdiction prior to receiving any

contract construction funds. If the city is unwilling to annex the area, the city and county in which the area is located must submit the project as a joint application.

(2) Joint applications. Subject to approval by the United States Department of Housing and Urban Development and subject to each participating community satisfying the application requirements of the Texas Community Development Program fund under which the application is submitted and this paragraph, an application will be accepted from two or more units of general local government if the application clearly demonstrates that the proposed activities will mutually benefit the residents of the communities applying for funds. A joint application solely for administrative convenience will not be accepted. Any community participating in a joint application may not submit a single jurisdiction application under the project fund for which the joint application was submitted. One of the participating communities must be primarily accountable to the department for financial compliance and program performance. Only one unit of general local government may be the official applicant and this applicant must enter into a legally binding cooperation agreement with each participant that incorporates Texas Community Development Program requirements. A proposed project which is located in more than one jurisdiction or in which beneficiaries from more than one jurisdiction will be counted must be submitted as a joint application (except as specified for the Texas capital fund, the governor's special assistance fund for small and minority businesses, and the governor's small business special assistance fund).

(d) Eligible location. Only projects or activities which are located in the nonentitlement areas of the state are eligible for funding under the Texas Community Development Program. The only exception is Hidalgo County, an entitlement county, which is eligible for the Colonia fund.

(e) Ineligible activities. Any type of activity not described or referred to in the federal Housing and Community Development Act of 1974, §5305(a) (42 United States Code, §5301 et seq) is ineligible for funding under the Texas Community Development Program. Specific ineligible activities include, but are not limited to, construction of buildings and facilities used for the general conduct of government (e.g., city halls and courthouses); new housing construction, except as described as eligible under the current Texas Community Development Program application guides; the financing of political activities; purchases of construction equipment; income payments, such as housing allowances; most operation and maintenance expenses; pre-contract costs, such as application preparation fees paid prior to submittal of the application; prisons; and racetracks.

(f) Citizen participation.

(1) Public hearing requirements. For each public hearing scheduled and conducted by an applicant or contractor, the following public hearing requirements shall be followed.

(A) Notice of each hearing must be published in the nonlegal section of a newspaper having general circulation in the city or county at least 72 hours prior to each scheduled hearing. The published notice must include the date, time, and location of each hearing and the topics to be considered at each hearing. The published notice must be printed in both English and Spanish, if appropriate. Articles published in such newspapers which satisfy the content and timing requirements of this subparagraph will be accepted by the department in lieu of publication of notices. Notices must also be prominently posted in public buildings.

(B) Each public hearing shall be held after 5 p.m. on a weekday or on a Saturday and at a location convenient to potential or actual beneficiaries, with accommodation for the handicapped.

(C) When a significant number of non-English speaking residents can reasonably be expected to participate in a public hearing, an applicant or contractor shall provide an interpreter to accommodate the needs of the non-English speaking residents.

(2) Application requirements. Prior to submitting an application, an applicant for Texas Community Development Program funding shall satisfy the following requirements.

(A) At least one public hearing shall be held prior to preparing its application and at least one additional public hearing prior to submitting its completed application to the department.

(B) The public hearings must be held at least seven days apart.

(C) At least one of the public hearings must be held in the proposed project area.

(D) An applicant shall retain documentation of the hearing notices, a list of attendees at each hearing, minutes of the hearings, and any other records concerning the proposed use of funds for a period of one year or until the project, if funded, is closed out. Such records must be made available to the public in accordance with Texas Civil Statutes, Article 6252-17a.

(E) The first public hearing must include a discussion with citizens on

the development of housing and community development needs, the amount of funding available, all eligible activities under the Texas Community Development Program, and the use of past Texas Community Development Program contract funds, if applicable. Citizens, with particular emphasis on persons of low and moderate income who are residents of slum and blight areas, shall be encouraged to submit their views and proposals regarding community development and housing needs. Citizens shall be made aware of the location where they may submit their views and proposals should they be unable to attend the public hearing.

(F) The second public hearing must include a discussion of the proposed project, the amount of funds being requested, the estimated amount of funds proposed for activities that will benefit low- and moderate-income persons, and the plans of the applicant to minimize displacement of persons and to assist persons actually displaced as a result of activities assisted with Texas Community Development Program funds, if applicable. The notice must include the location and hours when the application is available for review.

(3) Contractor requirements.

(A) A contractor must hold a public hearing concerning any substantial change, as determined by the department, proposed to be made in the use of Texas Community Development Program funds from one eligible activity to another.

(B) Upon completion of its contract, the contractor shall hold a public hearing to review its program performance, including the actual use of the funds provided under the contract.

(C) A contractor shall retain documentation of the hearing notices, a list of attendees at each hearing, minutes of the hearings, and any other records concerning the actual use of funds for a period of three years after the contract is closed out. Such records must be made available to the public in accordance with Texas Civil Statutes, Article 6252-17a.

(4) Complaint procedures. Applicants and contractors must maintain written citizen complaint procedures that provide a timely written response to complaints and grievances. The complaint procedures for contractors must comply with the requirements of the Texas Community Development Program Complaint System, Part V of this title §178.1 and §178.2. Citizens must be made aware of the location and hours at which they may obtain a copy of the written procedures.

(5) Technical assistance. An applicant shall provide technical assistance to groups representative of persons of low and

moderate income that request such assistance in developing proposals for the use of Texas Community Development Program funds. The level and type of assistance shall be determined by the applicant based upon the specific needs of its residents.

(g) Appeals. An applicant for funding under the Texas Community Development Program may appeal the disposition of its application in accordance with this subsection.

(1) The appeal may only be based on one or more of the following grounds.

(A) Misplacement of an application. All or a portion of an application is lost, misfiled, or otherwise misplaced by department staff, resulting in unequal consideration of the applicant's proposal.

(B) Mathematical error. In rating the application, the score on any selection criteria is incorrectly computed by the department due to human or computer error.

(C) Other procedural error. The application is not processed by the department in accordance with the application and selection procedures set forth in this subchapter. Procedural errors alleged to have been committed by a regional review committee may only be appealed in accordance with the provisions of §9.8 of this title (relating to Regional Review Committees).

(2) The appeal must be submitted in writing to the Texas Community Development Program of the department no later than 30 days after the date the announcement of contract awards is published in the *Texas Register*. In addition, timely appeals not submitted in writing at least five working days prior to the next regularly scheduled meeting of the State Review Committee will be heard at the subsequent meeting of the State Review Committee. The department staff will evaluate the appeal and may either concur with the appeal and make an appropriate adjustment to the applicant's scores, or disagree with the appeal and prepare an appeal file for consideration by the State Review Committee at its next regularly scheduled meeting. The State Review Committee will make a final recommendation to the executive director of the department. The decision of the executive director of the department is final. If the appeal concerns a Texas capital fund application, a governor's special assistance fund for small and minority businesses application, or a governor's small business special assistance fund application, the appeal must be submitted in writing to the department no later than 30 days following the date of the notification letter of the denial. The staff evaluates the appeal and may either concur with the appeal or disagree with the appeal and prepare an appeal file for consideration by the executive director. The executive director then consid-

ers the appeal within 30 days and makes the final decision.

(3) In the event the appeal is sustained and the corrected scores would have resulted in project funding, the application is approved and funded. If the appeal is rejected, the department notifies the applicant of its decision, including the basis for rejection after the meeting of the State Review Committee at which the appeal was considered. If the appeal concerns a Texas capital fund application, a governor's special assistance fund for small and minority businesses application, or a governor's small business special assistance fund application, the applicant will be notified of the decision made by the executive director within 10 days after the final determination by the executive director.

(4) Appeals not submitted in accordance with this subsection are dismissed and may not be refiled.

(h) Threshold requirements. An applicant must satisfy each of the following requirements in order to be eligible to apply for or to receive funding under the Texas Community Development Program:

(1) demonstrate the ability to manage and administer the proposed project, including meeting all proposed benefits outlined in its application;

(2) demonstrate the financial management capacity to operate and maintain any improvement made in conjunction with the proposed project;

(3) levy a local property tax or local sales tax option;

(4) demonstrate satisfactory performance on existing and prior Texas Community Development Program contracts; and

(5) resolve all outstanding compliance and audit findings related to existing and prior Texas Community Development Program and Texas Rental Rehabilitation Program contracts.

(i) Unmet benefits. Actions that may be taken against a contractor by the department where the department finds that the contractor did not provide the level of benefits specified in its contract include, but are not limited to:

(1) holding the contractor ineligible to apply for Texas Community Development Program funds for a period of two program years or until any issue of restitution is resolved, whichever is longer;

(2) requiring the contractor to reimburse the department for the difference between the amount of funds provided for the level of benefits specified in the contract and the amount of funds actually expended in providing such level of benefits; and

(3) rescoring the contractor's application, and if the level of benefits actually provided by the contractor would have changed the funding recommendation, terminating the local government's contract.

(j) False information. If an applicant provides false information in its application which has the effect of increasing the applicant's competitive advantage, the department refers the matter to the State Review Committee for disciplinary action. If the applicant provides false information in a Texas capital fund application, a governor's special assistance fund For small and minority businesses application, or a governor's small business special assistance fund application, the department staff in conjunction with the staff of the Texas Department of Commerce shall make a recommendation for action to the executive director of the department. The State Review Committee makes a recommendation for action to the executive director of the department at its next regularly scheduled meeting. Recommendations that the State Review Committee may make include, but are not limited to:

(1) holding the applicant or contractor ineligible to apply for Texas Community Development Program Texas Community Development Program funds for a period of two program years or until any issue of restitution is resolved, whichever is longer; and

(2) terminating the local government's contract if the correct information would have changed the scores and resulted in a change in the rankings for purposes of funding.

(k) Substitution of standardized data. Any applicant that chooses to substitute locally generated data for standardized information available to all applicants must use the survey instrument provided by the department and must follow the procedures prescribed in the instructions to the survey instrument.

(1) Only door-to-door surveys are allowed, unless an alternate method is approved in writing by the department.

(2) Surveys, including signed tabulation sheets, all responses, and all nonresponses must be submitted to the department at least 14 days prior to the application deadline, for verification and spot-checking.

(3) A survey instrument that lacks any information is considered as a nonresponse for that family.

(4) The applicant must demonstrate a 100% effort in contacting households to be surveyed and obtain at least an 80% response rate for surveys which include 150 or fewer beneficiary households or obtain at least a 70% response rate for surveys which include 151 or more beneficiary households.

(5) A survey that was completed after the 1984 program year for a previous Texas Community Development Program application may be accepted by the department for a new application to the extent

specified in the most recent application guide for the proposed project.

(l) Unobligated and recaptured funds. Any additional funds resulting from the recapture of dollars from a prior year's allocation, recapture of program income, unobligated funds from a program area specified in subsection (b) of this section, or reallocated funds which the United States Department of Housing and Urban Development has recaptured from small cities grantees are redistributed to eligible communities on a priority basis with eligible emergency and urgent need projects and projects benefitting public housing as the highest priorities. Any additional remaining funds may be redistributed to eligible communities at the discretion of the executive director of the department within such program areas. A governor's small business special assistance fund was established for economic development projects proposed by communities impacted by base closings/cutbacks or defense related layoffs (i.e., Fort Hood area). This program was funded through \$500,000 of 1988 and 1989 program years' allocations by an amendment to the 1990 final statement. This fund does not involve 1991 funds.

(m) Waivers. The department may waive any provision of this subchapter upon its own motion, or upon an applicant's or contractor's written request for such a waiver if the department finds that compelling circumstances exist outside the control of the applicant or contractor which justify the approval of such a waiver.

(n) Performance threshold requirements. In addition to the requirements of subsection (h) of this section, an applicant must satisfy the following performance requirements in order to be eligible to apply for program year 1991 funds. A contract is considered executed for the purposes of this subsection on the date stated in Section 2 of such contract.

(1) Obligate at least 50% of the total funds awarded under a contract (except for Texas capital fund contracts) executed at least 12 months prior to the program year 1991 application deadline.

(2) Expend all but the audit funds awarded under a contract (except for Texas capital fund contracts) executed at least 24 months prior to the program year 1991 application deadline and submit to the department the close-out documents required by the most recent edition of the Texas Community Development Program Project Implementation Manual.

§9.3. Texas Capital Fund.

(a) General provisions. This fund covers projects which will result in either an increase in new, permanent employment within a community or retention of existing permanent employment. All jobs being created or retained must primarily benefit low-

and moderate-income persons. A minimum of 51% of all of the jobs ultimately created or retained must have been for people who at the time of their employment had total family income below the low- and moderate-income limit for the county where the development occurred. Eligible activities include the loan program, the infrastructure program, and the real estate development program. The loan program provides financing for activities such as machinery and equipment, working capital, the purchase of land and depreciable property, new construction, and rehabilitation of commercial or industrial facilities. The public infrastructure program provides funds for eligible activities such as the construction or improvement of water/wastewater facilities, public roads, natural gas-line services, electric-power services, and railroad spurs. The real estate development program provides a contract to an eligible applicant for the acquisition, construction, or rehabilitation of real estate in support of a specific business (either a for-profit entity or a non-profit entity). The terms and criteria for the loan program, the public infrastructure program, and the real estate development program are further defined in the pre-application guidelines for the programs. A firm financial commitment from all funding sources other than the United States Department of Commerce Economic Development Administration is required upon submission of a pre-application. A letter from the United States Department of Commerce Economic Development Administration inviting a formal application under its public works program must be included in the pre-application if applicable. The leverage ratio between all funding sources and Texas capital funds must not be less than 1:1. In order for an applicant to be eligible for Texas capital funding, the cost per job calculation must not exceed \$25,000.

(1) No assistance will be provided for projects intended to facilitate the relocation of industrial or commercial plants or facilities from one unit of general local government within Texas to another unit of general local government within Texas unless the relocating industrial or commercial plant or facility provides the department with satisfactory documentation that it will move out of the State of Texas without such assistance, or unless the chief elected official of the unit of general local government from which such plant or facility is relocating provides the department with satisfactory documentation that such unit of general local government has no objections to the relocation.

(2) The department will not consider any application for funding which would result in the provision of assistance for an economic development project where the applicant and one or more other cities or counties are competing to provide economic development project funds to that project.

(3) The department will not consider any application for funding in which the business to be assisted thereunder has filed under the Federal Bankruptcy Code, and the matter is in the process of being adjudicated or in which such business has been adjudicated bankrupt.

(4) The department will only consider applications that provide funding for one business.

(5) The department may consider providing funding for an economic development project proposed by a city that is outside the city's corporate limits or extraterritorial jurisdiction and may consider a project proposed by a county that is outside the unincorporated area of the county if the applicant demonstrates that the project is appropriate to meet its needs, if the applicant has the legal authority to engage in such a project, and if at least 51% of the principal beneficiaries reside within the applicant's jurisdiction.

(6) A business which is currently being provided assistance from the Texas capital fund must create at least 50 permanent jobs in each additional proposed Texas capital fund project in order for such project to be considered for funding.

(7) A Texas capital fund or governor's special assistance fund for small and minority businesses contractor must satisfactorily close out a contract in support of a specific business in order to be eligible to receive additional funds under the Texas capital fund for the same business.

(8) The department will not consider or accept an application for funding under the Texas capital fund or the governor's special assistance fund for small and minority businesses in support of the same project.

(b) Funding cycle. This fund is distributed to eligible units of general local government. Pre-applications are accepted continuously. There are no pre-application deadlines.

(c) Selection procedures. The department has entered into an interagency cooperation contract with the Texas Department of Commerce by which the Texas Department of Commerce performs marketing and underwriting services for this fund. Applications under this section are reviewed by the Texas Capital Fund Advisory Committee after they have been scored by staff of the Texas Department of Commerce. The Advisory Committee is appointed by the executive director of the Texas Department of Commerce and the Community Development Block Grant division director of the department. The Texas Department of Commerce and the department have equal representation on the Advisory Committee. The Texas Capital Fund Advisory Committee and staff make recommendations to the department's executive director for final award. The application and

selection procedures consist of the following steps.

(1) Prior to submitting a formal application, each potential applicant must submit a complete pre-application to the Office of Business Finance Services, Business Development Division, of the Texas Department of Commerce.

(2) Upon receipt of a pre-application containing financial information on the business to be considered for funding, the staff of the Texas Department of Commerce performs an initial review to determine whether the pre-application is complete and whether the activities proposed are eligible for funding. In those instances where the staff of the Texas Department of Commerce determines that the pre-application is either incomplete or that the activities are ineligible for funding, the pre-application is returned for the applicant to complete or is cited as ineligible. The staff at the Texas Department of Commerce then conducts a review of each complete pre-application to make threshold determinations with respect to:

(A) the financial feasibility of the business to be assisted based on a credit analysis;

(B) the strength of commitments from all other public and/or private investments identified in the pre-application;

(C) the ability of the applicant to operate or maintain any public facility or service assisted with Texas Community Development Program funds, if infrastructure improvements are requested;

(D) whether the use of Texas capital funds is appropriate, as defined in the pre-application guidelines for this fund, to carry out the project proposed in the pre-application; and

(E) whether there is evidence that at least 51% of the permanent jobs created or retained will benefit low- and moderate-income persons.

(3) If the Texas Department of Commerce or the department invite a formal application, the staff of the Texas Department of Commerce is required to discuss the project and program rules with the mayor or judge, as applicable, or his designee, and one company official. A formal application may only be submitted if the Texas Department of Commerce or the department authorizes such in writing. If an authorization to submit a formal application is granted, a formal application must be submitted within 45 days of the authorization.

(4) A copy of a complete application must be provided to the appropriate regional review committee. Each regional review committee may, at its option, review and comment on an economic development proposal from a jurisdiction within its state planning region. These comments become part of the application file and are considered by the department provided such comments are received by the department within 10 days after the formal application is submitted.

(5) The staff of the Texas Department of Commerce generates scores on selection criteria related to leverage ratio, cost per job, minority hiring, and project feasibility. Scores on factors in these categories are derived from information provided by the applicant. An applicant must receive at least 60 points out of a possible 100 points to be considered for funding. An applicant that receives at least 60 points on such criteria may be invited to send a representative to make a presentation to the Texas Capital Fund Advisory Committee.

(6) The staff of the Texas Department of Commerce in conjunction with department staff may conduct a site visit of the proposed project.

(7) If a project is determined not to be feasible by the Advisory Committee, the department notifies the applicant of its decision, including the basis for denial.

(8) The Texas Capital Fund Advisory Committee and staff make recommendations to the department's executive director for final award.

(9) The executive director of the department reviews the recommendations and announces the projects selected for funding.

(10) The staff of the Texas Department of Commerce in conjunction with department staff works with the recipients to execute contract agreements. While the contract award must be based on the information provided in the pre-application and the formal application, the department may negotiate any element of the final contract agreement with the recipient.

(d) Selection criteria. The following is an outline of the selection criteria used for selection of projects under the Texas capital fund. One hundred points are available. The terms and criteria used in this subsection are further defined in the pre-application guidelines for this fund.

(1) Project feasibility (total-30 points). The feasibility of each project is evaluated and scored based on the financial soundness of the project. Factors examined include firm commitments for financial investments and the jobs to be created or retained; the history of the business; the current financial condition of the business, including a full review of the credit analysis; cash flow projections; the business or marketing plan, including letters of intent to

purchase products or services; and management experience of the business's principals. A project located in a designated enterprise zone receives special consideration.

(2) Minority hiring (total-20 points). Percentage of minorities presently employed by the applicant divided by the percentage of minority residents within the local community (20 points). In the event less than 5.0% of the applicant's population base is composed of minority residents or the applicant has less than five permanent employees, the applicant is assigned the average score on this factor for all applicants for the previous program year or the score calculated on the actual figures, whichever is higher.

(3) Leverage ratio (total-30 points). Points are awarded by dividing the total other funds committed by the amount of Texas capital funds requested less administration, in accordance with the following scale:

(A) 1.0:1 (100%)-10 points;

(B) 1.5:1 (150%)-15 points;

(C) 2.0:1 (200%)-20 points;

(D) 2.5:1 (250%)-25 points;

(E) 3.0:1 (300%)-30 points.

(4) Cost per job (total-20 points). Points are awarded by dividing the amount of Texas capital funds requested by the number of full-time job equivalents to be created or retained, in accordance with the following scale:

(A) at or below 10,000-20 points;

(B) at or below 15,000-15 points;

(C) at or below 20,000-10 points;

(D) at or below 25,000-five points.

(e) Additional criteria for the loan program and the public infrastructure program. A minimum of a 10% equity injection (of the total project costs) in the form of cash, land, buildings, equipment, furniture, or fixtures by the business is required.

(f) Additional criteria for the real estate development program. A minimum of a 10% equity injection (of the total project costs) in the form of cash, land, buildings, equipment, furniture, or fixtures by the business is required if the business has been operating for at least three years. A minimum of a 33% equity injection (of the total

project costs) in the form of cash, land, buildings, equipment, furniture, or fixtures by the business is required if the business has been operating for less than three years.

§9.7. Governor's Special Assistant Fund for Small and Minority Businesses.

(a) General provisions. This fund covers projects which will result in either an increase in new, permanent employment within a community or retention of existing permanent employment. All jobs being created or retained must primarily benefit low- and moderate-income persons. A minimum of 51% of all of the jobs ultimately created or retained must have been held by people who at the time of their employment had total family income below the low and moderate income limit for the county where the development occurred. A firm financial commitment from all funding sources is required upon submission of a pre-application. The department may provide a maximum of 75% of the total cost of the project. A minimum of a 10% equity injection (of the total project costs) in the form of cash, land, buildings, equipment, furniture, or fixtures by the business is required. In order for an applicant to be eligible for funding, the cost per job calculation must not exceed \$25,000.

(1) A small business is defined as a for-profit enterprise with less than 100 employees or less than \$1 million in annual gross receipts. A minority business is defined as a for-profit enterprise in which at least 51% of the enterprise is owned, operated, and controlled by one or more persons who are socially disadvantaged because of their identification as members of certain groups, including, but not limited to women, Black Americans, Hispanic Americans, Asian or Pacific Americans, and American Indians.

(2) No assistance will be provided for projects intended to facilitate the relocation of industrial or commercial plants or facilities from one unit of general local government within Texas to another unit of general local government within Texas unless the relocating industrial or commercial plant or facility provides the department with satisfactory documentation that it will move out of the State of Texas without such assistance, or unless the chief elected official of the unit of general local government from which such plant or facility is relocating provides the department with satisfactory documentation that such unit of general local government has no objections to the relocation.

(3) The department will not consider any application for funding which would result in the provision of assistance for an economic development project where the applicant and one or more other cities or counties are competing to provide economic development project funds to that project.

(4) The department will not consider any application for funding in which the business to be assisted thereunder has filed under the Federal Bankruptcy Code, and the matter is in the process of being adjudicated or in which such business has been adjudicated bankrupt.

(5) The department will only consider applications that provide funding for one business.

(6) The department may consider providing funding for an economic development project proposed by a city that is outside the city's corporate limits or extraterritorial jurisdiction and may consider a project proposed by a county that is outside the unincorporated area of the county if the applicant demonstrates that the project is appropriate to meet its needs, if the applicant has the legal authority to engage in such a project, and if at least 51% of the principal beneficiaries reside within the applicant's jurisdiction.

(7) A Texas capital fund or governor's special assistance fund for small and minority businesses contractor must satisfactorily close out a contract in support of a specific business in order to be eligible to receive additional funds under the governor's special assistance fund for small and minority businesses for the same business.

(8) The department will not consider or accept an application for funding under the Texas capital fund or the governor's special assistance fund for small and minority businesses in support of the same project.

(b) Funding cycle. This fund is distributed to eligible units of general local government. Pre-applications are accepted continuously. There are no pre-application deadlines.

(c) Selection procedures. The department has entered into an interagency cooperation contract with the Texas Department of Commerce by which the Texas Department of Commerce performs marketing and underwriting services for this fund. Applications under this section are reviewed by the governor's special assistance fund for small and minority businesses advisory committee. The advisory committee is appointed by the executive director of the Texas Department of Commerce and the Community Development Block Grant division director of the department. The Texas Department of Commerce and the department have equal representation on the Advisory Committee. The Advisory Committee and staff make recommendations to the department's executive director for final award. The application and selection procedures consist of the following steps.

(1) Prior to submitting a formal application, each potential applicant must submit a complete pre-application to the Office of Business Finance Services, Busi-

ness Development Division, of the Texas Department of Commerce.

(2) Upon receipt of a pre-application containing financial information on the business to be considered for funding, the staff of the Texas Department of Commerce performs an initial review to determine whether the pre-application is complete and whether the activities proposed are eligible for funding. In those instances where the staff of the Texas Department of Commerce determines that the pre-application is either incomplete or that the activities are ineligible for funding, the pre-application is returned for the applicant to complete or is cited as ineligible. The staff at the Texas Department of Commerce then conducts a review of each complete pre-application to make threshold determinations with respect to:

(A) the financial feasibility of the business to be assisted based on a credit analysis;

(B) the strength of commitments from all other public and/or private investments identified in the pre-application;

(C) whether the use of funds from the governor's special assistance fund for small and minority businesses is appropriate, as defined in the pre-application guidelines for this fund, to carry out the project proposed in the pre-application; and

(D) whether there is evidence that at least 51% of the permanent jobs created or retained will benefit low- and moderate-income persons.

(3) If the Texas Department of Commerce or the department invite a formal application, the staff of the Texas Department of Commerce is required to discuss the project and program rules with the mayor or judge, as applicable, or his designee, and one company official. A formal application may only be submitted if the Texas Department of Commerce or the department authorizes such in writing. If an authorization to submit a formal application is granted, a formal application must be submitted within 45 days of the authorization.

(4) A copy of a complete application must be provided to the appropriate regional review committee. Each regional review committee may, at its option, review and comment on an economic development proposal from a jurisdiction within its state planning region. These comments become part of the application file and are considered by the department provided such comments are received by the department within 10 days after the formal application is submitted.

(5) Based on the information provided by the applicant, the staff of the Texas Department of Commerce evaluates the application on the basis of financial feasibility, leverage ratio, cost per job, and management capabilities.

(6) The staff of the Texas Department of Commerce in conjunction with department staff may conduct a site visit of the proposed project.

(7) If a project is determined not to be feasible by the Advisory Committee and staff, the department notifies the applicant of its decision, including the basis for denial.

(8) The governor's special assistance fund for small and minority businesses advisory committee and staff make recommendations to the department's executive director for final award.

(9) The executive director of the department reviews the recommendations and announces the projects selected for funding.

(10) The staff of the Texas Department of Commerce in conjunction with department staff works with the recipients to execute contract agreements. While the contract award must be based on the information provided in the pre-application and the formal application, the department may negotiate any element of the final contract agreement with the recipient.

(d) Selection criteria. The following is an outline of the selection criteria used for selection of projects under the governor's special assistance fund for small and minority businesses. The terms and criteria used in this subsection are further defined in the pre-application guidelines for this fund.

(1) Financial feasibility and management capabilities. The feasibility of each project is evaluated based on the financial soundness of the project. Factors examined include firm commitments for financial investments and the jobs to be created or retained; the history of the business; the current financial condition of the business, including a full review of the credit analysis; cash flow projections; the business or marketing plan, including letters of intent to purchase products or services; and management experience of the business's principals. A project located in a designated enterprise zone receives special consideration.

(2) Leverage ratio. The leverage ratio is calculated by dividing the all other funds exclusive of governor's special assistance fund for small and minority businesses by the governor's special assistance fund for small and minority business grant amount requested less administration.

(3) Cost per job. The cost per job ratio is calculated by dividing the amount of governor's special assistance

fund for small and minority businesses' funds requested by the number of full-time job equivalents to be created or retained. In order for an applicant to be eligible for funding, the cost per job calculation must not exceed \$25,000.

Issued in Austin, Texas, on November 4, 1991.

TRD-9113813 Anne O. Paddock
Interim Assistant General
Counsel
Texas Department of
Housing and
Community Affairs

Effective date: November 4, 1991

Expiration date: March 3, 1992

For further information, please call: (512) 320-9526

TITLE 22. EXAMINING BOARDS

Part VIII. Texas Appraiser Licensing and Certification Board

Chapter 153. Provisions of the Texas Appraiser Licensing and Certification Act

• 22 TAC §153.9

The Texas Appraiser Licensing and Certification Board adopts on an emergency basis an amendment to §153.9, concerning applications, which was adopted on an emergency basis in the September 13, 1991, issue of the *Texas Register* (16 TexReg 5017). This section is part of the implementation of the Texas Appraiser Licensing and Certification Act (the Act), Texas Civil Statutes, Article 6573a.2. The board found that the adoption of emergency rules is necessary because of an imminent peril to the public welfare.

Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) requires the use of state certified or licensed real estate appraisers in connection with federally related transactions performed after December 31, 1991. It is necessary to adopt these rules in order to license and certify appraisers before December 31, 1991.

The amendment is adopted on an emergency basis under the Act, Texas Civil Statutes, Article 6573a.2, which provides the Texas Appraiser Licensing and Certification Board with the authority to adopt rules and regulations necessary for the performance of its duties. The Act, §26, provides for emergency adoption of rules.

§153.9. Applications.

(a) (No change.)

(b) The Texas Licensing and Certification Board adopts by reference the following forms approved by the board in 1991 and published by and available from the board, P.O. Box 12188, Austin, Texas 78711-2188:

(1) (No change.)

(2) TALCB Form 2.1 [2.0], Appraisal Experience Affidavit;

(3) TALCB Form 3.1 [3.0], Appraisal Experience Log;

(4) (No change.)

(5) TALCB Form 5.0, Request for Course Approval and Renewal; [and]

(6) (No change.)

(7) TALCB Form 7.0, Joint Affidavit for Experience; and

(8) TALCB Form 8.0, Change of Office Address by a Licensed or Certified Appraiser

(c)-(f) (No change.)

Issued in Austin, Texas, on November 4, 1991.

TRD-9113860 Renil C. Limer
Commissioner
Texas Appraiser Licensing
and Certification Board

Effective date: November 5, 1991

Expiration date: January 2, 1992

For further information, please call: (512) 465-3950

TITLE 37. PUBLIC SAFETY AND CORREC- TIONS

Part III. Texas Youth Commission

Chapter 81. Administrative Provisions

General

• 37 TAC §81.13

The Texas Youth Commission adopts on an emergency basis new §81.13, concerning the selection process of an architect/engineer. The emergency adoption will allow the commission to select architects and engineers necessary to begin construction of four new dormitories and a new facility in Beaumont as authorized by the 72nd Legislature. The emergency adoption is necessary in order for the commission to provide additional bed space necessary for detaining committed youth longer periods of time in residential facilities.

The new section is adopted on an emergency basis under the Human Resources Code, §61.048, which provides the Texas Youth Commission authority to promulgate rules relating to award of contracts for construction.

§81.13. Selection Process of an Architect/Engineer.

(a) Policy. The Texas Youth Commission (TYC) obtains architect/engineer services through a systematic process.

(b) Rules.

(1) TYC solicits proposals from architects, engineers, and other design professionals based on the following:

(A) request for proposals prepared by maintenance and construction department;

(B) user recommendation;

(C) expressed interest in seeking TYC consultants contracts;

(D) general knowledge of consultants available in the project area; and

(E) legal advertisement of request for proposals.

(2) The director of plant operations and development, chief of planning and design, and chief of building engineering and management rate proposals received based on evaluation criteria in the request for proposals.

(3) Not less than five firms (short list) are selected based on the combined ratings from paragraph (2) of this subsection.

(4) Interview committee composed of director of plant operations and development, chief of planning and design, superintendent at facility, business manager at the facility, and plant maintenance manager at the facility meet to review short list and interview process.

(5) Chief of planning and design mails questionnaire to references for firms on short list.

(6) Interview committee reviews the returned questionnaires for the firms on the short list, interviews firms on short list at the facility, rates each firm based on the interview, ranks firms in order, and recommends three top firms to the board for selection.

(7) The director of plant operations and development presents the findings of the interview committee to the board and recommends selections.

(8) Upon selection of a consultant and an alternate by the board, the chief of planning and design negotiates an architectural/engineering agreement for execution with the firm selected at the fee states.

(9) If an agreement cannot be executed within 45 days from selection with the selected consultant, the consultant shall

be notified that the firm is no longer being considered and negotiations shall begin with the alternate firm selected by the board.

(10) TYC enters into an architectural/engineering agreement.

(11) In the event the project under consideration is a new facility, the superintendent, business manager, and plant maintenance manager shall be replaced by appointments made by the executive director, director of institutions, or director of community services depending on the facility and director of finance.

Issued in Austin, Texas, on November 1, 1991.

TRD-9113780

Ron Jackson
Executive Director
Texas Youth Commission

Effective date: November 4, 1991

Expiration date: March 3, 1992

For further information, please call: (512) 483-5244

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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 1. ADMINISTRATION

Part IV. Office of the Secretary of State

Chapter 71. Office of the Secretary of State

Practice and Procedure

• 1 TAC §71.9

The Office of the Secretary of State proposes an amendment to §71.9, concerning refunds of monies paid to the secretary of state. This amendment is proposed to clarify the existing policy on issuance of refunds.

Lorna Wassdorf, Special Assistant, Statutory Filings Division, 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.

Ms. Wassdorf also has determined that for each year of the first five years the section is in effect the public and the Office of the Secretary of State will benefit from the removal of restrictions on issuance of refunds. There will be no effect on small business. There is anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Lorna S. Wassdorf, Special Assistant, Statutory Filings Division, P.O. Box 13697, Austin, Texas 78711-3697.

The amendment is proposed under Texas Civil Statutes, Article 6252-13a, and the Government Code, §405.034, which gives the secretary of state the authority to adopt rules of practice reasonably necessary to carry out its ministerial duties and to issue refunds.

§71.9. Fees; Payment of Money; Refunds.

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

(c) Money paid by actual mistake or in excess, such as a payment not required by law, is subject to refund [will be refunded, but]. A [a] mere change of purpose after the payment of money, as when a party desires to withdraw a [an application for] filing, will not entitle a party to a refund. [Only amounts in excess of \$5.00 will be refunded under any circumstances.]

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 November 5, 1991.

TRD-9113882

Lorna Wassdorf
Special Assistant
Office of the Secretary of State

Earliest possible date of adoption: December 13, 1991

For further information, please call: (512) 463-5586

TITLE 10. COMMUNITY DEVELOPMENT

Part I. Texas Department of Housing and Community Affairs

Chapter 1. Administration

Subchapter B. Block Grants

• 10 TAC §1.11, §1.13

The Texas Department of Housing and Community Affairs (the department) proposes amendments to §1.11 and §1.13, concerning the formal complaint system established to investigate complaints received about programs funded by federal block grants administered by the department. The amendment changes the name of the agency and establishes timeframes for responding to complaints concerning Texas Community Development Program complaints.

Ruth Cedillo, interim director, Community Development Block Grant (CDBG) Division, also has determined that there will be no fiscal implications as a result of enforcing or administering the section.

Ms. Cedillo also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be an integrated complaint system for handling complaints concerning the department's federal block grant contractors. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Anne O. Paddock, Interim Assistant General Counsel, P.O. Box 12026, Austin, Texas 78711-2026, within 30 days of the date of this publication.

The amendments are proposed under Texas Civil Statutes, Article 4413(501), §1.07, which provide the department with the authority to adopt and enforce rules for the conduct of its affairs.

§1.11. General Provisions.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1)-(3) (No change.)

(4) Department—Texas Department of Housing and Community Affairs.

(5)-(8) (No change.)

(b) (No change.)

§1.13. Complaint System.

(a) (No change.)

(b) The director of the division to which the comment or complaint is submitted shall transmit a copy of the comment or complaint to the entity which is the subject of the commentor complaint [and to the department's Legal Division] within two [five] calendar days for comments or complaints arising under the Texas Community Development Program or within five calendar days for all other block grant programs after the date the comment or complaint was received by the division.

(c) The entity shall complete its investigation of the comment or complaint and submit its findings, in writing, to the appropriate division director within seven [20] business [calendar] days for Texas Community Development Program comments or complaints or 20 calendar days for all other entities after the date the entity received the comment or complaint or notify the divisions director, within such period, of the date the investigation can be completed.

(d) The appropriate division director shall notify the complainant of the division's and the entity's findings before the 15th [31st] business day for Texas Community Development Program comments or complaints or the 31st calendar day for all other comments or complaints after the date the comment or complaint was received by the division, or the division shall notify the complainant, within such period, of the date the investigation can be completed.

(e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and

found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 4, 1991.

TRD-9113863 Larry C. Crumpton
Interim Director,
Community Affairs
Division
Texas Department of
Housing and
Community Affairs

Earliest possible date of adoption: December 13, 1991

For further information, please call: (512) 475-3802

Chapter 9. Texas Community Development Program

Subchapter A. Allocation of Program Funds

• 10 TAC §§9.1, 9.3, 9.7

(Editor's Note: The Texas Department of Housing and Community Affairs proposes for permanent adoption the new §§9.1, 9.3, and 9.7 it adopts on an emergency basis in this issue. The text of the new §§9.1, 9.3, and 9.7 is in the Emergency Rules section of this issue.)

The Texas Department of Housing and Community Affairs proposes new §§9.1, 9.3, 9.7, concerning the establishment of general provisions for the Texas Community Development Program and the establishment of specific requirements for the Texas capital fund and the governor's special assistance fund for small and minority businesses. Senate Bill Number 41, as passed by the 72nd Legislature, Second Called Session, transferred the Community Development Block Grant Program from the Texas Department of Commerce to the Texas Department of Housing and Community Affairs on September 1, 1991. Previous Community Development Block Grant program rules were Part V of this title §§178.10, 178.13, and 178.19.

Anne Paddock, interim assistant general counsel, 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.

Ruth Ceillor, interim director of community development block grant, has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the equitable distribution of funds to eligible units of general local government. There will be no effect on small business. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Anne Paddock, Interim Assistant General Counsel, P.O. Box 12026, Austin, Texas 78711, within 30 days after the date of this publication.

The new sections are proposed under Texas Civil Statutes, Article 4413(501), §2.07, which provide the Texas Department of Housing

and Community Affairs with the authority to allocate CDBG nonentitlement area funds to eligible counties and municipalities according to department rules.

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

Issued in Austin, Texas, on November 4, 1991.

TRD-9113814 Anne O. Paddock
Interim Assistant General
Counsel
Texas Department of
Housing and
Community Affairs

Earliest possible date of adoption: December 13, 1991

For further information, please call: (512) 320-9526

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 3. Oil and Gas Division

Conservation Rules and Regulations

• 16 TAC §3.14

The Railroad Commission of Texas proposes an amendment to §3.14, concerning well plugging. The proposed amendment specifies when wells are required to be plugged. Adoption of the proposed amendment will increase the assurance that inactive wells will not cause, or be likely to cause, pollution of surface or subsurface water.

Ms. Rita E. Percival, systems analyst for the Oil and Gas Division, has determined that for the first five-year period the section is in effect there will be fiscal implications for state government as a result of enforcing or administering the section. The effect on state government for the first five-year period the section will be an estimated additional cost of \$132,800 for fiscal year 1992, and \$63,600 per year for fiscal years 1993-1996. There will be estimated additional revenue of \$50,000 per year for fiscal years 1992-1996. There will be no fiscal implications for local government. The cost of compliance with the section for small businesses as a result of enforcing or administering the section will be an estimated \$1,500 per well requiring mechanical integrity testing and \$100 per well for wells using the extension permit option for a plugging extension after six months' inactivity.

Mr. Jamie Nielson, hearings examiner, Legal Division, 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 reduced likelihood that operations subject to Railroad Commission regulation will cause, or be likely to cause, pollution of surface or subsurface water. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

The Railroad Commission encourages public comment on the proposed amendment. Please submit comments to Jamie Nielson, Legal Division-Oil and Gas Section, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. The deadline for filing comments is 5 p.m., December 16, 1991. The docket number is 20-96,611.

The amendment is proposed pursuant to the sections of the Texas Natural Resources Code, Title 3, Chapters 86, 89, and 91, which that provides the Railroad Commission with authority to prevent pollution and determine plugging responsibility.

§3.14. Plugging.

(a) Application to plug.

(1)-(3) (No change.)

(4) Before plugging any well, notice shall be given to the surface owner of the well site tract, or the resident if the owner is absent [, and the operators of all offset producing leases]. If they so desire, a representative [representatives] of the surface owner [and offset operators], in addition to the commission representative, may be present to witness the plugging of the well. Plugging shall not be delayed because of the inability to deliver notice [notices] to [adjoining operators,] the surface owner [owners], or resident.

(b) **Plugging: commencement of operations, extensions, and responsibility** [Plugging report and commencement of operations].

(1) (No change.)

(2) Plugging operations on each dry or inactive well must be commenced within a period of six months [one year] after drilling or operations cease [ceased] and shall proceed with due diligence until completed. For good cause, a reasonable extension of time in which to start [the] plugging operations may be granted pursuant to the following procedures.

(A) The commission or its [oil and gas division director or the director's] delegate may administratively grant an extension of time if the well is in compliance with all other laws and Commission rules relating to conservation and safety or the prevention or control of pollution, is not a pollution hazard; and

(i) provided that [the well is in compliance with all other conservation laws and rules of the commission,] the operator [intends to use the wellbore,] pays the proper fee as provided in §3.76 of this title (relating to Fees, Bonds, and Alternate Forms of Financial Security Required to be Filed) (Statewide Rule 78), [and] obtains a permit for this extension, [re-entry] and no more than three extensions have been granted after January 1, 1992 for the well under the provisions of this clause; or

(ii) the operator files an

individual or blanket [posts a] performance bond as provided in §3.76, or a letter of credit. [or other form of financial security in an amount acceptable to the staff to ensure that the commission will not have to plug the well with state funds; or

[(iii) the operator has presented a viable plan for using the well in a secondary or tertiary recovery project within a reasonable time.]

(B) Any administratively granted extension of time is subject to review by the commission or its [oil and gas division director or his] delegate at any time.

(C) If the commission or its [oil and gas division director or his] delegate declines administratively to grant or to continue an extension of time, the operator shall plug the well or request a hearing on the matter. [After hearing, the examiner shall make a recommendation for final action by the commission.]

(D) The commission may allow a well to be the subject of more than four extensions, granted after January 1, 1992 under the provisions of subparagraph (A)(i) of this paragraph, upon written application and a showing that such an extension is necessary to prevent either waste or the confiscation of property.

(E) All wells more than 25 years old that become inactive and subject to the provisions of this paragraph shall be plugged or tested for mechanical integrity. Wells that are returned to continuous production, as evidenced by three consecutive months of production, within a year after the well becomes inactive need not be tested for mechanical integrity. A hydraulic pressure test is a sufficient mechanical integrity test for purposes of this section. Alternate methods of testing for mechanical integrity may be approved by the commission or its delegate by written application and upon a showing that such alternate method of testing will provide information sufficient to determine that the casing is sound and not subject to leakage. No mechanical integrity test conducted pursuant to this section shall be conducted without prior approval from the district office. The district office shall be given prior notice of not less than five days before the test is conducted. The results of any such required mechanical integrity test shall be filed with the district office on a commission-approved form. Mechanical integrity tests shall be conducted according to the following schedule.

(i) Wells that become both 25 years old and inactive after Jan-

uary 1, 1992 shall be tested within one year after the well becomes both inactive and greater than 25 years old unless the well has undergone a mechanical integrity test within five years of the date the well became inactive and the results of such test have been filed with the commission.

(ii) Wells that are both inactive and more than 45 years old as of January 1 1992 shall be tested before January 1 1993.

(iii) Wells that are both inactive and 35 to 45 years old as of January 1, 1992 shall be tested before January 1, 1994.

(iv) Wells that are both inactive and 25 to 35 years old as of January 1 1992 shall be tested before January 1, 1995.

(F) Any well for which proof of mechanical integrity was required under subparagraph (B) of this paragraph shall be subsequently tested to demonstrate continued mechanical integrity so long as the well remains inactive. Such tests shall be conducted every five years. However, the commission or its delegate may require that a well undergo a mechanical integrity test more frequently than every five years if conditions indicate that more frequent testing is necessary to prevent the threat of pollution of surface or subsurface water. The test shall not be conducted without prior approval from the district office. The district office shall be given prior notice of not less than five days before the test is conducted. The test results shall be filed with the district office, on a commission-approved form, within 30 days of the completion of the test.

(3) Proper plugging is the responsibility of the operator of the well. For purposes of plugging responsibility, the commission will presume that the following persons were responsible for the physical operation and control of the well at the time the well was about to be abandoned or ceased operation:

(A) the person designated as operator on the most recent commission-approved producer's transportation authority and certificate of compliance; and

(B) the person designated as operator on the producer's transportation authority and certificate of compliance most recently filed with the commission if such certificate has not been approved by the commission. This presumption may be refuted at a hearing called for the purpose of determining plugging responsibility.

(c) General plugging requirements.

(1) In plugging wells, it is essential that all formations bearing usable quality water, oil, gas, or geothermal resources be protected. [Proper plugging is the responsibility of the operator of the well. For purposes of plugging responsibility, the commission will presume that the operator designated on the most recent commission-approved producer's transportation authority and certificate of compliance was the person responsible for the physical operation and control of the well at the time the well was abandoned or ceased operation. This presumption may be refuted at a hearing called for the purpose of determining plugging responsibility.] All cementing operations during plugging must be performed under the direct supervision of the operator or his authorized representative, who shall not be an employee of the service or cementing company hired to plug the well. Direct supervision means supervision on location at the well site.

(2)-(11) (No change.)

(d)-(i) (No change.)

(j) Plugging horizontal drainhole wells. All plugs in horizontal drainhole wells shall be set in accordance with subsection (c)(10) of this section. The productive horizon isolation plug shall be set from a depth 50 feet below the top of the productive horizon to a depth either 50 feet above the top of the productive casing shoe or 50 feet above the production casing shoe if the production casing shoe is set below the top of the productive horizon. If the production casing shoe is set below the top of the productive horizon, then the productive horizon isolation plug shall be set from a depth 50 feet below the production casing shoe to a depth that is 50 feet above the top of the productive horizon. In accordance with subsection (c)(6) of this section, the commission or its delegate may require additional plugs.

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 November 5, 1991.

TRD-9113925

Martha V. Swanger
Hearings Examiner, Gas
Utilities/L.P.-Gas Section,
Legal Division
Railroad Commission of
Texas

Earliest possible date of adoption: December 13, 1991

For further information, please call: (512) 463-6864

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Chapter 5. Transportation Division

Subchapter Z. Base Rates, De- viations, and Suspensions

• 16 TAC §5.582

The Railroad Commission of Texas proposes an amendment to §5.582, concerning deviations from base rates. The amendment is proposed pursuant to a petition from the Texas Association of Warehousemen. The section defines the traffic on which deviations are allowed, and the levels of deviations that are permissible. The amendment will allow deviations of up to 25% on shipments moving out of established Texas distribution centers when the freight has had a prior movement into the center from out of state.

Jackye Greenlee, assistant director-central operations, 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.

Ronald D. Stutes, hearings examiner, has determined that for each year of the first three years the section is in effect the public benefit anticipated as a result of enforcing the section will be to make Texas distribution centers more competitive with distribution centers in other states. 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 Ronald D. Stutes, Hearing Examiner, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711.

The amendment is proposed under the Texas Motor Carrier Act, Texas Civil Statutes, Article 911b, §4(a)(8), which authorizes the commission to set the level of deviations allowed on shipments of general commodities.

§5.582. *Deviations from Base Rates.*

(a) (No change.)

(b) Subject to the provisions of subsection (f) of this section, motor carriers (other than specialized motor carriers and other than contract carrier subject to commission-prescribed tariffs governing transportation of specialized commodities) shall be permitted to deviate by an amount not to exceed 5.0% above or below the applicable base rate or charge for shipments of general commodities weighing from 501 to 9,999 pounds, except that deviations not to exceed 25% shall be permitted for shipments moving out of established Texas distribution centers, and only when product shipped has had prior movement into distribution center from outside the State of Texas.

(c)-(g) (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 November 5, 1991.

TRD-9113921

Martha V. Swanger
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Railroad Commission of
Texas

Earliest possible date of adoption: December 13, 1991

For further information, please call: (512) 463-7094

Chapter 15. Alternative Fuels Research and Education Division

The General Rules of Practice and Procedure

• 16 TAC §15.1, §15.2

The Railroad Commission of Texas proposes new Chapter 15 to the commission's rules, establishing General Rules of Practice and Procedure for the newly created Alternative Fuels Research and Education Division. The commission proposes new §15.1 and §15.2, concerning definitions to be used under the chapter, and registration of loading racks with the commission. The commission is proposing the new sections in response to House Bill 2505, which amends Chapter 113 of the Texas Natural Resources Code to create an Alternative Fuels Research and Education Fund in the state treasury.

Monies from the fund will be used by the commission to conduct research and educate the public regarding the use of LPG. Although House Bill 2505 refers to research and education regarding "LPG and other alternative fuels" in several places, it also restricts the use of funds to activities relating to the specific fuel from which the fee was derived. Because all of the funds will be derived from the LPG industry, they will be used solely for research and education regarding LPG.

New §15.1 sets out definitions applicable to the newly created division. Section 15.2 requires that loading racks be registered with the commission on an annual basis.

Renea Ryland, hearings examiner, Gas Utilities/LP-Gas Section, 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. Ryland also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be an increase in public education and understanding regarding the use of LPG. 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 Renea Ryland, Hearings Examiner, Gas Utilities/LP-Gas Section, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register*.

The new sections are proposed under the Texas Natural Resources Code, §113. 246, which authorizes the commission to promulgate rules and standards necessary for the

administration, collection, reporting, and payment of fees payable or collected under Chapter 113, Subchapter I of the Code.

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

Cargo container—Any receptacle mounted on a transport vehicle, including a bobtail or semi-trailer, designed and used for the transportation or storage of liquefied petroleum gas, excluding the vehicle's motor fuel tank.

Commission—The Railroad Commission of Texas.

Division—The Alternative Fuels Research and Education Division of the Railroad Commission of Texas.

First sale—The first transaction in which ownership of odorized liquefied petroleum gas transfers from seller to purchaser.

Liquefied petroleum gas (LPG)—Any material that is composed predominantly of any of the following hydrocarbons or mixtures of hydrocarbons: propane, propylene, normal butane, isobutane, or butylenes.

Loading rack—Any material handling facility where LPG is loaded into cargo containers, including, but not limited to, gas processing plants, refineries, underground and aboveground bulk storage facilities, pipeline terminals, and unattended LPG dispensing facilities.

Loading rack operator—The owner or any person or entity controlling the day-day operations of the facility. When this person or entity is not the person or entity invoicing the first purchase of LPG dispensed into a cargo container at a loading rack, then the person or entity invoicing the first purchase of LPG dispensed into a cargo container at a loading rack shall be considered the loading rack operator.

§15.2. Loading Rack Registration. All loading racks operating within the State of Texas must be registered with the commission. On or before January 1st of each year, each loading rack operator shall file with the commission Division Form Number 6, Loading Rack Registration. It shall be the responsibility of the operator to notify the commission of any changes in registration information, and failure to properly register may subject the operator to civil penalties under §15.27 of this chapter (relating to Civil Penalties).

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

Issued in Austin, Texas, on November 6, 1991.

TRD-9113922

Martha V. Swanger
Hearings Examiner, Gas
Utilities/LP-Gas Section,
Legal Division
Railroad Commission of
Texas

Earliest possible date of adoption: December 13, 1991

For further information, please call: (512) 463-7274

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• 16 TAC §§15.21-15.27

The Railroad Commission of Texas proposes new Chapter 15 to the commission's rules, establishing General Rules of Practice and Procedure for the newly created Alternative Fuels Research and Education Division. The commission proposes new §§15.21-15.27, concerning the administration, collection, reporting, and payment of fees due on the first sale of odorized liquefied petroleum gas (LPG), as well as penalties associated with failure to comply with the applicable statute or commission rules. The commission is proposing the new sections in response to House Bill 2505, which amends Chapter 113 of the Texas Natural Resources Code to create an Alternative Fuels Research and Education Fund in the state treasury.

Monies from the fund will be used by the commission to conduct research and educate the public regarding the use of LPG. Although House Bill 2505 refers to research and education regarding "LPG and other alternative fuels" in several places, it also restricts the use of funds to activities relating to the specific fuel from which the fee was derived. Because all of the funds will be derived from the LPG industry, they will be used solely for research and education regarding LPG.

New §15.21 establishes a fee on the first sale of odorized LPG, and prescribes the amount of the fee to be collected. The procedure for reporting and remitting the fees is described in §15.22 and §15.23 sets out the allowable exemptions. Section 15.24 and §15.25 concern application for refunds, both from the loading rack operator and from the commission. Administrative penalties for failure to report as required are covered in §15.26 and §15.27 sets out civil penalties that may result from failure to comply with Chapter 113 of the Texas Natural Resources Code or commission rules.

Renea Ryland, hearings examiner, Gas Utilities/LP-Gas Section, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications on local government. There will be fiscal implications to state government as a result of enforcing or administering the sections as follows: administrative costs in Fiscal Year 1992 of \$394,000; in Fiscal Year 1993 of \$350,000; in Fiscal Year 1994 of \$362,000; in Fiscal Year 1995 of \$366,000; and in Fiscal Year 1996 of \$377,000.

All administrative costs will be covered by fees collected under the rules, and therefore there is no expected net loss in state revenue.

Any funds collected in excess of administrative costs must be used for research and education relating to LPG, and therefore there is no net gain expected in state revenues.

The aggregate fiscal impact on small businesses required to pay fees under the rules will be approximately \$1,000,000 in fees collected in calendar year 1991, and approxi-

mately \$2,000,000 annually in fees collected in calendar years 1992-1995. The fees will be collected from loading rack operators as defined herein.

Ms. Ryland also has determined that for each of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections as proposed will be an increase in public education and understanding regarding the use of LPG.

The only anticipated economic costs to persons required to comply with the proposed sections will be the amount of the fee and any costs associated with collecting and remitting the fee to the commission.

Comments on the proposal may be submitted to Renea Ryland, Hearings Examiner, Gas Utilities/LP-Gas Section, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register*.

The new sections are proposed under the Texas Natural Resources Code, §113.246, which authorizes the commission to promulgate rules and standards necessary for the administration, collection, reporting, and payment of fees payable or collected under Chapter 113, Subchapter I of the Code.

§15.21. Fee on Delivery of Odorized LPG.

(a) Each operator of an LPG loading rack, upon delivery of odorized LPG into any cargo container, shall collect a fee on the first sale of said odorized LPG.

(b) The loading rack operator shall be responsible for collecting the fee from the first purchaser of the odorized LPG regardless of whether the first sale was made by the loading rack operator or by some other entity. Unless proven otherwise, it is presumed that the entity taking delivery of the odorized LPG at the loading rack is the first purchaser.

(c) The amount of the fee shall be computed on the net amount of odorized LPG delivered into the cargo container in accordance with the following fee schedule:

(1) \$7.50 for each delivery of less than 1,500 gallons;

(2) \$9.00 for each delivery of 1,500 gallons or more but less than 1,800 gallons;

(3) \$10 for each delivery of 1,800 gallons or more but less than 2,000 gallons;

(4) \$12.50 for each delivery of 2,000 gallons or more but less than 2,500 gallons;

(5) \$13.50 for each delivery of 2,500 gallons or more but less than 2,700 gallons;

(6) \$25 for each delivery of 2,700 gallons or more but less than 5,000 gallons;

(7) \$37.50 for each delivery of 5,000 gallons or more but less than 8,000 gallons;

(8) \$50 for each delivery of 8,000 gallons or more but less than 12,000 gallons;

(9) \$25 for each delivery of any increment of 5,000 gallons or any part of 5,000 gallons equal to or greater than 12,000 gallons.

§15.22. Report and Remission of Fees. On or before the 25th day of each month, each loading rack operator shall file a report and remit to the Commission all fees due on odorized LPG delivered in the previous month. Fees are due to the commission on all gas delivered in the previous month, regardless of whether the fees were actually collected from first purchasers in that month. The report shall be prepared on Division Form Number 1, Loading Rack Operator's Report of Fees Collected, and must be returned to the Alternative Fuels Research and Education Division of the commission postmarked on or before the deadline for filing. Late filings or failure to file as required will subject the operator to additional fees or penalties as set out in §15.26 and §15.27 of this title (relating to Penalty For Failure To Report As Required; and Civil Penalties).

§15.23. Exemptions.

(a) No fee shall be collected on any deliveries of odorized LPG destined for export out of the State of Texas if the LPG is in continuous movement to a destination outside the state.

(b) Purchasers or representatives of purchasers claiming an exemption under this section must complete the appropriate division form and return it to the loading rack operator making the exempt delivery. Division Form Number 2, Load Exemption, shall be completed by any purchaser certifying that a particular load of LPG is exempt from the fee. Division Form Number 4, Blanket Exemption, shall be completed by any purchaser obtaining an exemption for all LPG purchased. Each loading rack operator shall keep all exemption forms filed with him/her on file and available for commission inspection for a period of four years.

§15.24. Loading Rack Refunds. Any purchaser who pays a fee to a loading rack operator on a load of LPG that is exempt under §15.23 of this title (relating to Exemptions) may apply to the loading rack operator for a refund of the amount paid. To apply for the refund, the purchaser must complete Division Form Number 5, Request for Refund, and return it to the loading rack operator who collected the fee. Any loading rack operator who is required to refund a fee to a purchaser as a result of the purchaser having returned Division Form Number 5 shall report the amount of the refund on Schedule A of Division Form

Number 1. All amounts refunded and reported in this manner may be deducted from the total amount of fees collected to arrive at the total amount of fees to be remitted to the commission. All refund amounts reported must be supported by refund request forms kept on file and available for commission inspection by the loading rack operator for a period of four years.

§15.25. Commission Refund. Any operator of a loading rack may petition the commission for refund of fees remitted to the commission in error. Any operator seeking a refund must complete Division Form Number 3, Fee on First Sale of Odorized LPG Refund Request, and return it to the Alternative Fuels Research and Education Division of the commission. The reason for the refund and supporting documentation must accompany the request.

§15.26. Penalty For Failure To Report as Required.

(a) Loading rack operators filing a report or remitting fees later than the 25th day of the month in which fees are due, but within 30 days of the deadline, shall remit a penalty in the amount of 5.0% of the amount of fees originally due and payable.

(b) Loading rack operators filing a report or remitting fees more than 30 days after the deadline, shall remit a penalty in the amount of 10% of the amount of fees originally due and payable.

(c) An additional penalty of 75% of the amount of the fees and penalties due and payable will be added to the above-mentioned penalties if the failure to file a report or to remit the fees collected is determined to be the result of fraud or an intent to evade the provisions of the Texas Natural Resources Code, §§113.241-113.245 or commission rules.

§15.27. Civil Penalties.

(a) Any person who violates the provisions of the Texas Natural Resources Code, §§113.241-113.245 or the rules of the commission implementing those provisions forfeits to the state a civil penalty in an amount not less than \$25 and not more than \$200.

(b) At the request of the commission, the Attorney General is empowered to sue in a court of competent jurisdiction to collect any fee or penalty due under the provisions of Texas Natural Resources Code, §§113.241-113.250.

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 November 6, 1991.

TRD-9113923

Martha V. Swanger
Hearings Examiner, Gas
Utilities/LP-Gas Section,
Legal Division
Railroad Commission of
Texas

Earliest possible date of adoption: December 13, 1991

For further information, please call: (512) 463-7274

Part IV. Texas Department of Licensing and Regulation

Chapter 65. Boiler Division

• 16 TAC §§65.20, 65.50, 65.100

The Texas Department of Licensing and Regulation proposes amendments to §§65.20, 65.50, and 65.100, concerning certification, reporting, and technical requirements regarding boilers. Section 65.20(h) invokes the repair, setting, testing, and sealing of safety valves and safety relief valves by the valve manufacturer or repair firms holding certification by the National Board of Boiler and Pressure Vessel Inspectors for the valve repair "VR" symbol. Section 65.50(f) requires reporting of repairs and alterations to boilers within 90 days following completion of work. Section 65.100(j) requires welded repairs and alterations to boilers be accomplished by manufacturers holding certification from the American Society of Mechanical Engineers or the National Board of Boiler and Pressure Vessel Inspectors for use of the repair "R" symbol.

Meryl Vaughan, administrative assistant, boiler section, has determined that for the first five-year period the sections are in effect there will be fiscal implications for state and local government as a result of enforcing or administering the sections. The effect on state government for the first five-year period the sections are in effect will be an estimated additional cost of \$23,570 for fiscal year (fy) 1992; and \$37,140 for fys 1993-1996; and an estimated increase in revenue of \$24,120 for fy 1992; and \$48,240 for fys 1993-1996. There will be no effect on local government for the first five-year period the sections are in effect.

Mr. Vaughan 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 greater assurance that repairs and alterations to boilers and valves are performed by qualified, competent companies or firms ensuring greater reliability and safety. The effect on small businesses will be a special inspection fee which will be charged for the initial qualification review and triennial renewal. There will be no difference in costs for a small or large business. The anticipated economic cost to persons who are required to comply with the sections as proposed will be: \$24,120 for fy 1992; and \$48,240 for fys 1993-1996 for fees.

Comments on the proposal may be submitted to Public Comment Elvis Schulze, General Counsel, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711.

The amendments are proposed under the Health Authority and Safety Code, Chapter 755, which provides the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules in keeping with standard usage for the construction, inspection, installation, use, maintenance, repair, alteration, and operation of boilers.

§65.20. Licensing/Certification/Registration Requirements.

(a) -(g) (No change.)

(h) Authority to set and seal safety appliances. All safety and safety relief valves for ASME Sections I, IV, and VIII Division 1 boilers must be repaired, tested, set, and sealed by one of the following, provided the scope of the issued certificate of authorization covers the work to be performed:

(1) an organization holding a valid V, HV, or UV certificate of authorization, as appropriate, issued by the American Society of Mechanical Engineers (ASME); or [All safety valves and safety relief valves must be repaired, tested, set, and sealed by one of the following:]

[(A) authorized safety valve and safety relief valve manufacturers, assemblers, or owner/users who have been granted authorization by the commissioner. Such authorization shall be granted only upon proof of competency on a form to be furnished by the commissioner and signed by an officer of the organization requesting the authorization; or

[(B) safety valve and safety relief valve repair organizations that have been granted a certificate of authorization to use the TVR symbol stamp by the commissioner. Such authorization shall be granted only upon compliance with this subsection and implementation and demonstration of a written quality control system acceptable to the commissioner; or

[(C) authorization to use the stamp bearing the official valve repair symbol TVR as shown in Exhibit 1, Figure A (herein adopted by reference and which exhibit may be secured from the Texas Department of Labor and Standards, Boiler Section, 920 Colorado Street, Austin, Texas 78701, or mailing address P.O. Box 12157 Austin, Texas 78711) will be granted by the commissioner pursuant to the provisions of this section.]

(2) an organization holding a valid VR certificate of authorization issued by the National Board of Boiler and Pressure Vessel Inspectors; or [Repair organizations, manufacturers, assemblers, or owner/users that make repairs to the American Society of Mechanical Engineers (ASME) code symbol stamped safety valves and safety relief valves may apply to

the Texas Department of Labor and Standards by completing the application form provided by the agency. The commissioner may, at any time with the advice of the board of boiler rules, make such regulations concerning the issuance and use of such valve repair stamp. All such regulations shall become binding upon holders of valid TVR certificates of authorization.]

(3) an organization holding a valid owner/operator certificate of authorization issued by the department. Such authorization may be granted or withheld by the commissioner. [Authorization to use the valve repair stamp may be granted or withheld by the commissioner. Proceedings for denial, suspension, or revocation of a TVR certificate of authorization and appeals from those proceedings are governed by the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a. If authorization is granted and proper administrative fees as provided for in §65.80(b) of this title (relating to Fees) are paid, a TVR certificate of authorization will be issued evidencing permission to use such a symbol, expiring on the triennial anniversary date. The certificate shall indicate authorization to repair either ASME Section I or Section VIII valves or both, as verified by testing and as covered by the repair organization's quality control manual. The certificate will be signed by the commissioner and the chief inspector.]

(A) If authorization is granted and proper administrative fees as provided for in §65.80(b) of this title (relating to Fees) are paid a certificate of authorization will be issued, expiring on the triennial anniversary date. The certificate shall indicate authorization to repair ASME Sections I, IV, or VIII valves, as verified by testing and as covered by the repair organization's quality control manual. The certificate will be signed by the commissioner and the chief inspector. [Before issuance or renewal of a TVR certificate of authorization, the repair organization and its facilities are subject to a review and demonstration of its quality control system by a representative of the Boiler Section. It is the responsibility of the valve repair organization to make arrangements for this review. Wherever possible, Boiler Section reviews of valve repair organizations shall be coordinated with ASME and/or National Board reviews when applicable.]

(B) The applicant should apply to the department [Boiler Section] for renewal of authorization and reissuance of the certificate six months prior to the date of expiration.

(C) The owner/operator [TVR] certificate of authorization is renewable every three years. Before issuance or

renewal of the certificate of authorization, the repair organization and its facilities are subject to a review and demonstration of its [the] quality control system by a representative of the department or the authorized inspector [Boiler Section].

(D) Before the owner/operator certificate of authorization may be issued or renewed, two valves which have been repaired by the applicant must successfully complete operational verification tests as follows:

(i) visual examination to ensure the quality of material and workmanship;

(ii) verification that critical parts meet the valve manufacturer's specifications. Critical Parts that are replaced must be fabricated to the valve manufacturer's specifications. Critical parts which require repair shall meet the valve manufacturer's specifications;

(iii) tightness tests and verification;

(iv) set pressure test and verification.

(E) The purpose of the tests is to ensure that the function and operation of the valves meet the requirements of the applicable section of the ASME Code to which they are manufactured. Should any of the valves fail to meet the applicable requirements the test shall be repeated on two valves for each valve that failed. Failure of any of these valves shall cause the applicant to investigate and document the cause of failure and state what corrective action has been taken to prevent future recurrences. Retest of the original valve is acceptable. Following proper implementation of this corrective action and after satisfactory performance, permission to receive the certificate of authorization will be granted.

(F) Field repairs are defined as any repair conducted outside a fixed repair shop location. Field repairs may be conducted with the aid of mobile facilities with repair capabilities with or without testing capabilities. Field repairs may be conducted in owner/operator facilities without the use of mobile facilities. Organizations that obtain the owner/operator certificate of authorization for in-shop/plant repairs may also perform field repairs to safety and safety relief valves provided that:

(i) qualified technicians perform such repairs;

(ii) an acceptable quality control system covering field repairs is maintained;

(iii) periodic audits of the work carried out in the field are made by quality control personnel of the certificate of authorization holder to ensure that the requirements of the quality control system are met.

(G) Provided the provisions in paragraph (3)(F)(i)-(iii) of this subsection are met, verification testing of field repaired valves shall not be required.

(H) Organizations that perform field repairs only must demonstrate their field repair capabilities to a representative of the department or authorized inspector before the certificate of authorization may be issued or renewed. Two valves must be repaired in the field and successfully complete verification tests as described in subparagraph (D) of this paragraph. A quality control manual, as required in subparagraph (J) of this paragraph must be prepared describing all field repair activities.

(I) Repair of a safety and safety relief valve is considered to be the replacement, remachining, or cleaning of any part, lapping of seat and disc, or any other operation which may affect the flow passage, capacity function, or pressure retaining integrity. Disassembly, reassembly, and/or adjustments which affect the safety or safety relief valve function are also considered a repair. The initial installation testing and adjustments of a new safety valve or a safety relief valve in a boiler are not considered a repair.

(J) In general, the quality control system shall describe and explain what documents and procedures the owner/operator will use to validate a valve repair. Before issuance or renewal of the owner/operator certificate of authorization, the applicant must meet all requirements, including an acceptable written quality control system. The basic elements of a written quality control system shall be those described in Exhibit 1 (herein adopted by reference and which exhibit may be secured from the Texas Department of Licensing and Regulation Boiler Section 920 Colorado Street, Austin, Texas 78701, or mailing address P.O. Box 12157, Austin, Texas 78711).

(i) The written quality control system shall also include provisions for making revisions, posting, and dating changes in parts, enabling the system to be kept current as required.

(ii) A review of the applicant's quality control system will be performed by a representative of the Boiler Section or the authorized inspector. The review will include a demonstra-

tion of the implementation of the applicant's quality control system.

(iii) Each applicant to whom a certificate of authorization is issued shall maintain thereafter a controlled copy of the accepted quality control manual with the inspector. Except for changes which do not affect the quality control program, revisions to the quality control manual shall not be implemented until such revisions are acceptable by the inspector.

(K) It is essential that owner/operator valve repair organizations ensure that personnel making repairs to safety and safety relief valves are knowledgeable and qualified. The owner/operator shall provide documented training with minimum qualification requirements for the valve repair position. Specific requirements to be included in an individual's training are as follows:

(i) working knowledge of the organization's quality control manual;

(ii) working knowledge of the applicable requirements; and

(iii) working knowledge of the technical aspects and mechanical skills for valves being repaired or tested.

(L) Performance testing of repaired valves instructions are as follows.

(i) For shop valves a test stand shall be used. The test stand shall be of a size and design to ensure clean, consistent, and repetitive pop action and response to blowdown adjustment, if possible. Test gages shall be connected to the test stand in such a manner as to indicate true pressure at the inlet of the valve being tested. Test gages shall be maintained and calibrated, at least every 90 days, to a minimum of one-half of 1.0% accuracy over the upper 80% of full scale range. The use of digital gages is acceptable. All calibrations shall be documented and traceable to national standards.

(ii) Valves marked for liquid service shall be set according to the applicable manufacturer's specification.

(iii) Valves marked for steam service or having special internal parts for steam should be tested with steam. However, valves for steam service may be tested with air or nitrogen for correct opening (popping), pressure setting, and if possible, blowdown adjustment, provided the differential in popping pressure between steam and air or nitrogen, as specified in the quality control manual, are applied to the popping point.

(iv) Valves which are repaired in place shall be tested to demonstrate set pressure.

(v) For valves which are repaired in place a device (hydraulic, pneumatic etc.) may be used to apply an auxiliary lifting load on the spring to a valve for testing purposes and/or making adjustments. Calibrated testing equipment shall be used and detailed testing procedures followed. In such cases, the manufacturer's recommendations shall be used to establish blowdown.

(M) When a safety or safety relief valve is repaired, a metal repair tag, as described in the quality control manual shall be attached to the valve. As a minimum, the information on the tag will include the valve identification number, set pressure, date of repair, and certificate of authorization number.

[(4) Each applicant shall agree, if authorization to use the TVR symbol stamp is granted, that the stamp is at all times the property of the Boiler Section, Texas Department of Labor and Standards, and will be promptly returned pursuant to the provisions of this paragraph. If the applicant discontinues the repair of such valves or, if the TVR certificate of authorization issued to such applicant has expired and no new certificate has been issued, the TVR symbol stamp will be returned to the Boiler Section.

[(A) Each TVR symbol stamp shall be serialized and used only by the repair firm within the limitations and restrictions under which it was issued. The TVR symbol stamp shall be obtained only from the Texas Department of Labor and Standards, Boiler Section.

[(B) A holder of a TVR symbol stamp shall not permit any others to use the stamp. When a repair organization, manufacturer, or user, has a repair department and/or equipment in plants or shops located in more than one geographical area, it must submit separate applications for each plant or shop and the addresses of all such repair locations. It may make the repairs in its plant, shop, or in the field, provided such operations are controlled by the plant or shop. TVR certificates of authorization shall indicate if authorization is for shop or field repairs or both.

[(C) When a valve repair organization changes location, a review of its facilities and quality control manual shall be required. When a valve repair organization changes ownership, a review may be required depending upon the nature and extent of revisions to repair procedures, change of personnel, and equipment as a result of the ownership change.

[(D) The holder of a TVR certificate of authorization may obtain more than one TVR symbol stamp provided its quality control manual controls the use of such stamps from the locations shown in the TVR certificate of authorization. In such cases, the TVR certificate of authorization will indicate the serial numbers of each TVR symbol stamp which has been issued on loan to the repair organization.

[(5) Before the TVR certificate of authorization and symbol stamp may be issued or renewed, two valves which have been repaired by the applicant at a fixed repair facility and selected by a Boiler Section representative must successfully complete operational verification tests as follows:

[(A) perform visual examination to ensure the quality of material and workmanship;

[(B) perform verification that critical parts meet the manufacturer's specifications. Critical parts that are replaced must be fabricated by the manufacturer to the manufacturer's specifications. Critical parts which require repair shall meet the manufacturer's specifications;

[(C) perform tightness test and verification;

[(D) perform set pressure test and verification.

[(6) The valve selection (e.g., one steam and one air or gas where steam and gas valves are repaired) shall be such as to cause a minimum disruption to the repair organization. However, the valves shall be typical of those repaired by the organization and within the capabilities of the repair organization. Tests conducted at a repair organization must be witnessed by a representative of the Boiler Section. The purpose of the tests are to ensure that the function and operation of the valves meet the requirements of the applicable section of the ASME code to which they are manufactured. Should any of the valves fail to meet the applicable requirements, the tests shall be repeated on two valves for each valve that failed. Failure of any of these valves shall cause the applicant to investigate and document the cause of failure and state what corrective action has been taken to prevent future reoccurrence. Retest of the original valve is acceptable. Following proper implementation of this corrective action and after satisfactory performance, permission to receive the TVR certificate of authorization and symbol stamp will be granted.

[(7) A manufacturer or a manufacturer's authorized assembler holding a valid ASME certificate(s) of authorization for use of an ASME V and/or UV code

symbol stamp, may obtain the TVR certificate of authorization for the repair of ASME stamped safety and safety relief valves covered by his ASME certificate(s) of authorization. This can be accomplished without a review of the repair and test facilities provided there is a written quality control system to cover the scope of the repairs to be made and the repairs are carried out at the same location where the ASME valves are manufactured or assembled.

[(A) If the repaired valves are not tested on the same facilities and to the same procedures as new valves, then a review of the facilities is required and two repaired valves shall be selected by a Boiler Section representative for verification and tests.

[(B) Manufacturers or a manufacturer's authorized assembler making repairs to valves other than those covered by his ASME certificate(s) of authorization shall meet the qualifications for the TVR certificate of authorization as required elsewhere in these rules.

[(C) The quality control manual is to be submitted for review and acceptance by the chief inspector. In order for an ASME code symbol stamp holder to qualify for the TVR certificate of authorization and symbol stamp, the following areas to the written quality control system require attention:

[(i) statement of authority and responsibility—this should clearly indicate that valve repairs are carried out in accordance with the requirements and the rules of the Boiler Section. In addition, the scope and type of valve repairs covered by the manual should be indicated;

[(ii) organization—unless the functions which affect the quality of valve repairs are carried out by the individuals other than those responsible for manufacturing or assembly, it should not be necessary to revise the organizational chart;

[(iii) general quality control functions—usually quality control requirements regarding valve repairs may be controlled in the same manner as for ASME manufacturing or assembly, provided applicable shop and/or field activities are covered. If this is the case, the applicant for the TVR certificate of authorization and symbol stamp should include in the quality control manual a separate section covering valve repairs which reference the applicable section of the manual.

[(8) Repair of a safety and safety relief valve is considered to be the replacement, remachining, or cleaning of any parts, lapping of seat and disc, or any other operation which may affect the flow passage, capacity, function, or pressure re-

taining integrity. Disassembly, assembly, and/or adjustments which affect the safety or safety relief valve function are also considered a repair. The initial installation, testing, and adjustments of a new safety valve or a safety relief valve on a boiler or pressure vessel are not considered a repair if made by the manufacturer or assembler of the valve.

[(9) In general, the quality control system shall describe and explain what documents and procedures the repair firm will use to validate a valve repair. Before issuance or renewal of the TVR certificate of authorization, the applicant must meet all requirements including an acceptable written quality control system. The basic elements of a written quality control system shall be those described in Exhibit 2 (herein adopted by reference and which exhibit may be secured from the Texas Department of Labor and Standards, Boiler Section, 920 Colorado, Street, Austin, Texas 78701 or mailing address P.O. Box 12157, Austin, Texas 78711).

[(A) The written quality control system shall also include provisions for making revisions, posting and dating changes in parts, enabling the system to be kept current as required.

[(B) The description and information of the system may be brief or voluminous, depending upon the circumstances and shall be treated confidentially.

[(C) A review of the applicant's quality control system will be performed by a representative of the Boiler Section. The review will include a demonstration of the implementation of the provisions of the applicant's quality control system.

[(D) Each applicant to whom a TVR certificate of authorization is issued shall maintain thereafter a controlled copy of the accepted quality control manual with the chief inspector. Except for changes which do not affect the quality control program, revisions to the quality control manual shall not be implemented until such revisions are accepted by the chief inspector.

[(10) It is essential that valve repair organizations ensure that their personnel making repairs to safety and safety relief valves are knowledgeable and qualified. The repair organization shall provide for documented in-house training. Specific requirements to be included in an individual's training are as follows:

[(A) working knowledge of the organizations's quality control manual;

[(B) working knowledge of the pertinent portions of the latest edition of the applicable ASME code;

[(C) working knowledge of the manufacturer's technical bulletin for valves being repaired or tested.

[(11) The courses offered by the National Board of Boiler and Pressure Vessel Inspectors and by the various manufacturers can be an invaluable training tool and the repair organizations are encouraged to utilize this means of training personnel.

[(12) Test stands shall be of a size and design to ensure clean, consistent, and repetitive pop action and response to blowdown adjustment. Test gages shall be connected to the test stand in such a manner as to indicate true pressure at the inlet of the valve being tested. Test gages shall be maintained and calibrated, at least every 90 days, to a minimum of one-half of 1.0% accuracy over the upper 80% of full scale range. Gages shall be used only in the upper 80% of full scale range. The use of digital gages is acceptable. All calibrations shall be documented and traceable to national standards.

[(A) Valves marked for general service or liquid service shall be set according to the applicable manufacturer's specification.

[(B) Valves marked for steam service or having special internal parts for steam shall be preferably set on steam. ASME Section I valves set on air or set at pressures above the repair firm's steam testing capability shall be set on air or nitrogen, provided the valve manufacturer's recommendations concerning this test medium are followed and additional test and/or adjustments are made on steam after installation.

[(C) ASME Section VIII valves for steam service may be tested on air for correct opening (popping), pressure setting and, if possible, blowdown adjustment, provided the valve manufacturer's corrections for differential in popping pressure between steam and air are applied to the popping point.

[(D) Valves which are installed in such a manner that it makes it impractical to remove them from service and are repaired in place shall be tested to demonstrate set pressure and response to blowdown.

[(E) A hydraulic or pneumatic device may be used to apply an auxiliary lifting load on the spring of a valve for testing purposes and/or making adjustments. Calibrated testing equipment shall be used and detailed testing procedures followed. In such cases the manufacturer's recommendations shall be used to establish blowdown.

[(13) Safety valve and safety relief valves discharging to atmosphere can create a high noise level. Consideration should be given either to appropriate silencers or individual ear protection. Likewise, the discharge blast can create safety hazards and should be considered.

[(14) When a safety or safety relief valve is repaired, the TVR metal repair nameplate, as shown in Exhibit 1, Figure B (herein adopted by reference and which exhibit may be secured from the Texas Department of Labor and Standards, Boiler Section, 920 Colorado, Street, Austin, Texas 78701 or mailing address P.O. Box 12157, Austin, Texas 78711) marked with the information required shall be permanently attached to the valve. The preferred location for the nameplate is either above, adjacent to, or below the original nameplate or marking. On small valves, the TVR nameplate shall be securely attached to each valve with a corrosion resistant stainless steel or alloy wire. The information on the TVR nameplate shall be that shown on Exhibit 1, Figure B and include the name of the repair organization, TVR symbol stamp number, and the date of repair. The valve set pressure (PSIG), capacity, and the blowdown (for V stamped valves) shall be marked out, but left legible on the original nameplate or marking. The new capacity shall be based on that for which the valve was originally certified as published by the National Board of Boiler and Pressure Vessel Inspectors, publication NB-18 with the applicable revision.

[(15) When the information on the original manufacturer's or assembler's nameplate is missing or the marking is illegible, the nameplate or marking will be augmented by a nameplate furnished by the TVR certificate of authorization holder marked "DUPLICATE" and "Section I" or "Section VIII" as applicable to indicate the original ASME code stamping, which contains all information which originally appeared on the nameplate or marking of the valve, as required by the applicable section of the ASME code, except the V or UV symbol and the National Board mark. The repair organization's TVR nameplate with serialized TVR symbol stamp and other required data will make the repair organization responsible to the Texas Department of Labor and Standards and the owner/user that the information on the "DUPLICATE" nameplate is correct. In all such cases where a "DUPLICATE" nameplate is furnished by the TVR certificate of authorization holder, positive identification of the valve must be made. Otherwise, the valve may not be repaired under the rules of the TVR program and the TVR certificate of authorization holder is not authorized to attach a TVR symbol stamp or a TVR nameplate. Positive identification and verification of original V or UV symbol stamping shall be obtained and the source of the information shall be documented for that specific valve and the documentation main-

tained in the TVR certificate of authorization holder's records. This information may be obtained from the original manufacturer or assembler of the specific valve, or may be obtained from the owner/user's records that document the original ASME code stamping when the valve was originally purchased by the owner/user and/or original buyer of the valve.

[(16) Field repairs are defined as any repair conducted outside a fixed repair shop location. Field repairs may be conducted with the aid of mobile facilities with repair capabilities with or without testing capabilities. Field repairs may be conducted in owner/user facilities without the use of mobile facilities.

[(A) Organizations that obtain the TVR certificate of authorization for in-shop/plant repairs may also perform field repairs to safety and safety relief valves provided that:

[(i) qualified technicians perform such repairs;

[(ii) an acceptable quality control system covering field repairs is maintained;

[(iii) all functions affecting the quality of the repaired valves are supervised from the location described on the TVR certificate of authorization; and

[(iv) periodic audits of the work carried out in the field are made by quality control personnel of the TVR certificate of authorization holder to ensure that the requirements of the quality control system are met.

[(B) Provided the previously mentioned provisions are met, verification testing of field repaired valves shall not be required.

[(C) Organizations that perform field repairs only must demonstrate their field repair capabilities to a representative of the Boiler Section. Two valves (e.g., one steam and one air or one gas where steam and gas valves are repaired) must be repaired in the field and successfully complete operational verification tests as described in this paragraph (5) of this subsection.

[(D) A quality control manual, as required in paragraph (9) of this subsection, must be prepared describing all field repair activities.]

(i) (No change.)

§65.50. Reporting Requirements.

(a)-(e) (No change.)

(f) Repair and alteration report forms. All repair and alteration report

forms must be submitted to the chief inspector within 90 days following the repair or alteration [repairs and alterations to boilers falling within the scope of the National Board inspection code, or the Texas boiler inspection law and rules, must be reported to the Texas Department of Labor and Standards on approved National Board forms or other approved forms provided by the department within 90 days following the repair or alteration].

§65.100. Technical Requirements.

(a)-(i) (No change.)

(j) [Major] Repairs and alterations. Repairs and alterations shall conform to the requirements of the National Board Inspection Code (NBIC) 1989 edition; and shall be acceptable to the inspector except that repairs and alterations may be performed by the following provided the intended work is within the scope of the issued certificate of authorization: [When a major repair or alteration is necessary, it shall be subject to the approval of the inspector. Repairs to all boilers and their appurtenances shall conform as nearly as practicable to the requirements of the NBIC. It is not intended that any duplicate replacement, the addition of nozzles not requiring reinforcement, or changes to nonpressure-retaining components be considered an alteration. An R symbol is available to boiler repair facilities from the National Board of Boiler and Pressure Vessel Inspectors upon approval by the chief inspector. Use of this stamp should be considered for major repairs.]

(1) holders of the appropriate certificate(s) of authorization from the American Society of Mechanical Engineers; or

(2) holders of a certificate of authorization from the National Board of Boiler and Pressure Vessel Inspectors for use of the R repair symbol stamp; or

(3) owner/operators of boilers who have been issued a certificate of authorization by the Texas Department of Licensing and Regulation.

(A) Issuance of the certificate of authorization will be made upon submission of an application on forms provided by the department.

(B) Review of the applicant's program and facilities initially and at subsequent three-year intervals will be done.

(i) The review will determine the applicant has a documented program to control repairs and/or alterations conforming to minimum requirements established by the department.

(ii) The review will require demonstration of the applicant's

ability to perform repairs and/or alterations by implementing on representative work the requirements of the written program.

(k)-(m) (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 November 5, 1991.

TRD-9113855 Larry E. Kosta
Executive Director
Texas Department of
Licensing and
Regulation

Earliest possible date of adoption: December 13, 1991

For further information, please call: (512) 463-3127

◆ ◆ ◆
TITLE 19. EDUCATION
Part II. Texas Education
Agency
Chapter 129. Student
Attendance

The Texas Education Agency (TEA) proposes the repeal of §§129.1-129.3, 129.21, 129.41, 129.61, and 129.62, concerning student attendance. Senate Bill 1, 71st Legislature, requires the State Board of Education (SBOE) to reconsider all rules affected by this provision so that any rules adopted on these matters must occur under the new rule-making relationship between the SBOE and the Legislative Education Board. The review of the rules is to be conducted over a three-year period. All sections of Chapter 129 have been reviewed by the board and are being repealed. A new Chapter 129 is being proposed in a separate submission.

Criss Cloudt, director planning coordination, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Ms. Cloudt also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be a clearer more concise statement of the agency's rule authority. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Criss Cloudt, Planning Coordination, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed repeals submitted in accordance with the Administrative Procedure and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

Subchapter A. Student Attendance Allowed

• 19 TAC §§129.1-129.3

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

The repeals are proposed under Senate Bill 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public education.

§129.1. Free Attendance in General.

§129.2. Kindergarten.

§129.3. Pupils Physically and/or Mentally Handicapped.

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 October 17, 1991.

TRD-9113870 Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

Earliest possible date of adoption: December 13, 1991

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

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Subchapter B. Compulsory Student Attendance

• 19 TAC §19.21

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

The repeal is proposed under Senate Bill 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public education.

§129.21. General Provisions.

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 October 17, 1991.

TRD-9113872 Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

Earliest possible date of adoption: December 13, 1991

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

◆ ◆ ◆
Subchapter C. Permissive Pupil Attendance

• 19 TAC §129.41

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

The repeal is proposed under Senate Bill 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public education.

§129.41. Who May Attend.

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 October 17, 1991.

TRD-9113873 Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

Earliest possible date of adoption: December 13, 1991

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

◆ ◆ ◆
Subchapter D. Student Attendance Accounting

• 19 TAC §§129.61, §129.62

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

The repeals are proposed under Senate Bill 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public education.

§129.61. Requirements for Student Attendance Accounting for State Funding Purposes.

§129.62. Court-Related Students.

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 October 17, 1991.

Earliest possible date of adoption: December 13, 1991

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

The Texas Education Agency (TEA) proposes new §§129.1, 129.21, and 129.22, concerning student attendance. Senate Bill 1, 71st Legislature, requires the State Board of Education (SBOE) to reconsider all rules affected by this provision so that any rules adopted on these matters must occur under the new rulemaking relationship between the SBOE and the Legislative Education Board. The review of the rules is to be conducted over a three-year period. All sections of Chapter 129 have been reviewed by the board and are being repealed in a separate submission.

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

Mr. Patton and Criss Cloudt, director for planning coordination, have determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a clearer, more concise statement of the agency's rule authority. 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 Criss Cloudt, Planning Coordination, 1701 North Congress Avenue, Austin, 78701, (512) 463-9701. All requests for a public hearing on the proposed sections submitted in accordance with the Administrative Procedure and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the sections has been published in the *Texas Register*.

Subchapter A. Student Attendance Allowed

• 19 TAC §129.1

The new section is proposed under Senate Bill 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public education.

§129.1. Free Attendance in General.

(a) Definitions. Identification is required within 30 days of a child's enrollment in a Texas school, in accordance with the Texas Education Code, §21.0313. For the purposes of identification, the following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Documents that are suitable for identification—shall be defined by the commissioner of education.

(2) The child's records—include a minimum set of data and documentation established by the commissioner of education. The minimum set of data will include the child's social security number or a state-approved alternative identification number as assigned by the Public Education Information Management System (PEIMS).

(b) Children shall not be denied enrollment or be removed solely because they fail to meet the requirements of subsection (a) of this section.

(c) Students in this country under a bona fide exchange program are eligible to attend school in the designated district of residence.

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

Issued in Austin, Texas, on October 18, 1991.

TRD-9113875

Criss Cloudt
 Director, Planning
 Coordination
 Texas Education Agency

Earliest possible date of adoption: December 13, 1991

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

Subchapter B. Student Attendance Accounting

• 19 TAC §129.21, §129.22

The new sections are proposed under Senate Bill 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public education.

§129.21. Requirements for Student Attendance Accounting for State Funding Purposes.

(a) All public schools in Texas shall maintain records to reflect the average daily attendance (ADA) for the allocation of Foundation School Program funds and other funds allocated by the Central Education Agency. Superintendents, principals, and teachers shall be responsible to their school boards and to the state to maintain accurate, current, attendance records.

(b) The commissioner of education shall be responsible for providing guidelines for attendance accounting in accordance with state law.

(c) The commissioner of education shall be responsible for providing all the necessary records and procedures required of school districts in preparation of a daily attendance register.

(d) Districts shall maintain records and make reports concerning student attendance and participation in special programs as required by the commissioner of education.

(e) If a school district chooses to use a locally-developed record or automated system, it must contain the minimum information required by the commissioner of education.

(f) The commissioner of education shall provide for special circumstances regarding attendance accounting in accord with the provisions of law.

(g) When classroom instruction is organized on a departmentalized basis, a central attendance accounting system must be used.

(h) A student must be enrolled for at least two hours to be considered in membership for half-day, and for at least four hours to be considered in membership for one full day.

(i) Attendance for all grades shall be determined by the absences recorded in the second or fifth period of the day, unless permission has been obtained from the Central Education Agency for an alternate period to record absences.

(1) Students enrolled on a half-day basis may earn only half-day of attendance each school day. Attendance is determined for these pupils by recording absences in a period during the half-day that they are scheduled to be present.

(2) The established period in which absences are recorded may not be changed during the school year.

(3) Students absent at the time the attendance-roll is taken, during the daily period selected, are counted absent for the entire day. Students present at the time the attendance roll is taken, during the daily period selected, are counted present for the entire day.

(j) A student who is not actually in school at the time attendance is taken shall not be counted in attendance for Foundation School Program funding purposes unless the student is participating in an activity which meets the conditions set out in subsection (k) of this section.

(k) A student not actually on campus at the time attendance is taken may be considered in attendance for Foundation School Program purposes under the following conditions.

(1) The student is participating in an activity which is approved by the local board of school trustees and is under the direction of a member of the professional staff of the school district.

(2) The student is a Medicaid-eligible child participating in the Early and Periodic Screening, Diagnosis, and Treatment Program (EPSDT) implemented by

the Texas Department of Human Services with contractual cooperation of the Texas Department of Health. Such students may be excused for up to one day at any time without loss of ADA.

(3) Excused days for travel under the Texas Education Code, §21.035(f), shall be limited to not more than one day for travel to and one day for travel from the site where the student will observe the holy days.

(l) In accordance with the Texas Education Code, §21.035, students may be excused for medical, dental, and psychological appointments; for special education assessment procedures; and for special education related services. However, if such students are absent when attendance is taken, they shall not be counted present for Foundation School Program purposes.

(m) The superintendent of schools is responsible for the safekeeping of all attendance records and reports. The superintendent of schools may determine whether the properly certified attendance records or reports for the school year are to be filed in the central office or properly stored on the respective school campuses of the district. Regardless of where such records are filed or stored, they must be readily available for audit by the Division of Audits of the Central Education Agency.

(n) The requirements concerning pupil attendance accounting for late afternoon and evening school are as follows.

(1) Attendance policies for funding purposes and records for late afternoon and evening schools shall be identical with those for the regular day school.

(2) A school calendar shall be adopted for the late afternoon and evening schools which shall provide a minimum of 180 days of instruction.

§129.22. Court-Related Students.

(a) Any student referred to a juvenile court for delinquent conduct or conduct indicating a need for supervision shall receive excused absences for any missed class when:

(1) the juvenile judge or probation officer assigned has detained the student or required the student to participate in activities related to the student's referral;

(2) detention or participation in such activities resulted in an absence from class;

(3) the cause of such absence is communicated in writing by the probation officer to school district personnel; and

(4) the student successfully completes all missed assignments as required by the school district.

(b) Any student referred to the Texas Department of Human Services or a

county or local welfare unit on the basis that he or she is abused or neglected shall receive excused absences for any missed class when:

(1) the caseworker assigned has required the student to participate in activities related to the student's referral;

(2) participation in such activities resulted in an absence from class;

(3) the cause of such absence is communicated in writing by the caseworker to school district personnel; and

(4) the student successfully completes all missed assignments as required by the school district.

(c) It is the responsibility of the liaison officer appointed in accordance with the Texas Education Code, §21.908, to assist students and teachers to ensure that students are provided the opportunity to complete all missed assignments.

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 October 18, 1991.

TRD-9113876

Crisa Cloudt
Director, Planning
Coordination
Texas Education Agency

Earliest possible date of adoption: December 13, 1991

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

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 325. Solid Waste Management

The Texas Department of Health proposes amendments to §§325.3, 325.5, 325.31, 325.32, 325.51, 325.52, 325.56, 325.60, 325.74-325.76, 325.111, 325.112, 325.114, 325.122-325.124, 325.132, 325.134, 325.136, 325.143, 325.145, 325.149, 325.150, 325.152, 325.154, 325.171, 325.172, 325.221, 325.222, and 325.890; the repeal of existing §§325.42, 325.55, 325.73, 325.113, 325.121, 325.124, 325.135, 325.137-325.139, 325.153, 325.173, and 325.223; and new §§325.42, 325.55, 325.113, 325.121, 325.124, 325.135, 325.137-325.139, 325.153, 325.173, 325.174, and 325.223, concerning solid waste management. The proposed amendments cover general regulatory applicability; definitions; applicability of department's solid waste transportation requirements; specific collection and transportation requirements; general permitting requirements; permit exemptions; permit revocation; preparation of permit applications; technical information required for landfill sites serving more than 5,000 persons; technical information required for solid

waste processing and experimental sites; technical information required for registration of solid waste facilities; general landfill operational standards; standards for the protection of ground and surface waters; unloading requirements; control of windblown material; disposal of nonindustrial special wastes; disposal site easements; open burning; site access roads; abandoned oil and water wells; cover requirements; site closure requirements; post-closure maintenance; post-closure use of landfilled areas; general operational requirements for processing and experimental sites; surveillance policy; enforcement policy; and assistance grants and contracts.

The sections proposed for repeal cover types of site; transfer of permits; technical information required for facilities serving fewer than 5,000 persons; industrial wastes; disposal of Class I (industrial) waste; boundary buffer zones; administrative penalty determination; effect of updated regulations on existing sites; general liner requirements and alternatives; ground water protection systems; easement protection; and post-closure maintenance.

The new sections cover types of municipal solid waste sites; change of status/transfer of permits; industrial wastes, prohibited wastes; landfill markers and benchmarks; evidence of financial responsibility for processing and experimental sites; administrative penalty determination; general liner requirements and alternatives; ground water protection systems; effect of updated regulations on existing sites; and easement protection.

The proposed amendments, repeals, and new sections will update and improve the portions of the regulations that deal primarily with landfill design and operation, processing of solid waste facility permits and registrations, protection of groundwater, handling of certain special and industrial wastes (such as asbestos and waste oil), enforcement procedures, and departmental priorities in regards to the issuance of assistance grants. Certain of the proposed amendments will guide solid waste facility owners/operators toward timely compliance with new, federal requirements concerning landfill criteria implemented under the Resource Conservation and Recovery Act, Subtitle D, in September 1991 by the United States Environmental Protection Agency.

Stepher Seale, Chief Accountant III, Budget Division, has determined that for the first five year period the sections are in effect there will be fiscal implications for state and local government as a result of enforcing or administering the sections. The estimated total overall additional cost to state government for each year of the first five-year period will be as follows: \$290,000 for fiscal year 1992; and \$580,000 per year for fiscal years 1993-1996.

Local governments that operate municipal solid waste facilities will experience additional operating costs. The additional costs for solid waste facility owners/operators are primarily those that result from expenses associated with the evaluation of landfill sites to determine presence of shallow groundwater, preparation of required soil and liner quality control plans and groundwater sampling quality control plans, design and construction of landfill liners, installation of groundwater monitoring wells, groundwater sampling and

analysis, and preparation and submittal of soil and liner evaluation reports. Owners of some facilities may decide to close their facilities, and divert solid waste to other sites, rather than meet the upgraded performance standards. Total additional annual costs for local governments for each year of the first five years will be as follows: \$8.6 million-\$20 million for fiscal year 1992; \$6.5 million-\$19.2 million for fiscal year 1993; and \$3.4 million-\$9.9 million for each year of fiscal years 1994-1996.

Businesses that own/operate solid waste sites (particularly landfills) will experience additional costs in the same way as local governments. Additional annual costs expected to be borne by businesses as a result of the proposed amendments, repeals, and additional new sections are as follows: \$1.2 million-\$2.7 million for fiscal year 1992; \$900,000-\$2.6 million for fiscal year 1993; and \$500,000-\$1.3 million for each year of fiscal years 1994-1996.

The additional cost to businesses is significantly smaller than to local governments since fewer municipal solid waste facilities are owned or operated by private companies than by local governments and since many privately owned and operated facilities are already meeting the more stringent requirements. Small Texas businesses will not be directly affected by the proposed amendments, repeals, and additions, however, they may see disposal fees for those wastes that they generate increase by as much as \$1.00-\$3.00 per ton, as permitted disposal facilities pass their increased operating costs back to the solid waste generators.

Mr. Seale also has determined that for each year of the first five years the sections are in effect the primary public benefit anticipated as a result of enforcing the sections will be better constructed landfills and substantially increased protection for local groundwaters.

The proposed rules will indirectly impact persons through increased local taxes and/or waste collection charges. Increased annual waste disposal costs to persons can be expected to range from \$1.40 to \$3.20, depending on whether the disposal facilities currently receiving their wastes will be required by the proposed rules to begin liner installation and/or to install groundwater monitoring wells. Between 20 and 30% of all Texans could eventually see increased collection charges. Such persons are more likely to live in small towns and rural areas than in larger metropolitan areas.

The proposed amendments, repeals, and new sections will have no measurable impact on local employment.

Five public hearings to receive comments on the proposed rules have been scheduled and are as follows: Friday, November 22, 1991, 1 p.m., Community Room, Mahon Public Library, 1306 Ninth Street, Lubbock; Monday, December 2, 1991, 1 p.m., Auditorium, Texas Department of Health, 1100 West 49th Street, Austin; Tuesday, December 3, 1991, 1 p.m., Short Course Center, Texas State Technical College (TSTC), 24 Box Wood, Harlingen; Wednesday, December 4, 1991, 1 p.m., City Council Chambers, 317 West College, Grand Prairie; and Thursday, December 5, 1991, 1 p.m., Bear Creek Park Agricultural Service Building, Two Abercrombie Drive, (2

3/4 miles north of the intersection of IH 10 and Highway 6, at intersection of Patterson Road and Bear Creek Drive), Houston.

Written comments will also be considered if they are received by 5 p.m., Monday, December 13, 1991. Comments should be mailed to: T. A. Outlaw, Jr., P.E., Chief, Bureau of Solid Waste Management, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199. Telephone inquiries may be made by contacting Hans Mueller at (512) 458-7271.

Subchapter A. General Information

• 25 TAC §325.3, §325.5

The amendments are proposed under the Solid Waste Disposal Act, Health and Safety Code, §361.011, which makes the department responsible for managing and controlling municipal solid waste management; §361.024, which provides the Board of Health with authority to adopt rules concerning municipal solid waste management; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health. The proposed rules affect the Health and Safety Code, Chapter 361.

§325.3. Applicability.

(a) The provisions of these regulations apply to any individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or other legal entity, including all federal installations (see the Resource Conservation and Recovery Act of 1976, §6001), involved in any aspect of the management and control of municipal solid waste including, but not limited to, storage, collection, handling, transportation, processing, and disposal. The Solid Waste Disposal Act (Act), Health and Safety Code, Chapter 361, [§8], states that: "A [No] person may not cause, suffer, allow, or permit the collection, storage, handling, transportation, processing, or disposal of solid waste[,] or the use or operation of a solid waste facility to store, process, or dispose [for the storage, processing, or disposal] of solid waste[,] or to extract materials under §361.092 in violation of this chapter or a rule, permit, license, [Act or of the rules, permits, licenses,] or other order [orders] of the department or commission, or a county, or a political subdivision exercising the authority granted by §361.165 in whose jurisdiction the violation occurs." Any person who violates any provision of the Act or of any rule, permit, registration, or order of the department is subject to administrative civil penalties or court-ordered civil and/or criminal penalties as provided for in the Act or other appropriate state statutes.

(b) The provisions of these sections do not apply to violations described in the Texas Litter Abatement Act[,] Health and

Safety Code, Chapter 365 [Texas Civil Statutes, Article 4477-9a]. When an investigation reveals a violation of the Texas Litter Abatement Act, the matter will be referred to appropriate local officials for corrective action pursuant to legal remedies available to such officials.

§325.5 Definitions. The following words, terms, and abbreviations, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Other definitions, pertinent to specific sections are contained within the appropriate sections.

CFR— Code of Federal Regulations.

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

Special Waste—Any solid waste or combination of solid wastes that because of its quantity, concentration, physical or chemical characteristics, or biological properties require special handling and disposal to protect the human health or the environment. If improperly handled, transported, stored, processed, or disposed of or otherwise managed, it may pose a present or potential danger to the human health or the environment. Special wastes are [include, but are not limited to]:

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

(C) special wastes [waste] from health care related facilities;

(D) municipal wastewater treatment plant sludges to include other type domestic sewage treatment plant sludges and water treatment supply sludges [that have not been treated by one of the processes prescribed in federal regulations under 40 Code of Federal Regulations Part 257, Appendix II];

(E)-(J) (No change.)

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

(L) (No change.)

(M) incinerator ash;

(N) petroleum product, crude oil, or chemically contaminated soils;

(O) used oil filters from nonhousehold sources;

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

(Q) materials from oil, gas, and geothermal facilities subject to regulation by the Railroad Commission of Texas;

(R) waste generated outside the boundaries of the State of Texas which contains any industrial waste or any waste associated with oil, gas, and geothermal exploration, production or development activities, or which contains any of the items listed previously; and

(S) any waste stream other than garbage, refuse, or rubbish.

TDWR—Texas Department of Water Resources (currently the Texas Water Commission).

Topsoll—The top six inches of natural soil, excavated from the site, that has been stockpiled for reuse.

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

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

TWC—Texas Water 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 November 6, 1991.

TRD-9113898

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: January 25, 1992

For further information, please call: (512) 458-7271

Subchapter C. Municipal Solid Waste Collection and Transportation

• 25 TAC §§325.31, §§325.32

The amendments are proposed under the Solid Waste Disposal Act, Health and Safety Code, §361.011, which makes the department responsible for managing and controlling municipal solid waste management; §361.024, which provides the Board of Health with authority to adopt rules concerning municipal solid waste management; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Depart-

ment of Health, and the commissioner of health. The proposed rules affect the Health and Safety Code, Chapter 361.

§325.31. *Applicability.* This subchapter is [shall be] applicable to all public and private collection and transportation systems. Additional collection and transportation requirements for particular kinds of waste are provided in: [the collection and transportation of hazardous wastes are contained in §§325.271-325.350 of this title (relating to Hazardous Waste Management).]

(1) §§325.271-325.282 of this title (relating to Hazardous Household Waste);

(2) §§325.441-325.449 of this title (relating to Transporters) concerning the transportation of sludges and similar wastes;

(3) §§325.621-325.623 of this title (relating to Transporters of Sludges and Similar Wastes), concerning reports and registration fees;

(4) §§325.631-325.633 of this title (relating to Transporters of Used and Scrap Tires), concerning reports and registration fees;

(5) §§325.641-325.643 of this title (relating to Transporters of Medical Waste), concerning reports and registration fees;

(6) §§325.811-325.818 of this title (relating to Transporters of Used and Scrap Tires), concerning requirements other than reports and registration fees; and

(7) §§325.1005-325.1009 of this title (relating to Medical Waste Transportation, Storage, and Collection).

§325.32. *Collection and Transportation Requirements.*

(a) (No change.)

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

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

(5) §§325.801-325.803, 325.811-325.818, 325.831-325.838, 325.851-325.855, and 325.871 of this title (relating to Management of Used and Scrap Tires); and

(6) §§325.1001-325.1009 of this title (relating to Medical Waste Management).

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

(d) In the event nonallowable wastes are discovered as having been discharged at a municipal solid waste facility by an identified transporter, such [Each transporter delivering waste to a solid waste management facility shall provide a certificate to the operator that he has so arranged his routes to eliminate nonallowable wastes from the loads he transports to that facility. This certificate shall also state that the] transporter shall [will] immediately remove all [any] nonallowable wastes dumped or delivered by him [immediately after their discharge] or [that,] at the option of the [disposal] facility operator, [he will] agree to pay whatever [any applicable] surcharges are required to have the [disposal] facility operator accomplish the required immediate removal for him.

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

(f) Additional [Special] requirements for transporters who haul [of] waste in enclosed containers or enclosed vehicles to Type IV landfills are as follows.

(1) [Special route permit requirements are as follows:

(A)] Except as provided in subsection (g) of this section each [Each] transporter delivering waste in enclosed containers or enclosed vehicles to a Type IV municipal solid waste management facility shall obtain from the department a special route permit for each [such] route the waste from which he proposes to take to a Type IV landfill. For the purposes of this subsection, route refers to a listing of all the business establishments [collected] from which waste is collected and not the street route.

(2)[(B)] Applications [The application] for [a] special transporter route permits [permit] shall be submitted on [a] forms provided by the department [form] (see §325.913 of this title (relating to Special Permit Application for Transporter Route)) [provided by the department] and

shall as a minimum include the information listed in subparagraphs (A)-(F) of this paragraph [all information requested thereon] and any additional information considered necessary by the applicant or [additional information as may be requested by] the department. The information requested is:

(A)(i) The application shall include the following information:

(I)] transporter contact person, company name, mailing address, street address, city, state, zip code, and telephone number;

(B)(II) landfill contact person, company name, mailing address, street address, city, state, zip code, and telephone number;

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

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

(E)(V) establishment information, which shall be provided on a separate sheet for each establishment on a form (see §325.915 of this title (relating to Establishment Data Sheet) provided by the department or a computer facsimile thereof, and shall include as a minimum route order, transporter name, collection frequency, the expected day and time of collection, establishment contact person, establishment name, establishment mailing address, establishment street address, city, state, zip code, telephone number, a description of activities associated with the business with particular emphasis on food handling and products sold or handled that could end up in the waste stream, and landfill information to include the name and permit number; and

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

(3)(ii) The application, at the time of submittal, must be accompanied by a [the required] \$100 application fee.

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

(3) This subsection does not apply if the waste load is from a single collection point that is a stationary compactor permitted in accordance with §325.25 of this title (relating to Requirements for Stationary Compactors) or municipal vehicles permitted under subsection (g) of this section.]

(5)(4) Each transporter delivering waste to a Type IV landfill in accordance with this subsection shall manifest all loads and provide to the landfill operator [on-site department inspector] a completed trip ticket in the form shown in [of] §325.916 of this title (relating to Transporter Trip Ticket) [prior to discharging his load]. The transporter and the Type IV landfill operator shall each retain a copy of all trip tickets for a period of three years. Such copies shall be made available to the department upon request. Transporters shall submit to the department an annual summary of their activities for each calendar year showing amounts and types of waste collected, disposition of such wastes, and amounts and types of waste delivered to various facilities. The report shall be submitted no later than March 1 of the year following the end of the report period. The first report shall cover calendar year 1991. The report shall be prepared in a format approved by the department.

(6) This subsection does not apply if the waste load is from a single collection point that is a stationary compactor permitted in accordance with §325.25 of this title (relating to Requirements for Stationary Compactors) or is collected by a municipality in enclosed vehicles or containers permitted under subsection (g) of this section.

(g) Special requirements for municipal transporters utilizing [transporter

routes using] enclosed vehicles or containers [or enclosed vehicles] to deliver waste [going] to Type IV landfills are as follows.

(1) (No change.)

(2) An application for a municipal transporter route permit must be submitted to the department for each truck or container to be used on a form (see §325.914 of this title (relating to Special Permit Application for Municipal Route)) provided by the department and shall as a minimum include the information listed in subparagraphs (A)-(G) of this paragraph [all information requested thereon] and any additional information considered necessary by the applicant [or additional information as may be requested by] the department. The information required is:

(A) [The application shall include the following information:

(i) the] applicant name, responsible person, title, mailing address, street address, city, state, zip code, and telephone number;

(B)(ii) the] contact person, title, mailing address, street address, city, state, zip code, and telephone number;

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

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

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

(F)(vi) landfill information, to include permit number, name, mailing address, street address, city, state, zip code, telephone number, and contact person; and

(G)(vii) a notarized certificate from the the city that states:

I, _____,
(name)
_____ of the City of _____
(title) (city)

in _____ County, certify that the contents of the vehicle described above will not enter a Type IV landfill unless it is free of putrescible, hazardous, Class I industrial nonhazardous, infectious, or any other waste not allowable in a Type IV landfill.

(3)(B) The application at the time of submittal must be accompanied by a [the required] \$50 application fee.

(4)(3) Each municipal transporter delivering waste to a Type IV landfill in accordance with this subsection shall provide to the landfill operator [route must be documented by] a trip ticket in the form shown in [of] §325.917 of this title (relating to Hauler Trip Municipal Transporter Route) [that is provided to the landfill operator] prior to discharging the load at the landfill. The transporter and the Type IV landfill operator shall each retain a copy of all trip tickets for a period of three years. Such copies shall be made available to the department upon request. Transporters shall submit to the department an annual summary of their activities for each calendar year showing amounts and types of waste collected, disposition of such wastes, and amounts and types of waste delivered to various facilities. The report shall be submitted no later than March 1 of the year following the end of the report period. The first report shall cover calendar year 1991. The report shall be prepared in a format approved by the department.

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

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

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

(2) An application to amend an existing special transporter route permit or special municipal route must include all of

the same documentation required on the [of an] original application.

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 November 6, 1991.

TRD-9113899 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: January 25, 1992

For further information, please call: (512) 458-7271

Subchapter D. Classification of Municipal Solid Waste Sites

• 25 TAC §325.42

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

The repeal is proposed under the Solid Waste Disposal Act, Health and Safety Code, §361.011, which makes the department responsible for managing and controlling municipal solid waste management; §361.024, which provides the Board of Health with authority to adopt rules concerning municipal solid waste management; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health. The proposed rules affect the Health and Safety Code, Chapter 361.

§325.42. Types of Municipal Solid Waste Sites.

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

Issued in Austin, Texas, on November 6, 1991.

TRD-9113800 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: January 25, 1992

For further information, please call: (512) 458-7271

The new section is proposed under the Solid Waste Disposal Act, Health and Safety Code, §361.011 which makes the department responsible for managing and controlling municipal solid waste management; §361.024, which provides the Board of Health with authority to adopt rules concerning municipal solid waste management; and §12.001 which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health. The proposed rules affect Chapter 361 of the Health and Safety Code.

§325.42. Types of Municipal Solid Waste Sites. The Texas Department of Health (department) has classified all solid waste sites and facilities according to function. Subject to the limitations set forth in §325.135 of this title (relating to Industrial Wastes); §325.136 of this title (relating to Disposal of Nonindustrial Special Wastes); and §325.137 of this title (relating to Prohibited Wastes); a municipal solid waste landfill may receive mixed wastes, and with the written approval of the department may also receive special wastes, including Class I nonhazardous solid wastes and hazardous wastes from conditionally exempt small quantity generators.

(1) Type I. A Type I site is considered the standard landfill for the disposal of municipal solid waste, and compliance with Type I operating standards is required for all municipal solid waste landfill sites, accepting putrescible waste, permitted on or after March 1, 1992. The department may authorize at Type I sites the designation of special-use areas for processing, storage, disposal, or other functions, involving solid waste. The operational standards contained in §§325.111-325.114, 325.121-325.124, and 325.131- 325.154 of this title (relating to Operational Standards for Solid Waste Land Disposal Sites) shall be followed.

(2) Types II and III. A Type II site or operation is one which previously was authorized by the department for sites serving less than 5,000 persons, or population equivalent, and receiving less than 12-1/2 tons of solid waste per day, provided that relevant factors indicated that a frequency of less than daily compaction and cover would not result in any significant health problems. A Type III site or operation is one which previously was authorized by the department for sites serving less than 1,500 persons, or population equivalent, and receiving less than 3-3/4 tons of waste per day. No new Type II or III sites, or expansions to existing Type II or III sites, shall be authorized. Existing Type II and III sites shall be allowed to remain in operation until the site has been filled or until the permittee properly closes the site, whichever occurs first. The operational standards contained in §§325.111-325.114, 325.121-325.124, and 325.131-324.154 of this title (relating to Operational Standards for Solid Waste Land Disposal Sites) shall be followed. The department may authorize the designation of special-use areas for processing, storage, and disposal or any other functions involving solid waste.

(3) Type IV. A Type IV site or operation may be authorized by the department for the disposal of brush, construction-demolition waste and/or rubbish (trash) that is free of putrescible waste. A Type IV operation shall not be operated within 300 yards of a public road unless the department after a site evaluation determines that operation in the proposed location will be acceptable. The minimum operational standards for Type IV sites are contained in §§325.111-325.114, 325.121-325.124, and 325.131-325.154 of this title (relating to Operational Standards for Solid Waste Land Disposal Sites). Waste shall be compacted and covered monthly unless another schedule is approved or required by the department.

(4) Type V. Separate solid waste processing sites are classified as Type V sites. These encompass processing plants that transfer, incinerate, shred, grind, bale, compost, salvage, separate, dewater, reclaim, or provide other processing of solid waste. Operational standards for Type V sites are contained in §§325.171-325.174, 325.181-325.190 of this title (relating to Operational Standards for Solid Waste Processing, Experimental, and Land Application.)

(5) Type VI. A Type VI site or operation may be authorized by the department for a site involving a new or unproven method of managing or utilizing municipal solid waste, including resource and energy recovery projects. The minimum operational standards for Type VI sites are prescribed in §§325.181-325.190 of this title (relating to Operational Standards for Solid Waste Processing, Experimental, and Land Application.)

(6) Type VII. A Type VII site or operation may be authorized by the department for the land management of sludges and/or similar wastes. Operational standards, depending on the particular waste, site purpose, and method of operation (land application for beneficial use, land disposal to include landfilling and land treatment, etc.) are contained in §§325.411-325.415, 325.431, 325.432, 325.441-325.447, 325.461-325.465, 325.481-325.484, 325.501-325.504, 325.511-325.514, and 325.531-325.534 of this title (relating to Management of Sludges and Similar Wastes).

(7) Type VIII. Sites utilized for the management of used or scrap tires are classified as Type VIII sites. Sites used for storage of used or scrap tires are further classified as either Type VIII-R, VIII-WT, VIII-S, VIII-I, or VIII-L sites. See §§325.831-325.840 of this title (relating to storage of Used and Scrap Tires) for registration, operational, and reporting requirements. Sites utilized for processing or disposing of used or scrap tires are further classified as Type VIII-P and VIII-D, respectively. Refer to §§325.841-325.848 of this title (relating to Processors of Used and Scrap Tires) and §§325.851-325.856 of this title (relating to Disposal of Used and Scrap Tires) for appropriate permitting, registration, and/or operational requirements.

(8) Type IX. A closed disposal site, or inactive portion of an active disposal site, used for the extraction of materials for energy or material recovery, including gas recovery, is classified as a Type IX site. See §325.51 of this title (relating to General) for permit and/or registration requirements.

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 November 6, 1991.

TRD-9113901

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: January 25, 1992

For further information, please call: (512) 458-7271

Subchapter E. Permit Procedures and Design Criteria.

• 25 TAC §§325.51-325.52, 325.56, 325.60

The amendments are proposed under the Solid Waste Disposal Act, Health and Safety Code, §361.011, which makes the department responsible for managing and controlling municipal solid waste management; §361.024, which provides the Texas Board of Health with authority to adopt rules concerning municipal solid waste management; and §12.001 which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Depart-

ment of Health, and the commissioner of health. The proposed rules affect the Health and Safety Code, Chapter 361.

§325.51. *General.* No person may cause, suffer, allow, or permit the processing or disposal of solid waste at any location, whether or not the location has been designated as a solid waste site or solid waste facility, [No municipal solid waste site shall be operated] without first receiving a permit or registration from the department, or a license from a county exercising licensing authority, except as authorized herein and in §325.52 of this title (relating to Permit/Registration Exemptions), for the operation of a solid waste disposal or processing facility at that location. [Sites in operation prior to October 16, 1974, for which a permit application has been filed with the department or previously licensed may remain in operation pending completion of processing of the application, providing the site is otherwise in full compliance with these sections.] A separate permit, registration, or license shall be required for each site or facility, and the department, at its discretion, may include one or more different types of facilities in a single permit if the facilities are collocated on the same site. A permit or license may be issued by the department or a county, respectively, only after an opportunity for a hearing has been provided to the applicant and persons affected. See §§325.71-325.76 [325.75] of this title (relating to Application and Data Requirements) and §§325.91-325.95 of this title (relating to Application Review Process) for departmental procedures and §§325.241-325.243 of this title (relating to County Governments with Licensing Authority) for minimum requirements for a county licensing program. The permitting of low-level radioactive waste processing, storage, and disposal facilities is not covered by these sections. The Chief, Bureau of Radiation Control, Texas Department of Health, should be contacted for permit requirements and operational standards for these types of facilities. Materials extraction or gas recovery operations shall not be conducted unless a permit for such purpose has been obtained from the department. However, exploratory and test operations for feasibility purposes may be conducted if a registration is obtained from the department. Inasmuch as design and operational requirements for these types of operations may be site-specific and may involve proprietary design and process data, registration/application and operational requirements shall be determined through consultation with the department.

§325.52. *Permit/Registration Exemptions.*

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

(c) A permit is not required for a site or facility where the only operation is the storage of used and scrap tires as

provided for in §§325.831-325.838 of this title (relating to Storage of Used and Scrap Tires). Facilities exempted from a permit under this subsection shall be registered with the department in accordance with §325.832 of this title (relating to Registration Requirements). Failure to operate such registered facilities in accordance with the requirements established in §§325.831-325.838 of this title shall be grounds for the revocation of the registration.

(d) A permit is not required for a medical waste collection facility, located at a hospital licensed by the department, provided such collection station is registered with the department in accordance with §325.1008 of this title (relating to Medical Waste Collection Stations). Failure to operate such registered facilities in accordance with the requirements established in §325.1008 shall be grounds for the revocation of the registration.

(e)[(c)] A request for registration for sites or facilities exempted from permits under subsections (a) - [and](e) [(b)]of this section must be submitted in typed letter format which includes, as an enclosure, the information requested on the site registration forms as provided under §325.901 of this title (relating to Appendix A-Application for a Permit/Registration to Operate a Municipal Solid Waste Site-Part A-(General Data)) and §325.902 of this title (relating to Appendix B-Application for a Permit/Registration to Operate a Municipal Solid Waste Site-Part B-(Technical Data)).

(f)[(d)] A permit or registration is not required for [on-site pathological incinerators used by a hospital, clinic, laboratory, or other similar-type facility for incineration of only on-site generated infectious or pathological wastes, or for] a facility or site which is used as a citizens' collection station; as a collection point for nonputrescible recyclable wastes; for composting of leaves, grass clippings, or wood chips; or as a collection point for parking-lot or street sweepings or wastes collected and received in sealed plastic bags from such activities as periodic city-wide cleanup campaigns and cleanup of rights-of-way or roadside parks.

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

(h)[(e)] A permit amendment is not required to establish a waste separation/recycling facility at an existing permitted municipal solid waste site if owned by the permittee of the existing site. Facilities exempted from a permit amendment under this subsection shall be registered with the department in accordance with §325.76 of

this title (relating to Technical Information Required for Registration of Solid Waste Facilities-Part B, Section II). Failure to operate such registered facilities in accordance with the requirements established in §§325.171-325.190 of this title (relating to Operational Standards For Solid Waste Processing and Experimental Sites) shall be grounds for the revocation of the registration.

(i) Existing, operational, on-site pathological incinerators used by a hospital, clinic, laboratory, or other similar-type facility for incineration of only on-site generated infectious or pathological wastes and which prior to the effective date of this section did not require a solid waste facility permit or registration, may continue to operate provided the incinerator owner, by not later than July 1, 1992, submits an administratively complete Part A permit application in accordance with §325.72 of this title (relating to General Information Required for All Sites-Permit/Registration Application, Part A) and by not later than December 1, 1992, submits a full and complete site development plan. Incinerator owners who comply with the submittal deadlines contained in this subsection, and who comply with any reasonable response deadlines established by the department during the review and processing of the permit application, may continue to operate such incinerator for the handling of medical wastes without a permit, until such time as a permit is either issued or denied.

[(f) A permit is not required for a site or facility where the only operation is the storage of used and scrap tires as provided for in §§325.831-325.838 of this title (relating to Storage of Used and Scrap Tires). Facilities exempted from a permit under this subsection shall be registered with the department in accordance with §325.832 of this title (relating to Registration Requirements). Failure to operate such registered facilities in accordance with the requirements established in §§325.831-325.838 of this title (relating to Storage of used and Scrap Tires) shall be grounds for the revocation of the registration.]

§325.56. Revocation or Amendment of a Permit.

(a) (No change.)

(b) A permit amendment shall be required when any of the following conditions at the site or facility are proposed to occur. The operation of a site or facility without the required permit amendment shall be a violation of these rules. [If, during the life of a permit, conditions change that would mandate a stricter or less strict type of operation (e.g., a change in population served), the permittee shall file a request for amendment within three months of the changed conditions. Requests for

amendments involving changes such as increase in site acreage, an addition of an area fill above natural ground (aerial fill), or the addition of other on-site processing or disposal facilities, should normally be submitted in the same manner and similar detail as for an initial application, including an updated site development plan, and accompanied by a permit amendment application fee as specified in §325.63(a)(3) of this title (relating to Permit Application Fees). In all cases, however, consultation with the department is recommended to determine specific data requirements for the proposed amendment. Modifications to the original site development plan, except as listed in paragraphs (1)-(7) of this subsection, may be approved by the department without a permit amendment in accordance with §325.111 of this title (relating to General Requirements) or §325.171 of this title (relating to General Requirements). However, the following types of modifications shall require a permit amendment:]

(1) (No change.)

(2) an increase in height above the originally permitted maximum elevation when the permit does not allow for above ground landfilling, with the exception of an increase in height for grading, drainage, or final contours deemed necessary by the department [both an increase in height of more than 10 feet above the originally permitted maximum elevation when the original permit did not provide for above-ground landfilling other than for grading; and for an aerial fill, an increase in height of more than 20% of the originally permitted height or 10 feet, whichever is greater, to the highest permitted height above natural ground];

(3) an increase in height for aerial landfilling, with the exception of increase in height for grading, drainage, or final contours deemed necessary by the department;

(4)[(3)] any [an] increase in trench or excavation depth; [which may result in changes to the lining requirements;]

(5)[(4)] any [a change in site development which will result in] additional encroachment into a 100-year floodplain beyond that allowed by the permit;

(6)[(5)] [a change in site development which will result in] disposal of wastes within the buffer zone or closer to site boundaries than allowed by the permit [originally approved];

(7)[(6)] the addition of [other] on-site processing or disposal facilities, other than those allowed by the department, except in the case of tire cutting machines, registered waste separation/recycling facilities, and registered transfer stations [excluding air-curtain destructors, which if sited independently would require a permit];

(7) other changes which could have an adverse effect on the health, welfare, or physical property of nearby residents or property owners or the environment and which could require the addition of a special provision to the permit.]

(8) a change to an existing special provision of a permit;

(9) any change that would require the addition of a special provision to the permit;

(10) a change in permit type;

(11) any changes in the waste stream and/or waste handling procedures at Type V processing facilities;

(12) use of a general municipal solid waste incinerator for the incineration of a solid waste stream consisting of more than 10% special waste from health care related facilities;

(13) disposal of more than one gallon/ton per year of special wastes consisting of hazardous waste from small quantity generators, industrial non-hazardous waste, or asbestos;

(14) an increase of more than 10% of the total amount of waste to be incinerated per day as approved by the permit, except as may be allowed by the bureau in emergency situations; or

(15) other changes which could have an adverse effect on the health, welfare, or physical property of nearby residents or property owners or the environment and which could require the addition of a special provision to the permit.

§325.60. Preparation of Application.

(a) The application for a permit or registration shall be prepared and signed by the applicant on a form or forms [to be] provided by the department or in a format specified by this chapter [sections in this subchapter] for specific types of sites and facilities. In general, the application shall include information necessary to make an evaluation of the proposed operation to ensure that the site or facility is located, designed, and operated so that the health, welfare, and physical property of the public as well as the environment and endangered species are protected. Failure to give complete information as required under this chapter [by these sections] may constitute grounds for the department's return of the application without further action. Likewise, the submission of false information shall constitute grounds for disapproval of the application or subsequent revocation of the permit or registration. See §§325.71-325.76 [325.75] of this title (relating to Application and Data Requirements) for specific requirements for the type of site or facility for which a permit or registration is desired.

(b) Except as provided for in subsection (c) of this section, data [Data] presented in support of any [an] application for a permit for a [Type I and Type IV] municipal solid waste site or facility [sites serving 5,000 persons or more, or same population equivalent,] shall be prepared under the direction of a registered professional engineer authorized under the Texas Engineering Practice Act Texas Civil Statutes, Article 3271a, to practice in the State of Texas, [under the Texas Engineering Practice Act, Texas Civil Statutes, Article 3271a,]. An engineer who prepares the supporting data for an application is not authorized to sign the application unless he is an official of the applicant's organization. If a consultant is employed, a letter of appointment shall be submitted by the proper city, county, agency, company, official, or individual confirming that the engineer is authorized to prepare plans and specifications (see §325.903 of this title (relating to Appendix C-Notice of Appointment) for suggested format).

(c) Applicants for Types II and III and for Type IV municipal solid waste sites serving less than 5,000 persons, or same population equivalent, are encouraged to seek professional engineering assistance in the collection of information and the design of their solid waste sites. Normally, these types of sites are located in sparsely populated areas and the types and volumes of wastes deposited therein do not constitute as much of a potential health hazard as those in subsection (a) of this section. However, when deemed necessary by the department, data presented in support of permit applications for these types of sites shall be prepared by a registered professional engineer.]

(c)[(d)] Data [Unless advised otherwise by the department, data] presented in support of an application for a permit or registration for Type [Types] V, VI, VII, [and] VIII, and IX municipal solid waste sites or facilities may, if the department determines that the data could better be presented by a specialist in another field, be prepared by an individual other than [shall be prepared by] a registered professional engineer. [under the same conditions prescribed in subsection (a) of this section, unless the department determines that the supporting technical data for the proposed operation could be better presented by a specialist in another field.]

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 November 6, 1991.

TRD-9113902 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: January 25, 1992

For further information, please call: (512) 458-7271

• 25 TAC §325.55

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

The repeal is proposed under the Solid Waste Disposal Act, Health and Safety Code, §361.011, which makes the department responsible for managing and controlling municipal solid waste management; §361.024, which provides the Board of Health with authority to adopt rules concerning municipal solid waste management; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health. The proposed rules affect of the Health and Safety Code, Chapter 361.

§325.55. Transfer of Permits/Applications/Property Ownership and Name Changes.

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 November 6, 1991.

TRD-9113903 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: January 25, 1992

For further information, please call: (512) 458-7271

Permits

• 25 TAC §325.55

The new section is proposed under the Solid Waste Disposal Act, Health and Safety Code, §361.011 which makes the department responsible for managing and controlling municipal solid waste management; §361.024, which provides the Board of Health with authority to adopt rules concerning municipal solid waste management; and §12.001 which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health. The proposed rules affect Chapter 361 of the Health and Safety Code.

§325.55. Change in Permit or Registration.

(a) A permittee or registrant shall, within 15 days of the occurrence, give written notice to the Bureau of Solid Waste Management (bureau) of the occurrence of any of the following events regarding the status of a permit or registration or the

permittee or the registrant and shall provide as part of the notice a full and specific description of the facts comprising the event:

(1) a change of the name of a corporate permittee or registrant;

(2) a change of a "doing business as" (dba) designation;

(3) the sale or transfer of a partner's interest in a partnership of the permittee or registered facility;

(4) the transfer of the title to the land comprising all or part of the permitted or registered facility;

(5) a change in the ownership of a corporate permittee's or corporate registrant's stock that results in any person owning 10% or more of the stock; or

(6) a change of mailing address, billing address, or responsible person for the permittee or registrant (i.e., mayor, county judge, president, chief operating officer, etc.).

(b) After receipt of a notice of change required of permittee's or registrant's and review of the facts by the Texas Department of Health (department), a letter acknowledging the change will be sent to the permittee or registrant. Also, additional requirements regarding the transfer of the permit or submission of a new registration application shall be transmitted in this letter.

(c) If the event requires that a new registration application be submitted for a registered solid waste facility, then the facility will be allowed to operate under the old registration until the new registration has been issued or denied. The applicant for the new registration shall submit, to the department for approval, the new registration application within 60 days of the date of the letter of acknowledgment of the change.

(d) If the event requires that a permit transfer be made, then the applicant should consult with the department prior to completion of the transfer documents to determine the specific requirements which must accompany the request to transfer the permit. The request for a permit transfer and all supporting documents shall be submitted within 60 days of the date of the letter of acknowledgment of the change. The request for a permit transfer shall be in the form of a letter signed by both the current permittee and the proposed permittee.

(e) Upon submission of the transfer request and supporting documents and review by the department, the decision will be made concerning the transfer. Pending a decision of the transfer, the department will hold the current permittee or applicant of record for an operating site responsible for the proper operation of the site.

(f) The documents which support a request for a permit transfer shall include the following:

(1) evidence that the new permittee has the legal authority to make use of the property within the boundaries of the site as described in the legal description included in the current permit. A permit transfer shall not be accepted unless the name, and mailing address of the new property owner has been provided. The new permittee shall provide a statement from the owner substantially equivalent to §325.905 of this title (relating to Appendix E- Form For Property Owner Affidavit). The owner-signed statement shall be witnessed and notarized. If the owner does not sign this affidavit, the new permittee shall provide the department with reasonable evidence that the property owner has been properly notified and advised of his responsibilities and potential liabilities;

(2) a statement from the applicant that he is familiar with the requirements of:

(A) the subject permit and its special provisions;

(B) the approved Site Development Plan and/or Site Operating Plan upon which the permit is based;

(C) these sections; and

(D) all official actions related to this site, and that he agrees to assume the legal responsibility for the operation of this site;

(3) evidence of financial responsibility which assures the department that the applicant has sufficient assets to properly operate the site and to provide proper closure. The assurance for operation of the site may be in the form of performance bonds, letters of credit from recognized financial institutions, trust funds, or insurance. A commissioners' court or city council resolution, in the case of publicly owned facilities, may be substituted for the financial assurance for the operation, if approved by the bureau. The department shall have the authority to require financial assurance for proper closure utilizing one of the instruments indicated in this subsection. The amount of financial assurance for proper closure shall be determined by the bureau, however, the permittee may submit calculations to aid in determining the final amount. In any event, the amount of financial assurance may not be less than that required by the original permit;

(4) evidence of competency to operate the site, including landfilling and earth moving experience, other pertinent experience, or department letters of competency possessed by key personnel and the number and size of each type of equipment to be dedicated to site operation. The applicant shall submit a list of all solid waste sites operated in Texas within the last 10

years as well as in all other states, territories, or countries. The type of site operated in each state, territory, or country shall be identified by location, operating dates, name and address of regulatory agency, and the name under which the site was operated. If the applicant does not have a prior site operating record, he must possess a valid department-issued letter of competency as described in §§325.381-325.391 of this title (relating to Solid Waste Technician Training and Certification Program) for the type of facility involved, evidence of equivalent qualification, or evidence that the proposed site supervisor has such qualification. The department may require that an appropriately qualified site supervisor be employed before commencing site operation. The names of the principals and supervisors of the applicant's organization shall be provided, together with previous affiliations with other organizations engaged in solid waste activities;

(5) a statement acknowledging the approved Site Development Plan and/or Operating Plan showing any changes pertinent to the transfer of the subject permit which differ from the latest approved Site Development Plan. Substantial changes made to the approved site operating plan may cause a delay in transferring the permit. If present or proposed operating procedures differ from those proposed by the original permittee, changes shall be made to the approved site operating plan; and

(6) for sites which have no Site Development Plan or Site Operating Plan, a Site Development Plan and Site Operating Plan shall be prepared and submitted as a supporting document to the request for permit transfer. The requirements in §325.74 of this title (relating to Technical Information Required for Landfill Sites-Site Development Plan) shall be utilized to prepare the Site Development Plan.

(g) Failure by a permittee or registrant to properly notify the department of any changes indicated in this section, failure to complete a permit transfer request or necessary application for a new registration, failure to give complete information, or submittal of false information shall constitute grounds for denial of a permit transfer request or of an application for a new registration. The department may also initiate the procedures for subsequent revocation of the affected permit or registration, or may seek other legal relief.

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 November 6, 1991.

TRD-9113904

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: January 25, 1992

For further information, please call: (512) 458-7271

◆ ◆ ◆
• 25 TAC §325.73

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

The repeal is proposed under the Solid Waste Disposal Act, Health and Safety Code, §361.011, which makes the department responsible for managing and controlling municipal solid waste management; §361.024, which provides the Board of Health with authority to adopt rules concerning municipal solid waste management; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health. The proposed rules affect the Health and Safety Code, Chapter 361.

§325.73. Technical Information Required for Landfill Sites Serving Less Than 5,000 Persons—Permit Application, Part B.

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 November 6, 1991.

TRD-9113905

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: January 25, 1992

For further information, please call: (512) 458-7271

◆ ◆ ◆
Subchapter E. Permit Procedures and Design Criteria
Application and Data Requirements

• 25 TAC §§325.74-325.76

The amendments are proposed under the Solid Waste Disposal Act, Health and Safety Code, §361.011, which makes the department responsible for managing and controlling municipal solid waste management; §361.024, which provides the Board of Health with authority to adopt rules concerning municipal solid waste management; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health. The proposed rules affect the Health and Safety Code, Chapter 361.

§325.74. Technical Information Required for Landfill Sites [Serving 5,000 Persons or More]—Site Development Plan.

(a) For all [Type I and IV] sites [serving 5,000 persons or more, or same population equivalent], the technical information submitted in support of Part A, in lieu of using Part B, shall be prepared in the form of an engineering Site Development Plan as described in this section. In the interest of expediting the development of complete technical data requirements and reducing costs to the applicant, two draft copies of the Site Development Plan shall be submitted to the department for review prior to reproduction in final form. The Texas Department of Health (department) will review the draft copies of the plan and advise of any changes or additions which are required or recommended and, if considered necessary, will request that the design engineer meet with appropriate staff members when clarification of data is necessary. Following this review, the department will advise the applicant, or his design engineer, of the number of copies required of the plan for distribution to review agencies which may need to make a detailed review with respect to matters under their jurisdiction. It is advisable that a copy of the soils report be submitted to the department for review as soon as it has been prepared so that the department can provide timely guidance if soil conditions will require special considerations. Individual site drawings shall be signed and sealed by the registered professional engineer responsible for their preparation. All drawings or other sheets submitted with the Site Development Plan are preferred to be no larger than 8 1/2 by 11 inches and should be no larger than 15 by 22 inches so that they can be reproduced by normal office copy machines. However, in addition to the reduced sheets, standard-sized drawings folded to 8 1/2 by 11 inches may be submitted or required if their reduction would render them difficult to interpret. Bound plans shall be signed and sealed by the engineer, preferably on the first page.

(b) The Site Development Plan shall be prepared in the format and content described as follows, except as may be otherwise determined for a specific site by the chief of the Bureau of Solid Waste Management (bureau) in accordance with §325.71(b) of this title (relating to General).

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

(5) Design data shall be reflected to the maximum extent possible on the set of attachments described in paragraph (6) of this subsection. Applicants shall consider criteria that in the selection of a site and design of a facility will provide for the safeguarding of the health, welfare, and physical property of the people and the environment through consideration of geology, soil conditions, drainage, land use, zoning, adequacy of access roads and highways, and other considerations as the specific site dictates. Applicants shall include in the support data for their permit applications information as specified in the

design criteria indicated in this paragraph. It is recommended that the applicant review the operational standards for the specific type of site before completing the application. Additional information may be required of the applicant when deemed necessary by the department.

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

(C) Engineering considerations. The following shall be discussed as part of the design data in support of the attachments:

(i)-(vi) (No change.)

[(vii) adequacy of supply, and soil characteristics, of on-site cover material, sufficient to provide a minimum of 18 inches of clayey soil (classification SC or CL as defined in the Unified Soil Classification System developed by the U.S. Army Corps of Engineers) and six inches of top soil, and any lining material that may be required. Soil balance calculations shall be provided to indicate the need for importing any materials. A soil management plan shall be provided to ensure the timely availability of required types of soil for lining, intermediate cover, and final cover. The plan shall also ensure that the temporary storage of soils to be used and excess soils pending final disposition does not conflict with site drainage plans. Any off-site source of soil material to be used for liner or final cover construction shall be identified and tested for proof of suitability, i.e., permeability, gradation, etc., and those test results shall be submitted to the department prior to use of the material;]

[(vii)][(viii)] fire control facilities, e.g., fire hydrants, fire breaks, earth stockpiles, water tanks, and availability of local fire departments;

[(viii)][(ix)] provisions for proper compaction of waste to minimize excessive or uneven settlement in completed fill areas which could affect drainage or result in ponding of water;

[(ix)][(x)] provisions to compensate for expected subsidence. The design engineer shall estimate the amount of subsidence for the particular site by taking into account the amount of compactive effort to be achieved depending on the type of equipment to be used and the anticipated fill height. The design shall provide for future settlement by specifying the initial cover slopes, which may be in excess of the recommended final slopes, that are expected to yield the desired final slope;

(x)[(xi)] provisions for inspection of the site for erosion, ponding, leachate migration, and methane migration and for taking corrective actions when indicated for the first five years after closure, and for such longer period as may be necessary to correct recurring problems; and [.]

(xl) provisions for the disposal of used and scrap tires to include, where applicable, methods to be used to split, quarter, or shred used or scrap tires prior to placement on the working face of the landfill.

(D) Ground water protection.

(i) The following words, professional descriptions and terms, when used throughout these regulations [in this subparagraph of this paragraph] shall have the following meanings unless the context clearly indicates otherwise.

(I) (No change.)

(II) Ground water—Water below the land surface [in the zone of saturation].

(ii) A facility shall be designed so as not to contaminate the ground water [groundwater] beyond the boundaries of the site. [As a general rule.] The [the] main concern is to protect the existing water quality from deterioration. Depth of ground water [groundwater] in the area shall be indicated. For the purposes of this section, the protection of ground water includes the protection of perched water or shallow surface infiltration. Except as required by clause (iii)II [(IV)] of this subparagraph, the minimum acceptable protection separating solid waste from ground-water or perched water shall be a constructed [naturally occurring barrier of in situ soil or a man-made] liner which provides the protection equivalent to that of three feet of soil having [with] a coefficient of permeability of no more than 1.0×10^{-7} centimeters per second, a liquid limit of no less than 30, a plasticity index of no less than 15, and percent passing Number 200 sieve of no less than 30. These soil parameters shall be determined by [ASTM] test procedures described in §325.122(b)(3)(C)(iv) of this title (relating to Soil and Liner Quality Control) or those tests which have been discussed with and approved by the department. Constructed liner thickness shall not be less than three feet even when soil with a coefficient of permeability of less than 1.0×10^{-7} centimeters per second is used. A protective cover of at least one foot of soil shall be provided for all constructed liners. [As an alternative, the one foot of protective soil cover may be omitted if the constructed liner thickness is at least 3 1/2 feet. In situ liners shall be at least four feet in thickness or three feet with a one-foot protective cover.]

(iii) A Soil and Liner Quality Control Plan (SLQCP) shall be included in the Site Development Plan to provide operating personnel adequate procedural guidance for assuring continuous compliance with the groundwater protection requirements specified in clause (ii) of this

subparagraph and §325.122(b)(3)(C) [sub-section (c) of §325.122] of this title (relating to Soil and Liner Quality Control). The plan shall be portrayed graphically in those materials required to be submitted under [in] paragraph (6)(H) of this subsection (Attachment Number 8—Ground and Surface Water Protective Facilities) and described narratively in paragraph (6)(L) of this subsection (Attachment Number 12—Site Operating Plan). It shall be keyed to the sectorized fill layout, paragraph (6)(F) of this subsection (Attachment Number 6—Sectorized Fill Layout), for area or trench identification. The plan shall include specifications and construction methods employing good engineering practices for compaction of clay soils to form a liner under both [each of] the [four] potential conditions described in subclauses (I) and (II) [- (IV)] of this clause and provide for soil and liner quality control testing procedures as described in clause (iv) of this subparagraph. Unless alternate construction procedures are approved by the department in writing, all constructed liners shall be keyed into an underlying formation of sufficient strength to ensure stability of the constructed lining.

(I) Liner [Where lining of complete trenches is necessary, the liner] details shall be depicted on cross sections of a typical trench showing the slope, widths, and thicknesses for compaction lifts. The amount of compaction shall be expressed as a percentage of a predetermined laboratory [standard Proctor] density.

[(II) Typical cross sections shall be provided for those instances in which overexcavation of permeable zones and backfilling with impermeable clay may be necessary.

[(III) Proposed procedures shall be shown when overexcavation and recompaction are required for impermeable soils containing fissures, cracks, joints, bedding planes, or any other secondary natural features which increase the apparent coefficient of permeability of the in situ soils.]

II[(IV) If groundwater is encountered in the disposal excavations, or in cases where excavations extend below the seasonal high-water table, cohesive soil materials with a weight equivalent to one foot of compacted clay liner for every two feet of static water head encountered shall be used as a basis for construction of a liner between the deposited solid waste and the groundwater. The minimum [total] thickness of the liner shall consist of three feet of soil with a permeability of no more than 1.0×10^{-7} centimeters per second, a liquid limit of no less than 30, a plasticity index of no less than 15, and

percent passing Number 200 sieve of no less than 30, plus an additional thickness of other cohesive soil material as described in this subclause. Hydrostatic pressure [Pressure] release systems may be used to reduce the amount of the liner support construction provided their effectiveness is proven by the installation of temporary piezometers.

(iv) Soil and liner quality control testing procedures, to include sampling frequency, shall be included in the SLQCP. [For circumstances where constructed lining may not be required or needed, the SLQCP shall include specific details on preparation measures required for in situ soils prior to their receipt of wastes.] All field sampling and testing, both during construction and after completion, shall be performed by a registered professional engineer employed full time as a [experienced in] geotechnical engineer [engineering] or a geologist having a college degree in geology with no less than four years of experience in engineering geology and working in or principal of a geotechnical laboratory or under their direct supervision. The geotechnical engineer or engineering geologist of record who signs and seals the Soils and Liner Evaluation Report (SLER) or his/her representative shall be on site 100% of the time during liner construction. Quality control sampling and testing procedures shall be prepared following guidelines of the department. Tests for the [following] parameters listed in subclauses (I)-(V) of this clause shall be performed [in accordance with standards prescribed in subparagraph (I)(iii) of this paragraph]. The minimum rate of testing of liners for quality control shall be in accordance with department guidelines:

(I)-(III) (No change.)

(IV) density and moisture content; and

(V) (No change.)

(v) Constructed liners [lining] other than compacted clay soils (e.g., flexible membrane, [asphalt, polymeric membranes, concrete,] bentonite [slurry or] admixture, etc.) may be utilized if written concurrence is obtained from the department. All such liners [lining] shall be placed in strict accordance with an approved quality control plan which incorporates the manufacturer's specifications and recommendations.

(vi) Ground water monitor wells shall be installed for surface impoundments, landfills, and land treatment sites. The location and depths of the wells in the ground water monitoring system shall be determined on the basis of a ground water characterization study performed by a qualified ground

water specialist as defined in clause (I)(III) and (IV) of this subparagraph and whose credentials have been submitted to and approved by the department. At a minimum the ground water characterization will determine the depth to ground water; whether more than one ground water regime exists; the direction and rate of flow for both the seasonal high and low water levels as expressed on a water table/potentiometric surface map; the recharge area in relation to the site; the static water elevation with dynamic seasonal high and low head characteristics; the depth to the uppermost water bearing unit impacted by waste disposal activity; and the relationship between the ground water and any surface water bodies including lakes, streams, and other impoundments. The total number and locations of monitor wells will be determined on the basis of the ground water characterization and any other pertinent data.

(I) Test holes drilled for soils and groundwater information shall not be converted to monitor wells, unless prior approval is obtained from the department.

(II) The bureau may require or authorize that earth electrical resistivity surveys be used in lieu of, or as a supplement to, monitor wells. The provision for monitor wells or alternatives shall be in accordance with department guidelines and/or permit special provisions.

(III) Details of monitor well construction and placement shall be shown in the Site Development Plan. Monitor well construction shall be at a minimum to department specifications. [As an aid in determining whether or not the lining of trenches will be required, the bureau will calculate the potential percolation of precipitation into deposited solid waste and potential for leachate generation using the water-balance method based on rainfall, evapotranspiration, and soils data as described in U.S. Environmental Protection Agency report SW-168 titled, "Use of Water Balance Method for Predicting Leachate Generation from Solid Waste Disposal Sites," or other improved procedure for evaluation in combination with other site-specific data. Applicants should consult with the bureau early in the design phase to determine if favorable water-balance condi-

tions exist. Before making that determination, the bureau shall be provided such site-specific data as necessary to evaluate the validity of water-balance calculations for the specific site. Such data may include types of surface and subsurface soils; depth of groundwater; distance to streams and floodplains; distance to stock ponds and sewage treatment lagoons; proposed slope and frequency of application of intermediate cover; the thickness and type of final cover material; slope of final cover; type of vegetative cover; and proposed operational procedures to provide assurance that the intrusion of surface and subsurface water into the disposal excavations will be prevented.]

(vii) A Ground Water Sampling Quality Control Plan (GSQCP) shall be included in the Site Development Plan to provide operating personnel adequate procedural guidance for assuring continuous compliance with groundwater sampling and testing requirements specified in this clause. The plan shall include procedures for handling, storing, and documenting chain-of-custody for any samples collected. [Except as may be authorized by subclause (VIII) of this clause, groundwater monitor wells shall be installed for surface impoundments, landfills, and land treatment sites. A groundwater monitoring system shall consist of at least one monitor well hydraulically upgradient of the site to obtain representative background groundwater samples and at least two monitor wells hydraulically downgradient of the site to obtain representative groundwater samples that may contain contaminants from leachate. The department may require additional monitor wells when conditions warrant, particularly for large sites. The design engineer shall determine the number, location, and depth of monitor wells based on such groundwater information as depth to the water table, direction and rate of groundwater flow, recharge area in relation to the site, static water elevation with dynamic head characteristics, and depth to the first potable aquifer.]

(I) The rate of sample acquisition shall be as follows [Test holes drilled for soils and groundwater information shall not be converted to monitor wells.]

(-a-) Background samples shall be obtained quarterly for all monitor wells within 12 months from the date of the site opening. The background levels shall be established from

samples collected from each well at least once during each of the four calendar quarters: January-March; April-June; July-September; and October-December. Samples from any monitor well shall not be collected for at least 45 days following collection of a previous sample unless a replacement sample is necessary. At least one sample per well shall be collected and submitted to the laboratory for analysis prior to the deposition of any solid waste on site. The analytical testing and the reporting of the results to the bureau shall be completed no less than 45 days from the date of sample acquisition. Background samples shall be analyzed for the parameters listed in subclause (II)(-a-) and (-b-) of this clause.

(-b-) Annual ground water samples shall be taken once the quarterly background sampling is complete, unless more frequent determinations are specified by the department. The month during which annual samples are collected shall coincide with a month that falls within the normally wettest calendar quarter. Once this month is selected it shall be submitted to the bureau and all annual sample acquisitions shall, thereafter, be made annually during the selected month. The analytical testing and the reporting of the test results to the bureau shall be completed no less than 45 days from the date of sample acquisition. Annual monitor well samples shall be analyzed for those parameters listed in subclause (II)(-b-) of this clause. The bureau may add constituents to this requirement as it deems necessary.

(-c-) Once every fourth year following the establishment of background values, the parameters specified in subclause (II) of this clause, plus volatile organic carbon (VOC) as specified in the most recent revision of Environmental Protection Agency (EPA) Method 8240, shall be analyzed and reported.

(II) Sample test parameters shall be as follows: [The bureau may require or authorize that earth electrical resistivity surveys be used in lieu of or as a supplement to monitor wells. The provision for monitor wells or alternatives shall be in accordance with department guidelines and/or permit special provisions.]

(-a-) Heavy Metals:

Arsenic
Mercury
Selenium
Lead
Chromium
Nickel

Copper
Barium
Cadmium
Silver
Zinc

(-b-) Other

Parameters:

Laboratory Measurements

Calcium	Total Dissolved Solids
Magnesium	Phenolphthalein Alkalinity as CaCO_3
Sodium	Alkalinity as CaCO_3
pH	Carbonate Hardness as CaCO_3
Bicarbonate	Sulfate
Chloride	Specific Conductance
Fluoride	Nitrate (as N)
Silica	Groundwater Elevation (MSL)
Iron	Total Organic Carbon (four replicate samples)
Manganese	Potassium
Biochemical Oxygen Demand, 5 Day (BOD5)	

Field Measurements

pH
Alkalinity
Specific Conductance
Temperature
Groundwater Elevation (MSL) - prior to purging

(III) The GSQCP shall specify the method(s) of sample collection to be used for each monitor well and shall include specifications and requirements for each of the nine items (-a-)-(-i-) of this subclause. [Details of monitor well construction and placement shall be shown in the Site Development Plan.]

(-a-) Immediately before beginning the purging procedure for any monitor well, the depth to water in the well shall be measured from a permanent reference point at that well. This depth measurement shall be recorded to the nearest hundredth of a foot.

(-b-) Prior to sampling a monitor well, it shall be balled or purged of at least three well volumes of water or to dryness. Balling or purging shall be accomplished within 24 hours of sampling; in circumstances where recharge is very slow the well may be

balled or purged 48 hours prior to sampling. Balling and purging devices shall meet requirements for sample collection devices set out in Item (-c-) of this subclause. Any baller used shall not be capable of releasing contaminants into the ground water.

(-c-) Sample collection devices include, but are not limited to, ballers, permanently installed pumps such as bladder pumps, portable pumps, and air or gas purging systems. If sample collection devices are not dedicated to an individual well, they shall be appropriately decontaminated between each sampling event. The decontamination protocol procedure shall be stipulated in detail within the GSQCP.

(-d-) Containers used for collecting water samples shall be appropriate to the analysis method and properly prepared to avoid introduction of contaminants to the sample. Each container shall be labeled to clearly identify the samples. If the bureau requires split

samples, the permittee shall furnish any and all sample containers required for both parties.

(-e-) All sampling data collected in the field shall be recorded in a permanent field log book or on field data sheets with copies maintained at the site office.

(-f-) A chain-of-custody record for each sample shall be maintained to document sample possession from time of collection to analysis.

(-g-) Detailed method or methods of sample preservation and transportation shall be stipulated.

(-h-) The normal sequence of sampling monitor wells shall begin with the upgradient well or wells and progress in a down gradient fashion. This sequence shall be determined from the ground water elevations checked prior to balling or purging. For those sites where ground water contamination

has been determined, the ground water sampling shall be conducted either by using dedicated bailers or the sampling sequence shall be from the least to the most contaminated well.

(-1-) All ground water sampling and test data shall be reported on department forms or a facsimile thereof. All forms shall be completed with all the information required.

(IV) Methods of analysis used for all ground water samples shall be those considered to be current practice and shall generally conform to those set out in the most recent edition

[calcium	total dissolved solids
magnesium	phenolphthalein alkalinity as CaCO ₃
sodium	alkalinity as CaCO ₃
carbonate	hardness as CaCO ₃
bicarbonate	pH
sulphate	specific conductance
chloride	anion-cation balance
fluoride	groundwater elevation (MSL)
nitrate (as N)	total organic carbon (TOC)
	(four replicates/sample)]

(V) All ground-water monitor wells shall be drilled by a licensed monitor well driller as set forth in The Water Well Driller Act. Each well shall be installed under the supervision of a geologist or engineer experienced in monitor well installation and whose credentials are accepted by the Department. [After background values have been determined, at approximately 12-month intervals, more often if the department so determines, the following indicators shall be measured:]

- replicates); [(-a-) TOC (four
- [(-b-) iron;
- [(-c-) manganese;
- [(-d-) pH;
- [(-e-) chloride (in appropriate cases);
- [(-f-) ground water elevation (MSL); and
- [(-g-) specific conductance or total dissolved solids (Either one may be selected, but once selection is made, a change may not be made without approval of the department.)

(VI) Once every fourth year following the establishment of background values, the parameters specified in subclause (IV)(- b-) of this clause shall be determined plus manganese and iron.

of Standard Methods for the Examination of Water and Wastewater. Other methods of analysis may be accepted by the department after review. Laboratories performing analysis shall establish and maintain appropriate quality assurance/quality control plans, with copies made available to the department. [Except as provided for in subclause (VIII) of this clause, a groundwater sampling program shall provide for obtaining four background groundwater samples of all monitor wells within 24 months from the date of the issuance of the permit. The background levels shall be established from samples collected from each well at least once during each of the four calendar quarters: January-

March; April-June; July-September; and October-December. Samples from any monitor well shall not be collected for at least 45 days following collection of a previous sample, unless a replacement sample is necessary. At least one sample per well shall be collected and submitted to a laboratory for analysis prior to the deposition of any solid waste on site. Background samples shall be analyzed for the two groups of parameters listed in items (-a-) and (-b-) of this subclause.]

[(-a-) heavy metals; arsenic, copper, mercury, barium, iron, selenium, cadmium, lead, silver, chromium, manganese, nickel, and zinc.]

[(-b-) other parameters:]

(VII) If any significant changes in the parameter levels are found and verified, the department may order additional sampling and analysis to determine if leachate is entering the groundwater. If it is determined that the landfill is the source of the contamination, the department will direct appropriate corrective action.

(VIII) All or part of the groundwater monitoring requirements may be waived by the department if it can be demonstrated that there is low potential for the creation and migration of leachate from the site via aquifers to water supply wells or to surface water. Potential for the creation and migration of leachate may be evaluated using the water balance of precipitation, evapotranspiration, runoff, and infiltration and the evaluation of the hydrogeological and physical properties characteristics of the saturated and unsaturated zone and the proximity of the site to water supply wells or surface water.]

(E) Drinking water protection. Solid waste shall not be deposited within 500 feet of [where a hazard may result to] a [drinking] water supply well head, intake of a water treatment plant, or raw water intake which furnishes water for human consumption. [If any of these are located within 500 feet of actual disposal areas, engineering data shall be provided to show that adequate protection to drinking water sources is provided.] Any water or other type of well to be plugged shall be plugged in accordance with all applicable TWC [TDWR] or Railroad Commission of

Texas (RRC) requirements and any additional requirements imposed by the department. Therefore, to meet all requirements, such wells shall have all removable casing removed and be pressure plugged with bentonite mud from the bottom of the well to ground surface except for the top 10 feet which shall be plugged with cement. A copy of the well plugging report required to be submitted to the appropriate state agency (TWC [TDWR] or RRC) shall be submitted to the department within 30 days after the well has been plugged.

(F) Surface water protection.

(i)-(ii) (No change.)

(iii) Surface drainage controls for a land disposal site shall be designed so as to minimize surface water runoff onto the working area. Dikes, embankments, drainage structures, or diversion channels of adequate size and grade shall be graded for adequate drainage, and the slopes of the sides and toe shall be graded in such a manner so as to minimize the possibility of erosion. Drainage calculations shall be based upon the 25-year rainfall intensity for the area and submitted with the design. Calculations for areas of 200 acres or less shall follow the rational method, and utilize appropriate surface runoff coefficients, as specified in the State Department of Highways and Public Transportation "Bridge Division Hydraulic Manual." Time of runoff concentration as defined within the said manual generally shall not be less than 10 [20] minutes for rainfall intensity determination purposes. Discharges from areas greater than 200 acres shall be com-

puted by using USGS/DHT hydraulic equations compiled by the U.S. Geological Survey and the State Department of Highways and Public Transportation (SDHPT Administrative Circular 80-76); the HEC-1 and HEC-2 computer programs developed through the Hydrologic Engineering Center of the U.S. Army Corps of Engineers; or an equivalent or better method approved by the department. Designs of all drainage facilities within the site area shall include such features as typical cross-sectional areas, ditch grades, and flowline elevations. Sample calculations shall be provided to verify that natural drainage patterns will not be significantly altered. The proposed surface water protection practices must maintain low non-erodable velocities, minimize soil erosion losses below permissible levels, and provide long-term slope stability to the final cover.

(iv) (No change.)

(v) The site shall be protected from flooding with suitable levees constructed to provide protection from a 100-year frequency flood and in accordance

with the rules and regulations of the TWC [Texas Department of Water Resources] relating to levee improvement districts and approval of plans for reclamation projects or the rules of the county or city having jurisdiction under the Texas Water Code, §16.236. Flood protection levees shall be designed and constructed to prevent the washout of solid waste from the site. A freeboard of at least two feet shall be provided except in those cases where a greater freeboard is required by the agency having jurisdiction under the Texas Water Code, §16.236. Such levees shall not significantly restrict the flow of a 100-year frequency flood nor significantly reduce the temporary water storage capacity of the 100-year floodplain.

(G)-(H) (No change.)

(I) Soil data and ground water.

(i) There shall be sufficient borings drilled on the proposed site to characterize ground water on site. These borings shall be to a depth necessary to identify each ground water bearing zone impacted by solid waste disposal activities. These borings used for ground water characterizations shall be developed into piezometers in sufficient numbers to determine the depth, direction of flow and rate of flow of each ground water zone. If there are no shallow ground water zones, either perennial or perched, within 50 feet of the deepest excavation then there shall be at least one test hole drilled to sufficient depth to intercept the top of the first perennial aquifer beneath the proposed site. Ground water bearing zones deeper than 300 feet below the lowest excavated point and which have estimated contaminant travel times from the site in excess of 30 years need not be identified through borings. The coefficients of permeability used for the purpose of estimating travel time shall be as follows:

PERMEABILITY - HYDRAULIC CONDUCTIVITY CONVERSIONS

SOIL TYPE	APPROXIMATE COEFFICIENTS OF PERMEABILITY			HYDRAULIC CONDUCTIVITY
	cm/sec	cm/year	ft/year	
Clay	1 x 10 ⁻⁷	3.15	0.10	0.002
	1 x 10 ⁻⁶	31.5	1.0	0.02
	1 x 10 ⁻⁵	315	10	0.2
Silt	1 x 10 ⁻⁴	3,150	103.5	2
	1 x 10 ⁻³	31,500	1,035	20
Sand	1 x 10 ⁻²	3.15 x 10 ⁵	1.03 x 10 ⁴	200
Gravel	1 x 10 ⁻¹	3.15 x 10 ⁶	1.03 x 10 ⁵	2,000

(ii) A report of all borings drilled on site to test soils and characterize ground water shall be submitted with a site map showing their locations and surface elevations. Each boring shall be presented in the form of a drilling log which contains, as a minimum:

- (I) boring number;
- (II) surface elevation;

- (III) location coordinates;
- (IV) columnar section describing:
 - (-a-) contact elevation of the soil or rock layers present;
 - (-b-) soil or rock description;
 - (-c-) the soil's unified soil classification;

- (-d-) color;
 - (-e-) degree of compaction;
 - (-f-) moisture content; and
 - (-g-) water bearing elevations (both original and static).
- (iii) Those test borings which are used to establish ground water characteristics shall be bailed of all drilling fluids and a piezometer set. In addition to the boring log required in clause (ii) of this paragraph, a piezometer log

shall be submitted which depicts the elevations of the casing, screened interval and gravel packed interval, and notes the type of casing grout used. Each piezometer shall be capped, numbered, and developed. Continuous coring is not required, but sufficient sampling shall be provided to adequately characterize each strata encountered.

(iv) A ground water characterization study shall be submitted based on on-site information obtained from monitoring and testing piezometers as described in clauses (ii) and (iii) of this subparagraph. This study shall at a minimum fully describe the shallowest ground water zone or zones impacted by waste disposal. It shall describe the direction of ground water flow and the estimated rate of flow. This report shall present a site map with a plan view showing the potentiometric surface of all applicable ground water regimes and the suggested monitor well locations. There shall also be presented sufficient cross sections depicting the piezometer/boring locations with appropriate boring logs

plotted and ground water elevations shown. The ground water elevations shown on the boring logs shall include the original elevations at which water was encountered and the highest seasonal static water bearing elevation.

(v) A hydrogeologist or a registered professional engineer experienced in ground water hydrology shall review the geologic information and ground water data which are available for the proposed site and its environs and shall inspect the site for any geologic condition (including faulting) which may be pertinent to the siting of a solid waste facility. From the data generated by these investigations, a geologic report shall be prepared and included in the ground water study. This report should also include the regional geologic and hydrogeologic history and description of the area.

(I) Soil data.

(i) Prior to finalizing a boring plan, the applicant may choose to perform a resistivity survey of the proposed site and, based on data obtained, request a

Size of Area In Acres	Number of Borings	Minimum Number of Borings 20 Feet Below Deepest Excavation
5 or less	2-4	2
5-10	4-6	3
10-20	6-10	5
20-50	10-15	7
50-100	15-20	7-12
100 and over—Determined in consultation with the department.		

(ii) A report of each columnar section obtained by borings shall be submitted along with a site map showing the location and elevation of each boring. Each boring log shall report the elevation and the soil layers present, describing the soil or rock constituents, color, degree of compaction, and amount of moisture present plus any additional information necessary for an adequate description. A total thickness of each soil or rock layer shall be represented on the boring log and enough information shall be obtained to classify each soil stratum based on the Unified Soils Classification System. If subsurface water is encountered, the test hole shall be bailed of all drilling fluids for its entire depth and the initial depth that water was encountered shall be noted on the boring log. Also, the static water level shall be obtained by measuring the depth to the water level daily until it has remained stable for a period of 24 hours or longer and noted on the boring log indicating the time required for the water level to stabilize. If drilling within 200 feet of an existing disposal site and water is encountered, and a groundwater monitoring program is not being conducted for the existing site, the hole shall be bailed of all

drilling fluids and a sample of the subsurface water shall be taken after the static water level has stabilized and it shall be analyzed to determine the existence of any contaminants. Consideration should be given to the conversion of bore holes into piezometers to establish groundwater gradient. Test borings shall not be utilized as monitor wells. All test holes, drilled in conjunction with soil testing and evaluation, shall be bailed, and once groundwater data is obtained, adequately plugged to prevent surface contamination from entering or livestock or personnel from falling into the surface opening. All test holes shall be pressure plugged their entire depth with bentonite mud.

(iii) A laboratory report of soil characteristics shall be submitted consisting of a minimum of one sample from each soil layer that will form the bottom and sides of the proposed excavation. The design engineer should have as many additional tests performed as necessary to provide a typical profile of the soils stratification within the site. No laboratory work need be performed on highly permeable soil layers which obviously will require lining. The soil samples shall be tested by a competent soils laboratory. The

reduction in the number of borings that would normally be required without this supplemental information. The applicant is encouraged to discuss any available plan with the department to ensure that only essential borings are made. Sufficient borings or other suitable geological data to provide a representative sampling of the types of soil contained in the site are required. The minimum number, locations, and depths of borings required can only be determined when the general characteristics and field tests of the specific site are analyzed. The following table is provided as a guide for planning, and the number of borings indicated is the minimum required when an alternate plan is not proposed by the applicant and approved by the department. Additional borings may be required if the findings obtained from the prescribed minimum number are inconclusive with respect to the soil geology of the proposed site. The depth of borings, under optimum soil conditions, i.e., relatively impermeable soils, should be not less than five feet below the deepest proposed excavation. With less favorable soil conditions, the depth of borings should be at least 20 feet below the deepest proposed excavation.

soil tests shall consist of the following, performed in accordance with the given standards or guidance.

(I) Permeability tests shall be performed according to one of the following standards on undisturbed soil samples. These permeability tests shall be performed using tap water and not distilled water as the permeant. Those undisturbed samples which represent the sidewall of any present or proposed trench, pit, or excavation shall be tested for the coefficient of permeability on the sample's in situ horizontal axis. All test results shall indicate the type of tests used and the orientation of each tested sample.

((a-) constant head—ASTM D2434; or

((b-) falling head—Appendix VII of the Corps of Engineers Manual EM1110-2-1906, 30 Nov. 70, Laboratory Soils Testing;

(II) sieve analysis and hydrometer analysis: #4, #10, #40, #200, -200, and hydrometer analysis on-200 fraction—ASTM D422;

[(III) atterberg limits--ASTM D423 and D424;

[(IV) moisture-density relations--ASTM D698;

[(V) moisture content--ASTM D2216.

[(VI) All soils bound within the following range of values shall be tested in a soils laboratory for the coefficient of permeability. Normally all soils below the range of values stated in this subclause are very sandy and will require lining. Those soils which exceed the range of values are high in clay and do not require additional testing to prove their adequacy

for sanitary landfill purposes. The physical parameters stated are to be considered as guidelines for soil sample testing. Engineering judgment must be used on those samples which exhibit some but not all of the boundary limits stated.

[Plasticity Index	15 to 25
Liquid Limit	30 to 50
Percent Passing	30 to 50
200 Mesh Sieve (-200)]	

[(iv) A geologist or a registered professional engineer experienced in ground water hydrology shall review the geologic information and groundwater data which are available for the proposed site and its environs. From these data, a geologic report, to include a brief description of the historical and depositional background of the area, shall be prepared and included in the soils report.

[(v) An analysis of the soils data and a recommendation as to the

adequacy of in situ soils for groundwater protection or the type and thickness of constructed liner, when necessary, shall be provided by a professional engineer experienced in geotechnical engineering or geologist having a college degree in geology with no less than four years of experience in engineering geology.]

(J) [Active geological] Geological faults. All applications submitted for the operation of a municipal solid waste facility shall include a preliminary

fault investigation report. The report shall include, at a minimum, results of direct site observations and a literature review of historical seismic activity and faulting in the area. If a facility is to be [Applications submitted for the operation of sites] located within areas which may be subject to differential subsidence or active geological faulting, the application must include detailed fault studies. When an active fault is known to exist within 1/2 mile, the site shall be investigated for both previously identified and unknown faults. Areas experiencing withdrawal of crude oil, natu-

ral gas, sulfur, etc., or significant amounts of ground water shall be investigated in detail for the possibility of subsidence faulting/growth faulting which could adversely affect the integrity of landfill liners. Such studies shall be conducted under the direct supervision of a [professional engineer experienced in geotechnical engineering or a] geologist whose credentials have been accepted by the department [qualified] to evaluate such conditions. The studies shall establish the fault displaced limits [(both upthrown and downthrown)] of the zones of influence of all active faulted areas within the site vicinity. Unless the applicant can provide substantial evidence that the zone of influence will not affect the site, no solid waste disposal activity shall be undertaken [accomplished] within a zone of influence of active geological faulting or differential subsidence because active faulting results in slippage along failure planes, thus creating preferred seepage paths for

liquids. The studies shall include information or data as applicable, on the items in clauses (i)-(xi) [(xii)] of this subparagraph, as follows:

(i)-(vi) (No change.)

[(vii) crude oil and natural gas accumulations.]

(vii) [(viii) electrical spontaneous potential and resistivity logs (correlation of subsurface strata to check for stratigraphic offsets);

(viii) [(ix)] earth electrical resistivity surveys (indications of anomalies which may represent fault planes);

(ix) [(x)] open trench excavations (visual examinations to detect changes in subsoil texturing and/or weathering indicating stratigraphic offsets);

(x) [(xi)] changes in elevations of established benchmarks; and

(xi) [(xii)] references to published geological literature pertaining to area conditions.

(6) Attachments.

(A)-(D) (No change.)

(E) Attachment 5-contour map. This is normally a constructed map showing the existing topographic contours prior to any site development [filling operations on the site]. Appropriate vertical contour intervals should be selected so that contours are not further apart than 100 feet as measured horizontally on the ground. However, wider spacing may be used when deemed appropriate. The map should show the location and quantities of surface drainage entering, exiting, or internal to the site and the area subject to flooding by a 100-year frequency flood.

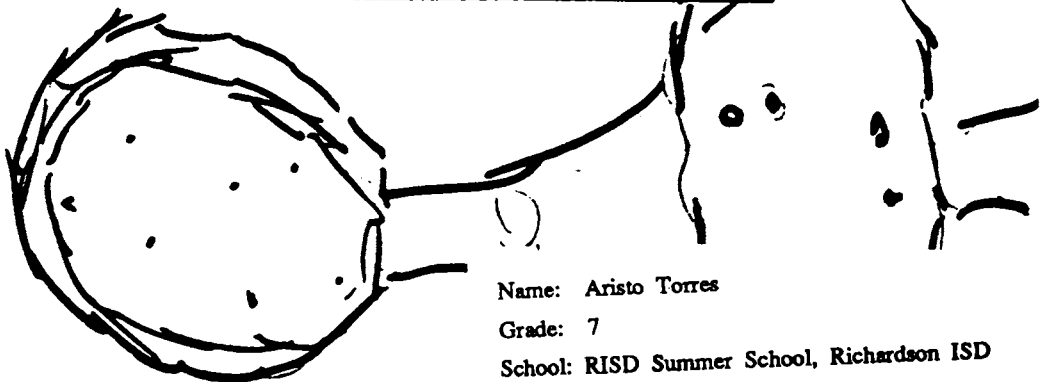
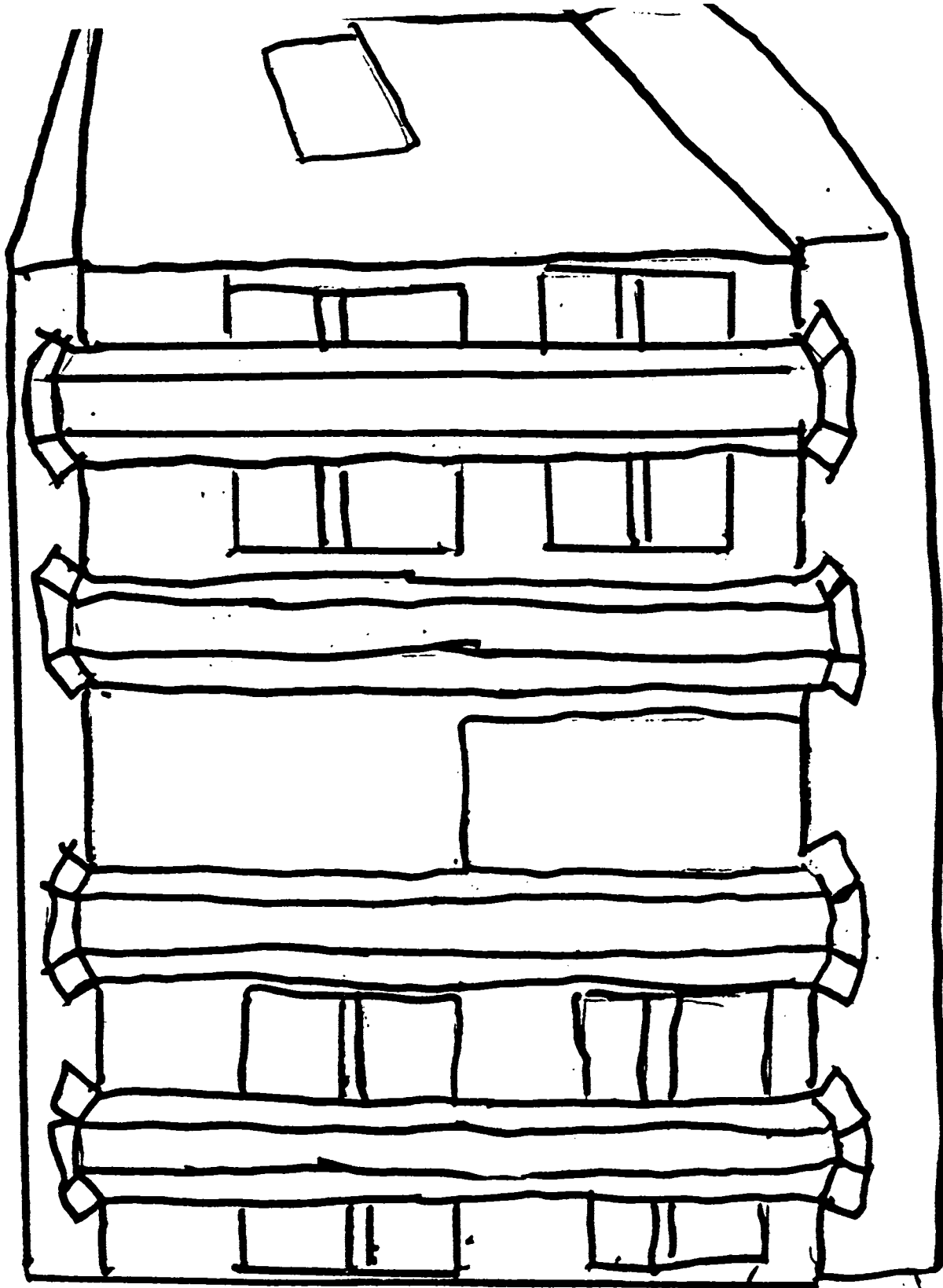
(F)-(O) (No change.)



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§325.75. Technical Information Required for Solid Waste Processing and Experimental Sites.

(a) Report preparation. For all Type V sites, [including those air-curtain destructors (trench burners)] which may require a permit and Type VI sites not involving land disposal, the technical information submitted in support of Part A shall be prepared in the form of a Site Development Plan as described in subsection (b) of this section. For all experimental land disposal sites (Type VI), the technical information submitted with an application shall include all applicable items as required for Type I disposal sites (see §325.74 of this title (relating to Technical Information Required for Landfill Sites [Serving 5,000 Persons or More]-Site Development Plan)); however, because of the many variables that may be involved in operations of these types, applicants should consult with the department to confirm the applicability of specific requirements. All [individual] drawings shall be signed and sealed by the registered professional engineer responsible for their preparation. Bound reports [plans] shall be signed and sealed by the engineer, preferably on the first page. The preliminary instructions contained in §325.74 of this title (relating to Technical Information Required for Landfill Sites [Serving 5,000 Persons or More]-Site Development Plan) with respect to consultation with the department, submittal of draft plans, size of drawings, and determination of number of copies apply to this subsection.

(b) Site Development Plan [development plan]. The Site Development Plan [site development plan] shall be prepared in the format and content described in paragraphs (1)-(6) of this subsection.

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

(6) Attachments.

(A)-(H) (No change.)

(I) Attachment 9-evidence of financial responsibility. The applicant shall submit evidence of financial responsibility which assures the department that he has sufficient assets to properly operate the site and to provide proper closure. A firm commitment to provide backup equipment by lease, purchase, or diversion from other activities is part of this responsibility. [This] The assurance for proper operation of the site may be in the form of performance bonds, letters of credit from recognized financial institutions, [company stockholder reports,] trust funds, or insurance. [in the case of privately owned facilities and by] A commissioners' court or city council resolution, in the case of publicly owned facilities, may be substituted for the financial

assurance if approved by the department. The department shall have the authority to require [such] financial assurance for proper closure in a form indicated in this subparagraph [responsibility as it deems appropriate]. The amount of financial assurance for proper closure shall be determined by the department; however, the applicant shall submit calculations to aid in determining the final amount.

(J)-(K) (No Change.)

§325.76. Technical Information Required for Registration of Solid Waste Facilities-Part B, Section II.

(a) (No change.)

(b) Unless an exception is granted by the chief of the Bureau of Solid Waste Management (bureau) or his designated representative in accordance with § 325. 71(b) of this title (relating to General), Part B, Section II shall be supported by the following:

(1) evidence of financial responsibility which assures the department that the applicant has sufficient assets to provide proper operation and closure of the site. A firm commitment to provide backup equipment by lease, purchase, or diversion from other activities is part of this responsibility. The [This] assurance for the operation of the site may be in the form of performance bonds, letters of credit from recognized financial institutions, [company stockholder reports,] trust funds, or insurance. A [in the case of privately owned facilities and by] commissioners' court or city council resolution in the case of publicly owned facilities may be substituted for the financial assurance if approved by the department. The department shall have the authority to require such financial assurance for proper closure in the form indicated in this subsection. The amount of financial assurance for proper closure shall be determined by the department; however, the applicant may submit calculations to aid in determining the final amount [responsibility as it deems appropriate].

(2) (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 November 6, 1991.

TRD-9113906

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: January 25, 1992

For further information, please call: (512) 458-7271

Subchapter F. Operational Standards for Solid Waste Land Disposal Sites

General

- 25 TAC §§325.111, 325.112, 325.114

The amendments are proposed under the Solid Waste Disposal Act, Health and Safety Code, §361.011, which makes the department responsible for managing and controlling municipal solid waste management; §361.024, which provides the Board of Health with authority to adopt rules concerning municipal solid waste management; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health. The proposed rules affect the Health and Safety Code, Chapter 361.

§325.111. General Requirements. The approved Site Development Plan, consisting of the design, Site Operating Plan [site operating plan], and related data, becomes an operational requirement, and any significant deviation from the plan without prior approval of the department is a violation of this subchapter.

(1) Within 30 days after the issuance of a permit or permit amendment, the permittee shall submit, to the bureau, three copies of the final approved Site Development Plan, which shall include all changes made during any public hearing on the application. These copies shall be loose-leaf bound and shall include all drawings and sketches. The outside binder shall be marked "Approved Site Development Plan" and dated with the date of permit issuance or amendment.

(2)[(1)] A copy of the permit, the approved Site Development Plan, and the department's current rules shall be on-site and the on-site supervisor shall be knowledgeable of each with respect to the operational requirements of the specific site. The on-site supervisor shall be subject to questioning by the department's representatives during visits to the site to verify this knowledge.

(3)[(2)] If at any time during the life of the site the site operator becomes aware of any condition in the approved Site Development Plan which necessitates a change to accommodate new technology or improved methods, or which makes it impractical to keep the site in compliance, other than those covered in §325.56 of this title (relating to Revocation or Amendment of a Permit), the site operator shall submit to the department a revised plan. Such proposed changes to the approved Site Development Plan shall be submitted to the department for approval.

opment Plan do not require a permit amendment but must be approved by the department prior to their implementation.

(4)(3) In the event that a necessary deviation is the result of unforeseen circumstances and there is insufficient time to prepare and submit a revised plan, the site operator shall immediately contact the bureau by telephone or telegram and obtain interim authorization pending the submission and review of the revised plan. Interim authorization shall be in writing and shall not exceed 30 days during which time the revised plan shall be prepared and submitted to the department [bureau].

(5)(4) All drawings or other pages [sheets] prepared for revisions to a Site Development Plan [site development plan] or other previously approved documents, which may be required by this subchapter, shall be submitted in triplicate [and normally should be 8 1/2 by 11 inches and shall not exceed 15 by 22 inches so that they can be reproduced by normal office copy machines]. The revised pages shall be marked "Revision Number", dated, and be punched for insertion into the loose-leaf binder. Drawings shall be 8 1/2 by 11 inches or 11 by 17 inches. However, standard-sized drawings (24 by 36 inches) folded to 8 1/2 by 11 inches may be submitted or required if [their] reduction in size would render such drawings [them] illegible or difficult to interpret. All revised drawings shall be signed and sealed by the registered professional engineer responsible for their preparation and will be included in the loose-leaf binder. Bound plans and/or reports, other than revisions to the Site Development Plan, shall be signed and sealed by the engineer, preferably on the first page.

§325.112. Meetings and Inspections Prior to Constructing and Opening New Facilities.

(a) Preconstruction conference. When the bureau has determined [during application processing] that a preconstruction conference is necessary to ensure a common understanding of the requirements of the Site Development Plan [site development plan], these rules, and any special provisions of the permit, the permittee shall be so advised in a [the] letter of notification of a preconstruction conference [transmitting the permit]. In that event, the permittee shall contact the bureau to establish a date, time, and place where department representatives can meet with the permittee and his design engineer. Any permittee not so advised may at his option request such a meeting anytime during the construction phase of the site. If appropriate, the design engineer shall be accompanied by a geotechnical engineer and/or engineering geologist, and if the permittee is not to be the on-site operator, the appropriate operating or management personnel shall attend the meeting.

(b) Preopening inspection. After all significant initial construction has been completed and prior to accepting any solid waste, the site operator shall contact the bureau and establish a date for representatives of the department to inspect the site in the company of the permittee, the design engineer, the geotechnical engineer and/or engineering geologist, and the proposed on-site operator for assurance that the site has been developed in accordance with the approved Site Development Plan. The site shall not accept solid waste until the department has confirmed in writing that all applicable submissions required by the permit, the approved Site Development Plan [site development plan], and these regulations have been received and found acceptable, and that construction is in compliance with the approved Site Development Plan.

§325.114. Evidence of Financial Responsibility. The department shall [may for good cause] require evidence of financial responsibility as it deems appropriate to assure the department that the responsible owner/operator has sufficient assets to properly operate the site and to provide proper closure. A firm commitment to provide backup equipment by lease, purchase, or diversion from other activities is part of this responsibility. This assurance for the proper operation of the site may be in the form of performance bonds, letters of credit from recognized financial institutions, [company stockholder reports,] trust funds, or insurance. A commissioners' court or city council resolution, in the case of publicly owned facilities, may be substituted for the required financial assurance, if approved by the department [in the case of privately owned facilities and by commissioners' court or city council resolution in the case of publicly owned facilities]. The department shall have the authority to require financial assurance for proper closure in a form indicated in this section. The amount of financial assurance for proper closure shall be determined by the department; however, the permittee may submit calculations to aid in determining the final amount. The financial assurance shall be submitted within 30 days after the issuance of the permit and shall cover a 12-month period and shall be renewed annually throughout the life of the site. The financial assurance may contain a provision for automatic renewal provided the department is to be notified by the financial institution at least 60 days prior to the cancellation of the assurance. The financial assurance shall include provisions acceptable to the department.

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 November 6, 1991.

TRD-9113907 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: January 25, 1992
For further information, please call: (512) 458-7271

◆ ◆ ◆
• 25 TAC §325.113

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

The repeal is proposed under the Solid Waste Disposal Act, Health and Safety Code, §361.011, which makes the department responsible for managing and controlling municipal solid waste management; §361.024, which provides the Board of Health with authority to adopt rules concerning municipal solid waste management; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health. The proposed rules affect the Health and Safety Code, Chapter 361.

§325.113. Effect of Updated Regulations on Existing Sites.

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

Issued in Austin, Texas, on November 6, 1991.

TRD-9113908 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: January 25, 1992
For further information, please call: (512) 458-7271

◆ ◆ ◆
The new section is proposed under the Solid Waste Disposal Act, Health and Safety Code, §361.011, which makes the department responsible for managing and controlling municipal solid waste management; §361.024, which provides the Board of Health with authority to adopt rules concerning municipal solid waste management; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health. The proposed rules affect the Health and Safety Code, Chapter 361.

§325.113. Effect of Updated Regulations on Existing Sites. The permittee shall review §§325.111-325.154 of this title (relating to Operational Standards for Solid Waste Land

Disposal Sites) to determine operational changes and submissions required by these updated regulations. Permits issued under past regulations remain valid for the period of time specified in the permit. Permittees or site operators shall submit a report to the bureau addressing those changed standards. The report shall include a time schedule for implementing any operational changes and for completing any required submissions. Upon approval of submissions required by this section, implementation plans and time schedules shall be implemented by the permittee.

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 November 6, 1991.

TRD-9113909 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: January 25, 1992

For further information, please call: (512) 458-7271

Standards for Protection of Ground and Surface Waters.

• 25 TAC §325.121, §325.124

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

The repeals are proposed under the Solid Waste Disposal Act, Health and Safety Code, §361.011, which makes the department responsible for managing and controlling municipal solid waste management; §361.024, which provides the Board of Health with authority to adopt rules concerning municipal solid waste management; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health. The proposed rules affect the Health and Safety Code, Chapter 361.

§325.121. General Liner Requirements and Alternatives.

§325.124. Ground Water Protection Systems.

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 November 6, 1991.

TRD-9113910 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: January 25, 1992

For further information, please call: (512) 458-7271

The new sections are proposed under the Solid Waste Disposal Act, Health and Safety Code, §361.011, which makes the department responsible for managing and controlling municipal solid waste management; §361.024, which provides the Board of Health with authority to adopt rules concerning municipal solid waste management; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health. The proposed rules affect the Health and Safety Code, Chapter 361.

§325.121. General Liner Requirements and Alternatives.

(a) Beginning March 1, 1992, all landfill sites must construct department approved liners for each new disposal trench, excavation, or area intended for the disposal of solid waste. These liners must be approved and constructed in accordance with this section and §325.122 of this title (relating to Soil and Liner Quality Control). All permit special provisions, variances, and/or references to water balance within site development plans, which have granted relief from liner requirements, are void as of March 1, 1992, except in those instances where the average annual precipitation has not exceeded 20 inches, as recorded in the latest Climatic Atlas of Texas, published by the Texas Water Commission, and there is no detectable subsurface water, either perched or perennial, within 50 feet of the bottom of the deepest trench or excavation, or from the surface of the ground, as applicable. Prior written approval to exercise this exception must be obtained from the department.

(b) The minimum acceptable protection is a constructed liner of soil in each disposal trench, excavation, or area that is three feet thick having a maximum coefficient of permeability of 1.0×10^{-7} centimeters per second, a liquid limit of at least 30, a plasticity index of at least 15, and a percent passing the Number 200 sieve of no less than 30% unless some other equivalent means of protection is approved by the department. All constructed liners shall be provided a protective cover of one foot of soil in addition to the liner. This protective cover may be of on-site material and does not have to meet a coefficient of permeability requirement. No in situ soils shall be considered acceptable as liners. If such soil meets the previous test requirements, it may be used if over excavated and recompacted.

(c) When liners, such as flexible membrane or bentonite admixtures, are approved as equivalent to the three feet of soil as described in subsection (b) of this section, a protective cover of at least two feet

of soil shall be placed on the liner surface. Consideration will be given to proposals for alternatives which will provide equivalent or greater protection of the waters in the state. A man-made liner other than compacted clay soils (flexible membrane, bentonite admixture, etc.) may be utilized only after the site operator has demonstrated the alternate method will provide the required protection of waters in the state and has received approval from the department to implement such alternate procedures.

§325.124. Ground Water Protection Systems.

(a) All facilities operating on or after March 1, 1992, and which presently have or are required to implement a ground water protection plan shall submit for the Bureau of Solid Waste Management's (bureau) approval a ground water sampling quality control plan (GSQCP). This GSQCP shall conform to the requirements set forth on §325.74(b)(D)(vii) of this title (relating to the Technical Information Required for Landfill Sites-Site Development Plan). Monitor wells shall be installed as a minimum to the standards set forth by the Texas Department of Health (department). The GSQCP of sites presently operating and which have ground water monitoring wells in place shall be submitted not later than March 1, 1992.

(b) All ground water monitor well sampling and testing shall be in accordance with the approved GSQCP and any additional requirements set forth by the department.

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 November 6, 1991.

TRD-9113911 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: January 25, 1992

For further information, please call: (512) 458-7271

Standards for Protection of Ground and Surface Waters.

• 25 TAC §325.122, §325.123

The amendments are proposed under the Solid Waste Disposal Act, Health and Safety Code, §361.011, which makes the department responsible for managing and controlling municipal solid waste management; §361.024, which provides the Texas Board of Health with authority to adopt rules concerning municipal solid waste management; and §12.001 which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of

health. The proposed rules affect the Health and Safety Code, Chapter 361.

§325.122. Soil and Liner Quality Control.

(a) All landfill sites, except as may be provided in subsection §325.121(a) of this title (relating to General Liner Requirements and Alternatives), must [which are required to] have an approved soil and liner quality control [lan (SLQCP), that complies with all requirements contained in §325.74(b)(5)(D)(iii) and (iv) of this title (relating to Technical Information Required for Landfill Sites-Site Development Plan) and shall submit, in a style and format required by the department and described in the approved SLQCP, appropriate soil and liner evaluation reports [shall have an approved soil and liner quality control plan (SLQCP)].

(b) Each soil and liner evaluation report (SLER) shall be submitted in triplicate (including all attachments) and shall be prepared in accordance with the methods and procedures contained in the approved SLQCP. [The operators of sites serving a population equivalent of 5,000 or more, or where required by permit special provision, shall submit to the bureau a soil and liner evaluation report (SLER) in triplicate (including all attachments) for each disposal trench, excavation, or area and in accordance with the construction methods and test procedures stated in the SLQCP at least 14 days prior to depositing any solid waste in the disposal trench, excavation, or area unless alternate means for protecting ground waters have been approved by the bureau]. The evaluated disposal trench, excavation, or area shall not be used for the receipt of solid waste until written approval is received from the department. When conditions warrant, verbal approval may be obtained from the department, which will be followed by written concurrence. In order to be approved, a SLQCP must:

(1) [The SLQCP shall be adequately described and illustrated to provide] describe and illustrate, for operating personnel, all necessary procedures [procedural guidance] for assuring continuous compliance with this subsection; [.]

(2) [The SLQCP shall] provide the engineer or geologist who will prepare [prepares] the SLERs for the site [the] guidance needed for testing and reporting evaluation procedures; [for the SLERs.]

(3) [The SLQCP shall] include specifications and construction methods for [employing good engineering practices for both the evaluation of existing soils and] the compaction of clay soils to form impermeable liners [a liner] under any of the appropriate [each of the four potential] conditions described in subparagraphs (A) and (B)-(D) of this paragraph and shall adhere to the [provide for soil and liner

quality control] testing frequencies and procedures as described in subparagraph (C)[(E)] of this paragraph.

(A) Details for trench and/or area lining by overexcavation and recompaction of the in situ soils, or the compaction of soils from a borrow source, [Lining of complete trenches. The liner details] shall be depicted on cross sections of a typical trench showing the slope, widths, and thicknesses for compaction lifts.

[(B) Lining of permeable zones. Typical cross sections shall be provided for those instances in which over excavation of permeable zones and backfilling with impermeable clay may be necessary.]

[(C) Overexcavation and recompaction. Proposed procedures shall be shown when overexcavation and recompaction are required for impermeable soils which exhibit fissures, cracks, joints, bedding planes, or any other secondary natural features which increase the apparent coefficient of permeability on the in situ soils.]

(B) [(D) Lining below static groundwater levels.] Procedures to be followed when excavations, trenches, or disposal areas extend into or have the potential to extend into the groundwater are provided in clauses (i)-(iv) of this subparagraph.

(i) If groundwater is encountered in the disposal excavations, or in cases where excavations extend below the seasonal high-water table, materials with a weight equivalent to one foot of compacted clay liner for every two feet of static water head encountered shall be used as a basis for construction of a liner between the deposited solid waste and the groundwater. The total thickness of the liner shall consist of three feet of soil with a permeability of no more than 1.0×10^{-7} cm/sec, a liquid limit of no less than 30, a plasticity index of no less than 15, and percent passing Number 200 sieve of no less than 30, plus an additional thickness of other material as described in this clause. [Pressure release systems may be used to reduce the amount of the liner support construction.]

(ii) Pressure release systems may be used to reduce the amount of the liner support required to be constructed [construction]. The effect of the system on the hydrostatic head must be substantiated by piezometers placed at locations and depths within the zone in influence.

(iii) In no case shall the thickness of the liner or liner-barrier combination be less than three feet when groundwater is encountered at or within three feet of the bottom of the excavation or if excavations extend below the seasonal highwater table.

(iv) The shearing resistance of the lining material may not be considered as justification for reducing liner thickness.

(C)[(E)] Soil [and] liner quality control testing frequencies and procedures shall be, at a minimum, in accordance with the department's most recent [department] guidelines and the following:

[(i) For circumstances where constructed lining may not be required or needed, the SLQCP shall include specific details on preparation measures required for in situ soils prior to their receipt of wastes.]

(i)[(ii)] All field sampling and testing, both during construction and after completion of lining [as well as verification of in situ soils], shall be performed by a registered professional engineer experienced in geotechnical engineering or a geologist having a college degree in geology with no less than four years experience in engineering geology, or under their his or her supervision.

(ii) [(iii)] The amount of compaction shall be expressed as a percentage of a maximum dry density based on a compaction test whose compactive effort is closely matched to the site construction equipment capabilities, and [standard Proctor density,] which has been proven by soils laboratory testing to provide a coefficient of permeability of 1.0×10^{-7} centimeters per second or less.

(iii)[(iv)] The [For constructed liners, the] SLQCP shall define the frequency of testing for each of the test procedures listed in subclauses (I)-(V) of this clause. (These frequencies shall be expressed in numbers of tests per specific area of liner per lift or specific thickness of liner unless an alternate is approved by the bureau):

(I) coefficient of permeability;

(II) sieve analysis;

(III) atterberg limits;

(IV) density; and

(V) thickness verification.

(iv)[(v)] Unless otherwise approved by the department, and soil tests

accomplished on constructed soil liners [for in situ soils] shall be performed according to the standards in subclauses (I)-(V) of this clause.

(I) Permeability tests. Permeability tests shall [should] be run on tap water and not distilled water. All test data must be submitted on permeability tests regardless of test method used.

(-a-) constant head w/Back pressure-Appendix VII of the Corps of Engineers' Manual EM, 110-2-1906[-ASTM D2434]; or

(-b-) falling head-Appendix VII of the Corps of Engineers' Manual EM, 1110-21906[, November 30, 1970, Laboratory Soils Testing].

[(c-) undisturbed soil samples tested for the coefficient of permeability will be oriented on both the

Plasticity Index
Liquid Limit
Percent Passing
200 Mesh Sieve (-200)
Coefficient of
Permeability

Greater than 15 [15 to 25]
Greater than 30 [30 to 50]
Greater than 30% [30 to 50]

Less than or equal to 1×10^{-7} cm/sec

(vii)[(vii)] Permeability tests for proving the suitability of soils to be used in constructing clay liners must also be accomplished in the laboratory using the procedures and guidance of clauses (v) and (vi) of this subparagraph. Field quality control must be provided by field density tests based on predetermined moisture density compaction curves, Atterberg limits, and lab permeabilities of undisturbed field samples of compacted liner soils, unless an alternate plan is approved by the department.

(viii) All quality control testing shall be performed during the construction of the liner. In no instance shall any quality control field or laboratory testing be undertaken after completion of liner construction, except for that which is required of the final constructed lift, confirmation of liner thickness or cover material thickness.

(viii) All soil testing and evaluation of [either in situ soil or] constructed soil liners shall be complete prior to placing the required one foot of protective cover on the area under evaluation.

(4)-(5) (No change.)

(6) Soils liners shall not be compacted with a bulldozer or any track mobilized equipment unless it is used to pull a pad footed roller. All soils liners shall be compacted with a pad or prong

horizontal axis (for soils which will constitute the sidewalls of an excavation) and on the vertical axis (for soils which will constitute the trench or area bottom).]

(II) Sieve analysis [and hydrometer analysis]. Number [4, #10,] #40, #200, -200[, and hydrometer analysis on-200 fraction ASTM D422].

(III) Atterberg limits. ASTM D4318 [D423 and D424].

(IV) Moisture density relations. ASTM D648 or any department approved modified test whose compactive effort matches the on site construction equipment [D698].

footed roller only. The maximum clod size of the soils compacted shall be approximately the gradation size as that used in laboratory compaction testing to develop a moisture-density compaction curve.

(c) (No change.)

(d) The area, trench, or excavation covered in the SLER shall not be used for the receipt of solid waste until conformation of acceptance is received in writing from the department. (Verbal approval may be given by; the department when circumstances warrant.) [Markers shall be placed so that all areas for which a SLER has been submitted and approved by the department are readily determinable. Such markers are to provide site workers immediate knowledge of the extent of approved disposal areas. These markers shall be located so that they are not destroyed during operations.]

(e) The surface of a constructed liner shall be covered with a layer of solid waste within a period of six months to mitigate the effects of surface erosion and rutting due to traffic. All liners which need repair due to damage will require a new SLER submitted on the new construction.

§325.123. Miscellaneous Standards for the Protection of Ground and Surface Waters.

(a) Contact between solid waste and unconfined waters, which are subject to free exchange with ground or surface

(V) Moisture content. ASTM D2216.

(v)[(vi)] All soils used as constructed liners must have the following minimum values when tested in a soils laboratory: [bound within the following ranges of values shall be tested in a soils laboratory for the coefficient of permeability. All soils below the ranges of values stated are very sandy and will require lining, while those soils which exceed the range of values are high in clay and do not require additional testing to prove their adequacy for sanitary landfill purposes. The physical parameters stated in this clause are to be considered as guidelines for soil sample testing. Engineering judgment must be used on those samples which exhibit some but not all of the boundary limits stated.]

waters, is prohibited [Solid waste shall not be placed in unconfined waters which are subject to free exchange with ground and surface waters].

(b) The department may require a ground water characterization study or assessment, monitor wells, and/or resistivity surveys to monitor ground water quality and/or movement when such is deemed necessary.

(c) Prior to placing solid waste in any area within a floodplain, the site operator must construct levees to protect the site from a 100-year frequency flood. Levee design and construction procedures shall be in accordance with TWC, city, or county [TDWR] requirements when applicable or shall be approved by the department. The minimum freeboard shall [will] be two feet unless otherwise required. Until levees are constructed, any area within a solid waste disposal facility that is subject to flooding shall be clearly marked by flood protection markers in accordance with §325.139 of this title (relating to Landfill Markers and benchmark) [means of permanent posts not more than 300 feet apart or closer if necessary to retain visual continuity, which extend at least six feet above ground level].

(d) Suitable drainage structures shall be provided to divert the flow of rainfall runoff or other surface water away from [active disposal] areas not provided final cover and to contain any water that has come in contact with solid waste.

(e) Water [Rainfall water] within the landfill area that has come in contact with solid waste [and other polluted waters] shall not be discharged offsite without prior specific approval from TWC [of TDWR]. Prior to the off-site discharge of any water that has been in contact with solid waste, a copy of TWC's [TDWR] approval for such discharge shall be provided to the bureau.

(f) Any water or other type of wells to be plugged shall be plugged in accordance with all applicable TWC [TDWR] or Railroad Commission of Texas requirements and additional requirements imposed by the department. Therefore, to meet all requirements, such wells shall have all removable casings removed and be pressure-plugged with bentonite mud from the bottom of the well to ground surface, except for the top 10 feet which shall be a cement plug. A copy of the well plugging report required to be submitted to the appropriate state agency (TWC [TDWR] or RRC) shall be submitted to this department within 30 days after the well has been plugged.

(g) Water within the landfill that has come in contact with solid waste or which has otherwise become contaminated may be eliminated by constructing evaporation ponds or by transporting the contaminated water to a wastewater treatment plant. The evaporation pond must have an approved liner covering its bottom and side slopes. Odor control methods shall be used if odors from the contaminated waters become a nuisance.

(h) At Type V and VI sites, surface drainage in and around the facility shall be controlled to prevent surface water runoff onto, into, and off the treatment area. Unless wash or quench waters are disposed of into a sanitary sewer, they shall not otherwise be disposed of except in accordance with the rules and regulations.

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

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 November 6, 1991.

TRD-9113912

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: January 25, 1992

For further information, please call: (512) 458-7271

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Other Operational Standards for Type I, II, III, and IV sites.

- 25 TAC §§325.132, 325.134, 325.136, 325.143, 325.145, 325.149, 325.150, 325.152, 325.154

The amendments are proposed under the Solid Waste Disposal Act, Health and Safety Code, §361.011 which makes the department responsible for managing and controlling municipal solid waste management; §361.024, which provides the Board of Health with authority to adopt rules concerning municipal solid waste management; and §12.001 which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health. The proposed rules affect Chapter 361 of the Health and Safety Code.

§325.132. Unloading. Unloading of solid waste shall be confined to as small an area as practical. A gate attendant shall be provided at all sites unless written approval by the department has been obtained. An attendant shall also be on duty during operating hours at the working face or active disposal area of Type I and IV sites to direct unloading of solid waste. These attendants shall not be the equipment operator unless written approval from the department has been obtained. At Type II and III sites, where a gate [an] attendant is not provided, appropriate signs must be used to indicate where vehicles are to unload. The use of forced access lanes, identified by ditches, dikes, fences, or other means, may be used in lieu of signs and may be required by the department for the prevention of indiscriminate dumping where signs and/or other methods have proven ineffective.

§325.134. Control of Windblown Material and Litter. Windblown material and litter shall be collected and returned to the active disposal area or working face as necessary to minimize unhealthy, unsafe, or unsightly conditions, but in no event less than once per day.

(1) A portable fence [or other suitable means shall] may be employed to confine windblown material resulting from unloading, spreading, and compaction operations [to the smallest area practical]. If a portable fence is not practical, other suitable practices shall be employed to control windblown material.

(2) Litter scattered throughout the site, along fences and access roads, and at the gate due to wind or as a result of waste falling from vehicles shall be picked up at least twice a month and returned to the active disposal area or working face.

§325.136. Disposal of Nonindustrial Special Wastes.

(a) Disposal of special wastes not specifically provided for under subsections [subsection] (b), (c), or (d) of this section, §325.135 of this title (relating to Industrial Wastes) or §325.137 of this title (relating to Prohibited Wastes), requires prior written approval from the bureau.

(1)-(6) (No change.)

(b) Receipt of the following special wastes do not require additional [further] written authorization from the bureau for acceptance provided the waste is handled in accordance with the noted provisions for each waste.

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

(3) Water supply treatment plant sludges containing a minimum of 10% solids, containing no free liquids, and which are not hauled in vacuum trucks, may be accepted at a Type I, II, or III municipal solid waste site. Free liquids content shall be determined by Environmental Protection Agency (EPA) Method 9095, "Paint Filter Liquids Test" as found in EPA publication SW-846.

(4) Stabilized sludges from domestic wastewater treatment plants containing a minimum of 20 [10] % solids, containing no free liquids, and containing less than 800 mg/kg lead on a dry weight basis, which are not hazardous and are not hauled in vacuum trucks, may be accepted at a Type I, II, or III municipal solid waste site. Quantities shall be limited to that which can be adequately handled at the site without creating odor problems and shall be placed on the working face along with other solid waste and covered with soil or solid waste on the day received.

(5) Unstabilized sludges, which have passed through primary and secondary digesters, from domestic wastewater treatment plants may be accepted at a Type I municipal solid waste site without further written authority when the sludge is:

(A) composed of at least 20 [10]% solids, contains no free liquids, and is hauled in other than vacuum trucks (for vacuum truck wastes see subsection (a)(3) of this section);

(B)-(D) (No change.)

[(6) Friable asbestos waste may be accepted at a Type I site in accordance with the procedures in subparagraphs (A)-(G) of this paragraph.

[(A) The site operator contemplating acceptance of friable asbestos waste shall notify the regional director of environmental and consumer health protection in the appropriate department regional office or the Surveillance and Enforcement Division of the bureau in Austin.

[(B) Delivery of the friable asbestos waste to the site shall be coordinated with the on-site supervisor so the waste will arrive at a time it can be properly handled and covered.

[(C) Friable asbestos waste shall be accepted at the site only in a wetted condition and in tightly closed and unruptured containers or bags as approved by the TACB.

[(D) The bags or containers holding the friable asbestos waste shall be placed below natural grade level. Where this is not possible or practical, provisions shall be made to ensure that the waste will not be subject to future exposure through erosion or weathering of the intermediate and/or final cover.

[(E) The bags or containers holding the friable asbestos waste shall be carefully unloaded and placed in the final disposal location. They shall be covered immediately with 12 inches of clean earthen material or three feet of solid waste containing no asbestos. Care shall be exercised in the application of the cover so that the bags or containers will not be ruptured.

[(F) A contingency plan in the event of accidental spills (ruptured bags or containers) shall be prepared prior to accepting friable asbestos wastes. The plan shall specify the person(s) responsible and the procedure for collection and disposal of the spilled material.

[(G) Asbestos waste which has been designated as a Class I waste may be accepted by a Type I municipal landfill provided the waste is handled in accordance with the provisions of this paragraph and the provisions of subsections §325.137(b)(1)(E), (e), (f), and (g) of this title (relating to Disposal of Class I Wastes).]

[(6) [(7)] Nonfriable asbestos, which is not a regulated asbestos containing material (RACM) as defined in 40 CFR, Part 61, may be accepted for disposal at any municipal solid waste landfill provided the wastes are placed on the active working face and covered in accordance with these regulations. Under no circumstances shall any RACM material [containing nonfriable asbestos] be placed on any surface or roadway which is subject to vehicular traffic or disposed of by any other means by which the material could be crumbled into a friable state.

[(7) [(8)] Empty containers which have been used for pesticides, herbicides, fungicides, or rodenticides may be disposed of in accordance with subparagraphs (A) and (B) of this paragraph.

(A) These containers may be disposed of at a Type I, II, or III site provided:

(i) the containers are triple-rinsed prior to receipt at the site;

(ii) the containers are rendered unusable prior to or upon receipt at the site; and

(iii) the containers are covered by the end of the same working day they are received.

(B) Those containers for which triple-rinsing is not feasible or practical (paper bags, etc.) may be disposed of [under provisions of paragraph (9) of this subsection of §325.137 of this title (relating to Disposal of Class I wastes) as applicable.] provided either of the disposal procedures listed in clauses (i) and (ii) of this subparagraph is followed:

(i) the waste is placed in the active disposal area and covered with at least three feet of municipal solid waste; or

(ii) the waste is placed in a specially designated area and covered with at least two feet of compacted soil.

(C) Salvaging and/or scavenging of the containers shall not be allowed under any circumstances.

[(8) [(9)] Municipal hazardous waste from a conditionally exempt small quantity generator (CESQG) may be accepted at a Type I municipal solid waste site without further approval provided the amount of waste does not exceed 220 pounds (100 kilograms) per month per generator, provided the waste does not contain free liquids, and provided the landfill owner/operator is willing to accept the waste. The conditions for CESQG shall be defined by the Texas Water Commission. [Municipal hazardous waste from small quantity waste generators (SQWG) who are subject to regulation under subsection (f) of §325.298 of this title (relating to Special Requirements for Small Quantity Generators) may be accepted at a Type I municipal solid waste site without further approval. A SQWG qualifies under this provision if he generates less than 100 kilograms of municipal hazardous waste in a calendar month and accumulates less than 100 kilograms of municipal hazardous waste on site.]

(c) Regulated asbestos containing waste (RACW) may be accepted only at Type I landfills which have received written authorization from the bureau of solid waste management. Sites which request authorization to accept asbestos containing waste must comply with the following.

(1) A Type I landfill which intends to accept RACW must have a special area or trench which is used only for

the disposal of asbestos containing waste. The location of the trench must be established by a registered professional surveyor and recorded on a site map. The site owner/operator shall establish a permanent reference marker on the site for the purpose of locating the asbestos disposal trench/area. This marker shall not be moved, altered or changed in any way without the written authorization of the bureau. The corners of the designated area, trench, or excavation shall be marked with special markers which are orange in color and not less than six feet in height above ground level.

(2) Three copies of the site map with location of the asbestos waste disposal area shall be filed with the bureau.

(3) RACW may be accepted only at a Type I solid waste facility in accordance with the procedures in subparagraphs (A)-(I) of this paragraph.

(A) The bureau may, upon request, issue a general authorization for a specific site to accept RACW under the provisions of this subsection or under the provisions of a plan approved under subsection (a) of this section.

(B) Delivery of RACW to the site shall be coordinated with the on-site supervisor so the waste will arrive at a time it can be properly handled and covered.

(C) RACW shall be accepted at the site only in tightly closed and unruptured containers or bags. The waste should have been wetted prior to placement in the containers or bags. The bags shall be marked in accordance with the requirements specified in 40 CFR, Part 61.

(D) The bags or containers holding the RACW waste shall be placed below natural grade level. Where this is not possible or practical, provisions shall be made to ensure that the waste will not be subject to future exposure through erosion or weathering of the intermediate and/or final cover. This shall mean that RACW placed above natural grade level shall be placed such that the location shall be at least 20 feet from the final side slope contours and at least 10 feet below the final top cover contour. At no time shall there be less than 18 inches of cover material on top of the asbestos waste 24 hours after the material was deposited.

(E) The bags or containers holding RACW shall be carefully unloaded and placed in the final disposal location. They shall be covered promptly with 12 inches of clean earthen material

or three feet of solid waste containing no asbestos. Care shall be exercised in the application of the cover so that the bags or containers will not be ruptured until the waste is covered. An additional six inches of intermediate cover material shall be applied and the end of each working day in which asbestos waste has been deposited.

(F) A contingency plan in the event of accidental spills (ruptured bags or containers) shall be prepared prior to accepting RACW. The plan shall specify the person(s) responsible and the procedure for collection and disposal of the spilled material.

(G) Asbestos waste from industrial waste generators which has been designated as a Class I industrial solid waste may be accepted by a Type I municipal landfill provided the waste is handled in accordance with the provisions of this paragraph and the provisions of §325.135(f)(7)-(12) of this title (relating to Industrial Wastes).

(H) All shipments of asbestos waste regulated under this paragraph shall be accompanied by a shipping document which satisfies the requirements of the United States Department of Transportation for hazardous materials and the United States Environmental Protection Agency. Industrial waste generators within the State of Texas shall use the form designated by the Texas Water Commission. Nonindustrial waste generators shall use a shipping document approved by the bureau of solid waste management or the Texas Air Control Board.

(I) All shipments of RACW shall be reported to the bureau on a monthly basis using forms provided by the bureau. The report shall be submitted by the 10th of the month following receipt of shipments. Failure to file required reports in a timely manner shall be a violation of these rules.

(4) Effective February 1, 1992, all site development plan provisions for handling asbestos containing waste, all permit special provisions related to acceptance of asbestos containing waste, and all previously approved asbestos containing waste management plans for facilities permitted under this chapter are revoked.

§325.143. Open Burning. The open burning of solid waste is prohibited at any municipal solid waste landfill [except for the infrequent burning of waste generated by land-clearing operations, agricultural waste, silvicultural waste, diseased trees, or emergency cleanup operations is prohibited

at any municipal solid waste landfill. The operation of any type of air-curtain destructor (trench burner), other than for the exceptions noted in the previous sentence, is prohibited. The landfill is also subject to TACB jurisdiction concerning burning and air pollution control.]

§325.145. Site Access Roads.

(a) Approved all-weather [All-weather] roads shall be provided within the site to the unloading area(s) designated for wet-weather operation. The tracking of mud and trash onto public roadways from the site shall be minimized.

(b) (No change.)

(c) All on-site and other access roadways shall be maintained on a regular basis. Litter and any other debris shall be picked-up and taken to the active disposal area or working face. All access roadways shall be re-graded when depressions or ruts occur and all potholes shall be filled in.

§325.149. Abandoned Oil and Water Wells.

(a) The site operator shall immediately notify the bureau in writing of the location of any and all existing abandoned water wells situated within the site upon such discovery during the course of site development. The site operator shall, within 30 days of such a discovery, provide the bureau with written certification that all such wells have been capped, plugged, and closed in accordance with all applicable rules and regulations of The Texas Water Commission (TWC) [Texas Department of Water Resources].

(b) (No change.)

§325.150. Compaction, Intermediate Cover, Interim Cover, and Final Cover.

(a) (No change.)

(b) Intermediate cover shall be six inches of well-compacted earthen material not previously mixed with garbage, rubbish, or other solid waste to prevent the blowing of waste materials; insect and rodent problems; and obnoxious odors. Cover frequency shall be daily [frequencies shall be as outlined in §325.42 of this title (relating to Types of Municipal Solid Waste Sites)] unless some other cover frequency is stipulated by the department.

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

(c) Interim cover for any Type I site shall be provided for all areas to be left undisturbed for longer than 30 days. This interim cover shall be an additional six inches of well-compacted earthen material not previously mixed with garbage, rubbish, or other solid waste for a total of not less than 12 inches.

(d) Alternate intermediate cover will be allowed with specific written approval from the department.

(1) Requests for approval to use alternate intermediate cover shall include:

(A) a description and thickness of the material to be used;

(B) its effect on vectors, fires, odors, windblown materials, and litter;

(C) the operational methods to be utilized at the site when using this material; and

(D) any other pertinent characteristic, feature, or other factors related to the use of this material.

(2) A status report on the alternate intermediate cover shall be submitted on a quarterly basis to the bureau describing the effectiveness of the material, any problems that may have occurred, and corrective actions required as a result of such problems.

(e)[(c)] The entire surface of each completed portion of the fill shall be provided with final cover within 30 days unless the operator justifies the delay, and the department issues written approval for the delay [inclement weather would prevent the application of any cover material]

(1) The final cover shall consist of no less than two feet of soil.

(A) The first 1-1/2 feet or more of cover, see paragraph (2) of this subsection, shall be of clayey soil of classification SC or CL, as defined in the "Unified Soils Classification System" developed by the United States Army Corps of Engineers, compacted in layers of no more than six inches to help minimize the water infiltration potential. A classification CH soil may be used; however, this soil may experience excessive cracking and must therefore be covered by at least 12 inches of topsoil to help in retaining moisture. Other types of soil may be used with prior approval.

(B) The final six inches of cover shall be of suitable topsoil which will sustain the growth of vegetation, and shall be seeded or sodded during the first growing season following application of final cover to help minimize erosion.

(2) Side slopes of all above-ground disposal areas (aerial fills) shall not exceed a 25% grade (four feet horizontal to one foot vertical). The final cover for the top portion of a landfill shall have a minimum gradient of 2.0% and shall not exceed 6.0%, but shall possess a sufficient minimum grade to preclude ponding of surface water when total fill height and expected subsidence are taken into consideration.

Side slopes in excess of 25% will not be authorized without controlled drainage such as flumes, diversion terraces, spillways, or other acceptable methods. Disposal of solid waste above natural ground level is prohibited unless pursuant to an engineering Site Development Plan approved by the department. Requests for changes to previously approved engineering Site Development Plans or new engineering Site Development Plans submitted in support of requests for aerial fills will be processed in accordance with §325.111 of this title (relating to General Requirements).

(3) Final cover shall be applied in accordance with the approved site closure/completion plan required by §325.152(b) of this title (relating to Site Completion and Closure Procedures).

(4) Erosion of cover shall be repaired by restoring the cover material, grading, compacting, and seeding it as necessary. Such periodic inspections and restorations are required during the site operational life and for a minimum of five years after closure.

(f)(d) The on-site ponding of water upgradient of deposited waste shall be prevented, unless the department is assured that such ponding does not pose a potential leachate generation threat.

(g)(e) Each landfill shall keep a cover application log on site readily available for inspection by department representatives and authorized agents or employees of local governments having jurisdiction. For [intermediate] cover, this log shall specify the date intermediate cover (no exposed waste) was accomplished. For interim cover, this log shall specify the area covered and the date interim cover was applied. For final cover, this log shall specify the area covered, the date cover was applied, and the thickness applied that date. Each entry shall be certified by the signature of the on-site supervisor that the work was accomplished as so stated in the log.

§325.152. Site Completion and Closure Procedures.

(a) An owner or operator of a new or existing municipal solid waste landfill must close the landfill in a manner that minimizes the need for further maintenance, and prevents the post-closure release of leachate to the ground or surface waters.

(b)(a) Prior [At least one year prior] to completion of disposal operations or abandonment of a site, the site operator shall notify the bureau and provide an updated closure schedule for the cessation of waste acceptance and completion of the closure of the site.

(c)(b) A completion/closure [closure/completion] plan approved by the department [bureau] is required for each land disposal site [serving a population

equivalent of 5,000 or more. Sites serving a population equivalent of less than 5,000 may be required to have an approved landfill completion/closure plan.] The completion/closure [closure/completion] plan shall portray the proposed final contours, establishing side slopes and top grades, and all proposed surface drainage features. Protective measures for any areas subject to flooding by a 100-year frequency flood shall be described. Requests to amend approved closure plans shall be submitted with all necessary supporting data to the department [bureau] no less than 60 days prior to implementation of closure procedures. Written approval by the department is mandatory before the site operator may proceed with the implementation of a completion/closure [closure/completion] plan for a site.

(d) The owner or operator shall post one sign notifying all persons of the closing, and the prohibition against further receipt of waste materials. Further, suitable barriers shall be installed at former gates or access points to prevent the unauthorized dumping of solid waste at the closed site.

(e) Upon completion of the placement of final cover, a registered professional engineer, employed by the owner or operator, shall certify that the required final cover has been placed in accordance with these sections and the approved site completion/closure plan. A certified copy of the engineer's statement shall be submitted to the department within 20 days following completion of final cover.

(f)(c) The site operator shall cause an affidavit to the public to be prepared and filed in the deed records in the office of the county clerk of the county in which the site is located. The affidavit shall include a legal description of the property on which the site is located and may include a site plan, specifying the area actually filled with solid waste. The affidavit shall also include a notice that any future owner or user of the site should consult with the department prior to planning or initiating any activity involving the disturbance of the landfill cover or monitoring system. See §325.904 of this title (relating to Appendix D-Affidavit to the Public) to obtain a suggested format for the affidavit required by this subsection.

(g)(d) The site operator shall obtain a certified copy of the affidavit to the public from the county clerk and file it with the bureau within 10 days after the completion of closure of the site.

(h)(e) Following receipt of the documents required in subsections (a)-(f)(d) of this section, as applicable, and an inspection report from the department's regional office reporting proper closure of the site, the department [bureau] will acknowledge the termination of operations and closure of the site and the landfill shall be deemed properly closed.

§325.154. Post-Closure Use of Landfilled Areas.

(a) (No change.)

(b) Written approval from the department shall be obtained prior to any construction activity within the boundary of the site. Any post-closure use of landfill shall consider the following. [Although departmental approval is not necessary for post-closure uses of landfills other than those specified in subsection (a) of this section, the department believes the information found in paragraphs (1)-(8) of this subsection should be considered.]

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

(3) The ponding of water, excessive irrigation, or plowing to a depth below the topsoil shall [should] not be allowed unless there is assurance that percolation of moisture into the buried waste will not occur.

(4) Concentrated loadings shall [should] be avoided to prevent uneven settlement.

(5) If enclosed structures are built, means shall [must] be provided for natural ventilation to prevent the accumulation of the potentially explosive methane gas. An example would be structures which use an open first level for parking, etc., to allow natural ventilation.

(6) The effectiveness of landfill cover and the bottom liner or barrier shall [must] not be disturbed when structures are built, particularly when pilings are used. Trees may not be planted on closed landfills over previously deposited waste.

(7) Consultation with the department shall [may] be made [desirable] prior to initiating any post closure [certain] activities to determine the types of wastes deposited, depth of waste cells, previous maintenance problems, etc.

(8) Underground [Such things as underground] utilities shall not be allowed to [that] cross any trench or disposal area, but shall be rerouted around the landfill site [one or both of the site boundaries should be avoided. If they cannot, a properly located and gravel-packed gas vent should be placed at each property boundary crossed to prevent methane gas migration along the pipeline, etc., to off-site structures.].

(9) New roadways traversing any closed landfill site, whether it was permitted by the department or whether it was closed prior to 1974, may be allowed provided the following conditions are met.

(A) All solid waste material located within the proposed right-of-way shall be exhumed and transported to an approved Type I landfill.

(B) Any exposed waste outside the right-of-way, that is left in place, shall be covered with two feet of final cover in accordance with §325.150 of this title (relating to compaction, Intermediate Cover, Interim Cover, and Final Cover). The final grade on this recovered area shall be between 2.0% and 6.0%.

(C) Intermediate cover of six inches of clean dirt or other department approved alternate intermediate cover shall be placed on any exposed waste at the end of each workday.

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 November 6, 1991.

TRD-9113913 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: January 25, 1992

For further information, please call: (512) 458-7271

◆ ◆ ◆
• 25 TAC §§325.135,
325.137-325.139, 325.153

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

The repeals are proposed under the Solid Waste Disposal Act, Health and Safety Code, §361.011 which makes the department responsible for managing and controlling municipal solid waste management; §361.024, which provides the Board of Health with authority to adopt rules concerning municipal solid waste management; and §12.001 which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health. The proposed rules affect Chapter 361 of the Health and Safety Code.

§325.135. Industrial Wastes.

§325.137. Disposal of Class I Wastes.

§325.138. Easement Protection.

§325.139. Boundary Buffer Zones.

§325.153. Post-closure Maintenance.

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 November 6, 1991.

TRD-9113914 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: January 25, 1992

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§325.135. Industrial Wastes.

(a) Waste from an industrial generator may not be accepted for disposal at a municipal solid waste facility, unless that waste has been classified in accordance with the rules of the Texas Water Commission. If requested by the site operator or the Department, the generator shall provide certification that the waste has been classified in accordance with the rules of the Texas Water Commission, and/or that the waste is not a hazardous waste. The subsections which follow list the conditions which apply to the acceptance of industrial solid waste at municipal solid waste facilities.

(b) Class III industrial solid waste may be accepted for disposal at a Type I, II, III, IV, or VI solid waste facility provided:

(1) waste does not contain free liquids; and

(2) the volume and character of the waste does not interfere with the facility operation.

(c) Class II industrial solid waste may be accepted for disposal:

(1) at any Type I solid waste facility provided:

(A) waste does not contain free liquids;

(B) the volume and character of the waste does not interfere with facility operation; and

(C) the facility remains essentially in compliance with these rules; or

(2) at a Type II or IV solid waste facility with the written authorization of the bureau provided:

(A) waste does not contain free liquids;

(B) the volume and character of the waste does not interfere with facility operation; and

(C) the facility remains essentially in compliance with these rules.

(d) Class I hazardous industrial solid waste shall not be accepted at any municipal solid waste facility.

(e) Class I nonhazardous industrial solid waste which has been designated Class I solely because of asbestos content or form may be accepted at a Type I solid waste facility in accordance with §325.136 of this title (relating to the Disposal of Nonindustrial Special Wastes) unless the Site Development Plan or permit excludes the acceptance of industrial wastes. Type I solid waste facilities which accept industrial asbestos waste shall comply with the record keeping and reporting requirements of the next subsection or be in violation of these rules.

(f) Class I nonhazardous industrial solid waste shall be accepted for disposal only at a Type I solid waste facility with written authorization from the bureau.

(1) Requests to receive a non asbestos Class I nonhazardous industrial solid waste will be accepted only from facilities which have a specific trench or specific trenches dedicated to burial of Class I nonhazardous industrial solid waste. The dedicated trench meet the following requirements.

(A) A composite liner system as specified in clauses (i)-(ii) of this subparagraph shall be as follows.

(i) The first liner shall be constructed of three feet of compacted clay.

(ii) The liner shall be evaluated by a registered professional engineer experienced in geotechnical engineering or a qualified geologist in accordance with §325.122 of this title (relating to Soils and Liner Quality Control) and evaluated to meet the minimum specifications of subclauses (I)-(IV) of this clause:

(I) coefficient of permeability equal to or less than 1.0×10^{-7} centimeters per second;

(II) plasticity index equal to or greater than 15;

(III) liquid limit equal to or greater than 30; and

(IV) percent passing Number 200 sieve equal to or greater than 30.

(iii) A Soil and Liner Evaluation Report (SLER) must be submitted to the bureau and formally accepted before construction on the flexible membrane liner can begin.

(iv) The second liner of this composite liner system shall consist of a synthetic flexible membrane liner (FML) constructed of either a minimum of 60 mils in thickness of extruded high-density polyethylene (HDPE) or a minimum of 40 mils in thickness if manufactured of other accepted materials recognized and used for this purpose.

(v) The FML shall be installed and tested in accordance with a quality control plan accepted by the bureau. The FML shall be tested by an independent third party whose credentials establishing their FML quality control testing capability have been accepted by the Bureau of Solid Waste Management (bureau).

(vi) Prior to use of the area, trench, or excavation, lined with FML, the permittee must submit an "as built" report containing a site map showing the location of all field seamed panels and patches, along with all quality control testing data and must receive written acceptance of the report from the bureau.

(vii) The corners of the approved area, trench, or excavation shall be marked with special markers which are orange in color and not less than six feet in height above ground level.

(B) Storm-water diversion facilities, such as dikes and ditches, must be on place to protect landfill trenches from runoff from a 25-year, 24-hour rainfall event.

(C) A ground water monitoring system which is capable of detecting the migration of pollutants from the landfill and is sampled semiannually for the parameters specified in §325.124 of this title (relating to Ground-water Protection Systems) must be installed.

(D) A final cover consisting of a minimum of one foot of uncontaminated topsoil capable of supporting vegetation overlying four feet of compacted clay-rich soil material shall meet the requirements of subparagraph (A)(ii) of this paragraph and shall be constructed to meet the requirements of §325.150(c)(2) of this title (relating to Compaction, Intermediate Cover, and Final Cover).

(2) All Class I nonhazardous industrial solid waste shall be placed below the surrounding natural ground surface ele-

vation, unless placed in an above ground containment which has the written approval of the bureau.

(3) An authorization to receive Class I nonhazardous industrial solid waste will be issued only after the bureau has received the written concurrence of the Texas Water Commission. This concurrence is required and shall be sought by the bureau, not the site operator. An authorization to accept Class I industrial solid waste will be made be for a specific waste from a specific generator at a specific solid waste facility, and will be granted only to facilities meeting the requirements of this subsection which are operating in general compliance with these regulations.

(4) The request for authorization shall include the following items:

(A) a statement of certification that the waste is not a hazardous waste as defined in §325.5 of this title (relating to Definitions of Terms and Abbreviations);

(B) a complete description of the chemical and physical characteristics of the waste;

(C) the quantity and rate at which the waste is produced, the expected frequency of disposal; and

(D) a copy of the generator's solid waste registration notification from the Texas Water Commission listing the waste or a statement from the generator listing the facility registration number of the generator and the classification of the waste stream.

(5) The facility operator shall have an operational plan containing the proposed procedures for handling the waste and listing of available protective equipment for operating personnel and on-site emergency equipment and shall have a contingency plan outlining responsibility for containment and cleanup of any accidental spills occurring during the delivery or disposal operation.

(6) The bureau may issue approval without a written request from the facility; however, the facility is not required to accept the waste.

(7) Failure to operate the facility in compliance with these sections shall be grounds for the bureau to revoke any or all authorizations for that facility to accept a Class I nonhazardous industrial solid waste.

(8) Failure to comply with special provisions of an authorization to accept a Class I nonhazardous industrial solid waste shall be cause for the bureau to revoke the authorization.

(9) Except for industrial solid waste which is Class I only because of

asbestos content or form, all authorizations for the acceptance of a Class I nonhazardous industrial waste shall terminate on December 31, 1991. This termination date shall apply to all authorizations made by the bureau irrespective of the date the authorization was granted.

(10) The amount of Class I nonhazardous industrial solid waste which a Type I solid waste facility may accept within a calendar year is limited to an amount not to exceed 20% of the total amount of waste accepted that year or the preceding year, whichever is larger. This limitation shall not apply to, or include, industrial waste specified in subsection (e) of this section.

(11) Any shipment of a Class I nonhazardous industrial solid waste shall be accompanied by a manifest (waste shipping-control ticket) as required by the Texas Water Commission. The facility operator or his designated representative shall sign the manifest for any authorized shipments of Class I nonhazardous industrial solid waste. The facility operator shall not accept or sign for shipments of Class I nonhazardous industrial solid waste for which an authorization to accept has not been granted by the bureau. The facility operator shall retain the disposal facility copy of the manifest for a period of three years. This time period is automatically extended if an enforcement action is pending by the bureau. Copies of all manifests shall be available on site for inspection by bureau representatives and may be copied by representatives of the bureau.

(12) A facility which accepts any Class I nonhazardous industrial solid waste shall submit monthly to the bureau a written report of Class I nonhazardous industrial solid waste activity including the non receipt of Class I nonhazardous industrial solid waste. This report shall be submitted by the 10th day of the following month. Reports shall be submitted on forms provided by the bureau and shall include all information required by the bureau. Failure to file such reports in a timely manner shall constitute a violation of these sections.

(13) Failure to maintain the records required in paragraph (10) of this subsection; failure to file the reports required in paragraph (11) of this subsection; acceptance of waste in excess of the amounts specified in paragraph (9) of this subsection; or in excess of the amount authorized by the bureau is a violation of these sections and is grounds for revocation of any or all authorizations to accept Class I nonhazardous industrial solid wastes.

(g) Generators of nonhazardous industrial solid waste which is disposed of at landfills permitted under this chapter shall be, in violation of these sections if:

(1) the waste has not been classified in accordance with the rules of the Texas Water Commission;

(2) the waste is misidentified with respect to industrial waste classification;

(3) the classification of the waste is misrepresented to the landfill operator or to the bureau; or

(4) the amount of waste shipped to the facility exceeds the amount of waste authorized.

(h) Generators of nonhazardous industrial solid waste which is disposed of at landfills permitted under this chapter shall provide the bureau a copy of their current Notice of Solid Waste Registration with the Texas Water Commission upon request by the bureau. The bureau may require the generator to provide information to verify the waste classification for any waste stream transported to a solid waste facility permitted under this chapter.

§325.137. Prohibited Wastes. The following wastes shall not be accepted for disposal at municipal solid waste facilities except as specified.

(1) Any waste containing a free liquid or free liquids shall not be accepted at a Type I, II, III, IV, or VI municipal solid waste facility after October 1, 1993, except as provided in paragraphs (1)-(3) of this subsections.

(A) Wastes containing free liquids which are to be processed to eliminate the free liquids by stabilization, solidification, or other process approved by the bureau prior to placement in the working face, may be accepted at municipal solid waste facilities.

(B) Wastes containing free liquids in containers of less than 2.5 gallons (9.5 liters) which are disposed of pursuant to orders issued by a federal court, a state court, or a federal or state agency charged with responsibility for regulation of food and drug items may be accepted for disposal at a municipal solid waste facility with written approval from the bureau. The bureau may limit the amount of such waste which may be accepted in a specified time period. In such cases where public health and safety requires immediate destruction or disposal, verbal authorization may be issued by the Chief of the Bureau of Solid Waste Management or his designated representative. Written confirmation of such verbal authorization shall be made within 12 working days.

(C) Waste containing free liquids from individual household, apartments houses, or other housing establishments may be accepted at municipal solid waste facilities provided the waste is not the result of a commercial or business activity and contains no more than two gallons.

(2) Electric light fixtures, ballasts, capacitors and similar items which contain polychlorinated (PCB) or polybrominated (PBB) biphenyl compounds which are not regulated by federal regulations may not be accepted at municipal solid waste facilities unless:

(A) the waste is from an individual household, apartment house, or other housing establishment, and the item does not exceed three pounds in weight and was not generated as a result of commercial or business activity; or

(B) the size of an individual item does not exceed three pounds and the number of items disposed of from a specific project, location or generator does not exceed 20 within a 10-day period.

(3) Electric light fixtures, ballasts, capacitors, and similar items which contain polychlorinated (PCB) or polybrominated (PBB) biphenyl compounds which are not regulated by federal rules, and which are discarded because of renovation projects involving more than 200 square feet of space may not be deposited in any landfill permitted under this subchapter.

(4) Lead-acid storage batteries shall not be accepted.

(5) Bulk or liquid waste motor oil shall not be accepted.

(6) Used internal combustion engine oil filters shall not be accepted.

(A) On or after March 1, 1992, filters from non-household sources may not be accepted for landfill disposal unless the filter:

(i) has been crushed to less than 20% of its original volume to remove all free waste oil; or

(ii) has been processed to remove all free waste oil.

(B) On or after July 1, 1992, filters from non-household sources shall not be accepted for landfill disposal from any generator whose place of business is located in a county with a population greater than 1,000,000.

(C) On or after September 1, 1992, filters from non-household sources shall not be accepted for landfill disposal from any generator located in a county with a population of more than 200,000 which is located on or east of the line defined by Interstate Highway 37, Interstate Highway 35 and 35W.

(D) On or after November 1, 1992, filters from non-household sources shall not be accepted for landfill disposal

from any generator located in a county with a population of more than 200,000.

(E) On or after January 1, 1993, filters from non-household sources shall not be accepted for landfill disposal from any generator located in a county with a population of more than 100,000 which is located on or east of the line defined by Interstate Highway 37, and Interstate Highway 35 and 35W.

(F) On or after March 1, 1993, filters from non-household sources shall not be accepted for landfill disposal from any generator located in a county with a population of more than 50,000 which is located on or east of the line defined by Interstate Highway 37 and Interstate Highway 35 and 35W.

(G) On or after May 1, 1993, filters from non-household sources shall not be accepted for landfill disposal from any generator located in a county with a population of more than 100,000.

(H) On or after July 1, 1993, filters from non-household sources shall not be accepted for landfill disposal from any generator located in a county with a population of more than 50,000.

(I) On or after September 1, 1993, filters from non-household sources shall not be accepted for landfill disposal from any generator located in a county located on or east of the line defined by Interstate Highway 37 and Interstate Highway 35 and 35W.

(J) On or after December 1, 1993, filters from non-household sources shall not be accepted for landfill disposal from any generator.

(K) On or after April 1, 1994, filters may not be accepted for landfill disposal from private households.

(L) The bureau may extend for up to 60 days any of the time periods specified in paragraphs (2)-(12) of this subsection if the bureau finds that commercial waste services for collection and recycling of waste filters are not available.

§325.138. Easements and Buffer Zones.

(a) Easements. Unless otherwise authorized by the Texas Department of Health (department), no solid waste disposal activities shall occur within 25 feet of any easement boundary of any utility or pipeline easement or right-of-way which crosses a landfill site. Where on-site access roads, drainage ways, or levees cross such easements, the permittee is responsible for

obtaining the concurrence of the easement holder or right-of-way owner.

(b) Buffer zones. Unless otherwise authorized by the department, a minimum separating distance of 150 feet shall be maintained between disposal operations and the boundary of the site to allow area for visual screening, surface drainage facilities, flood protection facilities. In no case shall this zone be narrower than that necessary to provide safe passage for fire-fighting or other emergency vehicles. The department encourages the establishment of a greenbelt along the property line.

§325.139. Landfill Marker and Benchmark.

(a) Markers shall be installed to clearly mark the following:

- (1) site boundaries;
- (2) 150-foot buffer zone;
- (3) easements and rights-of-way;
- (4) landfill grid system;
- (5) Soil Liner Evaluation Report (SLER) area;
- (6) 100-year flood; and
- (7) special use areas.

(b) All markers shall be posts, steel or wooden, and shall extend at least six feet above ground level. Markers shall not be obscured by vegetation. Sufficient intermediate markers shall be installed to show the required boundary.

(c) All markers shall be color coded as follows:

- (1) black-boundary markers;
- (2) yellow-buffer zone markers;
- (3) green-easement and rights-of-way markers;
- (4) white-grid markers;
- (5) red-SLER markers;
- (6) blue-flood protection markers; and
- (7) orange-special use area markers.

(d) Site boundary markers shall be placed at each corner of the site and along each boundary line at intervals no greater than 300 feet. Fencing may be placed within these markers as required.

(e) Markers identifying the 150-foot zone shall be placed along each buffer zone boundary at all corners and between corners at intervals of 300 feet. Placement of the landfill grid markers may be made along a buffer zone boundary.

(f) Easement and right-of-way markers shall be spaced at intervals no greater than 300 feet and shall be placed along the centerline of an easement and along the boundary of a right-of-way. A

marker shall be placed on the easement or right-of-way at each corner within the site and at the intersection of the site boundary.

(g) A landfill grid system shall be installed at all solid waste facilities unless written approval from the department has been received. The grid system shall encompass at least the area expected to be filled within the next three-year period. Although grid markers must be maintained during the active life of the site, post-closure maintenance of the grid system is recommended but not required. The grid system, similar to a typical city map grid, shall consist of lettered markers along two opposite sides of the site and numbered markers along the other two opposite sides. Markers shall be spaced no greater than 100 feet apart measured along perpendicular lines. Where markers cannot be seen from opposite boundaries, intermediate markers must be installed.

(h) SLER area markers shall be placed so that all areas for which a SLER has been submitted and approved by the department are readily determinable. Such markers are to provide site workers immediate knowledge of the extent of approved disposal areas. These markers shall be located so that they are not destroyed during operations. The location of these markers shall be tied into the landfill grid system and shall be reported on each SLER submitted.

(i) Flood protection markers shall be installed for any area within a solid waste disposal facility that is subject to flooding prior to the construction of a flood protection levee. The area subject to flooding shall be clearly marked by means of permanent posts not more than 300 feet apart or closer if necessary to retain visual continuity.

(j) Specific trenches dedicated to the burial of Class I nonhazardous industrial solid waste shall be marked. The approved composite liner area shall be marked at all corners. Such markers are to provide site workers immediate knowledge of the extent of approved disposal areas. These markers shall be located so that they are not destroyed during operations.

(k) Special use areas shall be marked at all corners and along the boundaries at intervals no greater than 100 feet. Fencing or berms or other access restrictions may be placed within the markers as required or as needed. Any other specific instructions about the markers not contained in this section shall be included in written instructions issued by the department at the time of approval of the special use area.

(l) A permanent benchmark shall be established at the site in an area of the site that is readily accessible and will not be used for disposal. This benchmark shall be a bronze survey marker set in concrete and shall have the benchmark elevation and date stamped on it. The benchmark elevation

shall be surveyed from a known United States Coast and Geodetic Survey benchmark or other permanent benchmark. The location and elevation of the reference benchmark and the permanent benchmark shall be identified on a map and shall be considered an addendum to the Site Development Plan.

§325.153. Post-Closure Maintenance.

(a) Beginning with the completion and acceptance of the final closure requirements, the site operator shall maintain the right of entry to the closed site and shall perform maintenance and or remediation as needed to maintain the final cover site vegetation, or to address other problems. Problems associated with erosion, subsidence or settling of cover material, vegetative growth, leachate or methane migrations, ponding of water, etc., shall be corrected as expeditiously as possible.

(b) Any monitoring program (ground water monitoring, resistivity study, methane monitoring, etc.) or leachate collection program in effect during the life of the site shall be continued during the post-closure maintenance period, unless otherwise approved by the department.

(c) The initial post-closure maintenance period shall be five years beginning with the completion and acceptance of the final closure requirements required in §325.152 of this title (relating to Site Completion and Closure Procedures).

(d) Post-closure maintenance requirements or remediation of problems may be required beyond the initial five year period.

(1) At the end of the initial five year post-closure maintenance period, the department may extend the post-closure maintenance period for an additional period up to five years if problems identified in subsection (a) of this section are in existence or if the monitoring programs reveal a potential problem.

(2) The department may further extend the post-closure maintenance period beyond any previous extension for a period of up to five years if problems exist at the conclusion of the period or if a monitoring program identifies a potential problem.

(3) Remediation work required to repair a problem, identified in subsection (a) of this sections, identified at the close of the initial post-closure maintenance period, or identified after an extended period shall be performed by the site operator. The department may reopen the post-closure maintenance period for a period of up to five years to assure correction of the problems.

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 November 6, 1991.

TRD-9113915

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: January 25, 1992

For further information, please call: (512) 458-7271

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Subchapter G. Operational
Standards for Solid Waste
Processing and Experimental
Sites

General

• 25 TAC §325.171, §325.172

The amendments are proposed under the Solid Waste Disposal Act, Health and Safety Code, §361.011, which makes the department responsible for managing and controlling municipal solid waste management; §361.024, which provides the Texas Board of Health with authority to adopt rules concerning municipal solid waste management; and §12.001 which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health. The proposed rules affect the Health and Safety Code, Chapter 361.

§325.171. General Requirements.

(a) (No change.)

(b) The approved site development plan consisting of the design, site operating plan, and related data, becomes an operational requirement, and any significant deviation from the plan without prior approval of the department is a violation of this subchapter.

(1) Within 30 days after the issuance of a permit or permit amendment, the permittee shall submit, to the bureau, three copies of any design sheets or drawings that may have been provided during the public hearing and that are part of the final approved site development plan. These copies shall be loose-leaf bound and shall include all drawings and sketches. The outside binder shall be marked "Approved Site Development Plan" and dated with the date of the permit issuance or amendment.

(2) [(1)] A copy of the permit, the approved site development plan, and the department's current rules shall be on site and the on-site supervisor shall be knowledgeable of each with respect to the operational requirements of the specific site. The on-site supervisor shall be subject to questioning by the department's representatives during visits to the site to verify this knowledge.

(3)[(2)] If at any time during the life of the site the site operator becomes aware of any condition in the approved site development plan which necessitates a

change to accommodate new technology or improved methods or which makes it impractical to keep the site in compliance other than those covered in §325.56 of this title (relating to Revocation or Amendment of a Permit), the site operator shall submit to the department a revised plan. Such proposed changes to the approved site development plan do not require a permit amendment but must be approved by the department prior to their implementation.

(4)[(3)] In the event that a necessary deviation is the result of unforeseen circumstances and there is insufficient time to prepare and submit a revised plan, the site operator shall immediately contact the bureau by telephone or telegram and obtain interim authorization pending the submission and review of the revised plan. Interim authorization shall be in writing and shall not exceed 30 days during which time the revised plan shall be prepared and submitted to the bureau.

(5)[(4)] All drawings or other pages [sheets] prepared for revisions to a site development plan or other previously approved documents, which may be required by this subchapter, shall be submitted in triplicate [and normally should be 8 1/2 by 11 inches and shall not exceed 15 by 22 inches so that they can be reproduced by normal office copy machines]. The revised pages shall be marked "Revision Number, dated, and be punched for insertion into the loose leaf binder. Drawings shall be 8 1/2 by 11 inches or 11 by 17 inches. However, standard-sized drawings (24 times 36 inches) folded to 8 1/2 by 11 inches may be submitted or required if their reduction would render them difficult to interpret [illegible]. All revised drawings shall be signed and sealed by the registered professional engineer responsible for their preparation and will be included in the loose leaf binder. Bound plans and/or reports, other than revisions to the site development plan, shall be signed and sealed by the engineer, preferably on the first page.

§325.172. Meetings and Inspections Prior to Constructing and Opening New Facilities.

(a) Preconstruction conference. When the bureau has determined [during application processing] that a preconstruction conference is necessary to ensure a common understanding of the requirements of the site development plan, these rules, and any special provisions of the permit, the permittee shall be so advised in a [the] letter of notification of a preconstruction conference [transmitting the permit]. In that event, the permittee shall contact the bureau to establish a date, time, and place where department representatives can meet with the permittee and his design engineer. Any permittee not so advised may at his option request such a meeting anytime during the construction

phase of the site. If appropriate, the design engineer shall be accompanied by a geotechnical engineer and/or engineering geologist, and if the permittee is not to be the on-site operator, the appropriate operating or management personnel shall attend the meeting.

(b) (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 November 6, 1991.

TRD-9113916

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: January 25, 1992

For further information, please call: (512) 458-7271

◆ ◆ ◆
• 25 TAC §325.173

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

The repeal is proposed under the Solid Waste Disposal Act, Health and Safety Code, §361.011 which makes the department responsible for managing and controlling municipal solid waste management; §361.024, which provides the Board of Health with authority to adopt rules concerning municipal solid waste management; and §12.001 which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health. The proposed rules affect Chapter 361 of the Health and Safety Code.

§325.173. Effect of Updated Regulations on Existing Sites.

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

Issued in Austin, Texas, on November 6, 1991.

TRD-9113917

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: January 25, 1992

For further information, please call: (512) 458-7271

◆ ◆ ◆
• 25 TAC §325.173, §325.174

The new sections are proposed under the Solid Waste Disposal Act, Health and Safety Code, §361.011 which makes the department responsible for managing and controlling municipal solid waste management; §361.024,

which provides the Board of Health with authority to adopt rules concerning municipal solid waste management; and §12.001 which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health. The proposed rules affect Chapter 361 of the Health and Safety Code.

§325.173. Effect of Updated Regulations on Existing Sites. The permittee shall review §§325.171-325.190 of this title (relating to Operational Standards for Solid Waste Processing and Experimental Sites) to determine operational changes and submissions required by these updated regulations. Permits issued under past regulations remain valid for the period of time specified in the permit. Permittees or site operators shall submit a report to the bureau addressing those changed standards. The report shall include a time schedule for implementing any operational changes, and for completing any required submissions. Upon approval of submissions required by this section, implementation plans and time schedules shall be implemented by the permittee.

§325.174. Evidence of Financial Responsibility. The Texas Department of Health (department) shall require evidence of financial responsibility as it deems appropriate to assure the department that the responsible owner/operator has sufficient assets to properly operate the site and to provide proper closure. A firm commitment to provide backup equipment by lease, purchase, or diversion from other activities is part of this responsibility. The assurance for the operation of the site may be in the form of performance bonds, letters of credit from recognized financial institutions, trust funds, or insurance. A commissioner's court or city council resolution in the case of publicly owned facilities, may be substituted for the financial required assurance if approved by the bureau. The department shall have the authority to require financial assurance for proper closure in a form indicated in this section. The amount of financial assurance for proper closure shall be determined by the bureau; however, the permittee may submit calculations to aid in determining the final amount. The financial assurance shall be submitted within 30 days after the issuance of the permit and shall cover a 12-month period and shall be renewed annually throughout the life of the site. The financial assurance may contain a provision for automatic renewal provided the department is to be notified by the financial institution at least 60 days prior to the cancellation of the assurance. The financial assurance shall include provisions acceptable to the department.

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 November 6, 1991.

TRD-9113918

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: January 25, 1992

For further information, please call: (512) 458-7271

Subchapter H. Surveillance and Enforcement

• 25 TAC §325.221, §325.222

The amendments, are proposed under the Solid Waste Disposal Act, Health and Safety Code, §361.011, which makes the department responsible for managing and controlling municipal solid waste management; §361.024, which provides the Texas Board of Health with authority to adopt rules concerning municipal solid waste management; and §12.001 which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health. The proposed rules affect of the Health and Safety Code, Chapter 361.

§325.221. Surveillance Policy.

(a) Site inspection. All sites will be inspected periodically by personnel of the department and/or local health officials.

(1) (No change.)

(2) The department's policy is to inspect all permitted municipal solid waste sites, registered transporters, registered solid waste facilities, and any illegal solid waste site or illegal transporter [sites serving more than 5,000 persons] at a frequency to be set by the Bureau of Solid Waste Management (bureau) [least once every three months and all other sites at least once every year]. The [However, the] inspection frequency shall be determined by [may be increased depending on] site history, its size, [and] its potential environmental impact, and the decision of the Bureau. The frequency shall be at least once every other month for all landfills, at least once every three months for illegal sites, and at least once every six months for all other sites and for registered transporters. Inactive solid waste sites and sites under post closure maintenance shall be inspected at least once every 12 months.

(b) (No change.)

(c) Collection, storage, generator, and transportation activities. The department will periodically inspect collection, storage and transportation activities as described in subsection (a)(2) of this section as well as respond to complaints. The department encourages local surveillance and enforcement of these activities by local health departments and local law enforcement agencies.

§325.222. Enforcement Policy.

(a) The Texas Department of Health's (department's) policy is to gain improvements in solid waste management through voluntary operational compliance by providing the site operator with technical assistance and guidance during routine inspections or upon the operator's request. Enforcement letters, compliance schedules, enforcement conferences, administrative civil penalties, permit revocation, or court-ordered civil penalties and injunction will be the enforcement tools used when voluntary compliance is not achieved. [Appropriate legal action as provided by law will be sought where timely voluntary operational compliance is not accomplished.]

(1) Local enforcement. Both counties and incorporated cities are authorized to enforce the department's regulations as well as applicable sections of the Solid Waste Disposal Act. Particular emphasis should be placed on the closure of illegal dump grounds, to include where necessary taking appropriate legal action against both the landowners and users of the dump grounds as authorized by the Solid Waste Disposal Act (Health and Safety Code, Chapter 361 [Texas Civil Statutes, Article 4477-7, §8]) and the Texas Litter Abatement Act (Health and Safety Code, Chapter 365 [Texas Civil Statutes, Article 4477-9a]). The department encourages such local enforcement and, where local enforcement is active and effective, it is the department's policy to support the local efforts in lieu of taking independent action. The department will initiate enforcement action when local efforts have not caused operational compliance within a reasonable period of time.

(2) Enforcement tools [Levels of enforcement]. The department normally seeks compliance using [in] the following methods [steps]; however, certain methods [steps] may be omitted or combined when [the department deems] it appears necessary to protect the public health and safety or the environment or where there appears to have [has] been an apparent willful violation of these rules.

(A) Enforcement letters [Advisory and enforcement]. When non-compliance with these rules is determined, the violations may be discussed with the violator. He [and/or he] will be advised by a follow-up letter outlining the noncompliance and what is required to come into compliance and may be given a deadline to achieve this compliance.

(B) Compliance schedule. When improvements resulting from [advisory and] enforcement letters are not satisfactory, the department will impose a written compliance schedule outlining spe-

cifically what must be done and the date by which it must be completed. Violation of a compliance schedule is a further violation of the department's regulations and failure to comply with a compliance schedule will be grounds for the department to initiate one or more of the actions specified in subparagraph (D) of this paragraph.

(C) (No change.)

(D) Further enforcement actions. Where voluntary compliance is not obtained, one or more of the following legal remedies will be pursued.

(i) Emergency orders [order]. An emergency order may be either mandatory or prohibitory in nature, and may be issued regarding any activity of solid waste management within the department's jurisdiction if the department determines that an emergency exists requiring immediate action to protect the public health and safety or the environment. Such activity may or may not be covered by a permit. The order may be issued without notice and hearing, or with such notice and hearing as the department deems practicable under the circumstances. If an emergency order is issued under this authority without a hearing, the department shall fix a time and place for a hearing to be held in accordance with TDH formal hearing procedures, so as to affirm, modify, or set aside the emergency order.

(ii) Administrative or other department order. Such orders may be mandatory or prohibitory and may be issued regarding any activity of solid waste management within the department's jurisdiction.

(iii) (No change.)

(iv) Court-ordered civil penalties and injunctions [Referral to the attorney general]. When the department deems it appropriate, the case will be referred to the attorney general for appropriate legal relief through the judicial system.

(v) Administrative civil penalties. When the department deems it appropriate, administrative civil penalties will be assessed in accordance with §325.223 of this title (relating to Administrative Penalty Determination) and TDH Formal Hearing Procedures.

(b) (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 November 6, 1991.

TRD-9113919

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: January 25, 1992

For further information, please call: (512) 458-7271

◆ ◆ ◆
• 25 TAC §325.223

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

The repeal is proposed under the Solid Waste Disposal Act, Health and Safety Code, §361.011 which makes the department responsible for managing and controlling municipal solid waste management; §361.024, which provides the Board of Health with authority to adopt rules concerning municipal solid waste management; and §12.001 which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health. The proposed rules affect Chapter 361 of the Health and Safety Code.

§325.223. Administrative Penalty Determination.

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

Issued in Austin, Texas, on November 6, 1991.

TRD-9113927

Robert A. MacLean
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: January 25, 1992

For further information, please call: (512) 458-7271

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The new section is proposed under the Solid Waste Disposal Act, Health and Safety Code, §361.011 which makes the department responsible for managing and controlling municipal solid waste management; §361.024, which provides the Board of Health with authority to adopt rules concerning municipal solid waste management; and §12.001 which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health. The proposed rules affect Chapter 361 of the Health and Safety Code.

§325.223. Administrative Penalty Determination.

(a) The assessment of an administrative penalty shall progress in the manner described in the following paragraphs.

(1) A determination shall be made by the Bureau of Solid Waste Management (bureau) to initiate the administrative penalty process and a proposed penalty amount shall be determined.

(2) The violator shall be notified by certified mail of the bureau's intentions and given an opportunity to request an informal meeting to discuss the proposed penalty. A "Draft Report for an Administrative Penalty" shall be sent to the violator.

(3) If the violator requests an informal meeting (either by telephone or in writing), such a meeting shall be scheduled to discuss and resolve the administrative penalty and any corrective actions required. Adjustments to the proposed penalty amount may be discussed at this meeting.

(4) If an agreement is reached between the bureau and the violator on a penalty amount and required corrective actions, then the violator shall be sent, by certified mail, the results of the meeting. An "Agreed Penalty/Corrective Action Report" shall be sent to the violator for concurrence.

(5) If a response (verbal or written) to the initial notification letter and "Draft Report for an Administrative Penalty" is not received within the time frame stipulated in the letter, or if no agreement is reached in the informal meeting, or if concurrence to the "Agreed Penalty/Corrective Action Report" is not received within the time frame stipulated, then the violator shall again be notified, by certified mail. A "Preliminary Report for Administrative Penalty" and the opportunity to request a formal hearing will accompany the notification letter.

(6) If the violator submits a signed "Agreed Penalty/Corrective Action Report", or if the violator fails to respond to both the draft report and the preliminary report, then the bureau shall forward a request to the Commissioner of Health with a recommendation to issue an "Assessment Order" for the appropriate penalty amount. Payment of the assessed penalty is required within 30 days after the order has been sent to the violator.

(7) If the violator requests a formal hearing, then the matter will be referred to the department's Office of General Counsel to arrange for and to conduct a formal hearing and to recommend to the Commissioner of Health the assessment of an administrative penalty and a penalty amount or dismissal of the penalty action. The notice for a formal hearing, hearing procedures, and judicial review, shall all be accomplished in accordance with the Solid Waste Disposal Act and TDH Formal Hearing Procedures.

(b) Consideration for the assessment of an administrative penalty shall include the following:

(1) seriousness of the violation, including but not limited to the nature, circumstances, extent, and gravity of the prohibited acts and the hazard or potential hazard created to the health or safety of the public;

(2) history of previous violations;

(3) a penalty amount necessary to deter future violations;

(4) efforts on the part of the violator to correct the violation; and

(5) any other matters that justice may require.

(c) The proposed assessment of an administrative penalty shall be based upon

the extent of each individual violation of this chapter, per day of violation, either by consecutive calendar days, one day of violation per observed occurrence, or one day of violation per single occurrence.

(1) Violations cited on an "Inspectors Field Report" for any solid waste site or facility or transporter (whether permitted, registered, or on illegal operations) shall be reviewed beginning with the latest report and working back in time to the report on which the initial citation for each violation was made to determine a continuous history of each violation. The length of time for a continuous violation shall be as determined by the bureau, either on a basis of one day of violation per inspection date

(observance and occurrence) or on a basis of consecutive calendar days of violation as indicated by the inspection reports and compliance schedule.

(2) Violations of requirements of this chapter, other than those cited on "Inspectors Field Report", which have been established through a compliance schedule, shall be reviewed to determine the extent of each violation. The length of time for this type of violation shall be one day of violation per each violation (single occurrence).

(d) The daily penalty amount for each of the following listed violations shall be as indicated, unless there is sufficient justification to reduce or increase the daily penalty amount.

Penalty Relative Violation

\$ 200	Failure to provide and/or maintain required signs	\$ 600	Failure to meet safety requirements
\$ 200	Failure to properly handle large or bulky items	\$ 800	Failure to operate a facility in accordance with permit or registration special provisions
\$ 200	Failure to properly control salvaging	\$ 800	Failure to adequately control vectors
\$ 200	Failure to properly control windblown materials	\$ 800	Failure to meet the ground water protection requirements set forth in the SLQCP or the GWQCP
\$ 200	Failure to provide for litter collection	\$ 800	Improper installation of soil liners
\$ 200	Failure to control or clean up materials lost from vehicles on access routes	\$ 800	Improper installation of ground water monitor wells
\$ 200	Failure to operate facility within approved operating hours	\$ 800	Discharge of contaminated water without required approval
\$ 200	Failure to maintain a cover log	\$ 800	Failure to repair erosion occurring at the site
\$ 200	Failure to provide the required closure schedule	\$ 800	Improper handling and disposal of special wastes not identified in other relative violations
\$ 200	Failure to provide or update the required closure plan	\$ 800	Failure to control overloading
\$ 200	Failure to submit the required "Affidavit to the Public"	\$ 800	Failure to control sludge application rates at beneficial land use sites
\$ 200	Failure to maintain records	\$ 800	Suffering or allowing the discharge, disposal, processing, transportation, or storage of solid waste without a permit or registration as required
\$ 200	Failure to submit required annual or quarterly reports	\$1000	Failure to provide the required compaction
\$ 200	Failure to provide records requested by the department	\$1000	Failure to provide the required intermediate cover, interim cover, and final cover
\$ 200	Failure of transporters to properly mark and maintain their vehicles, this can be assessed per vehicle that is in violation	\$1000	Failure to adequately cover dead animals upon receipt
\$ 400	Failure to provide proper screening	\$1000	Failure to prevent scavenging
\$ 400	Failure to maintain interior access roads	\$1000	Failure to render pesticide containers unusable upon receipt and to adequately cover
\$ 400	Failure to provide adequate equipment or personnel to operate the facility, includes failure to repair or replace equipment	\$1000	Disposal of prohibited wastes
\$ 400	Failure to protect endangered species	\$1000	Disposal of solid waste in unlined areas
\$ 400	Failure to plug abandoned wells	\$1000	Failure to provide required post-closure maintenance at landfills
\$ 400	Failure to provide required ground water sampling	\$1000	Open burning
\$ 400	Failure of generators to utilize TDH registered haulers	\$1000	Acceptance of a waste at a site not authorized to accept that waste
\$ 400	Failure of a municipal wastewater treatment plant operator to properly notify TDH of their sludge disposal activities	\$1000	
\$ 400	Failure to provide and/or maintain landfill markers		
\$ 600	Failure to maintain adequate fire protection		
\$ 600	Failure to protect buffer zones and easements, including depositing waste in the buffer zones and easements		
\$ 600	Failure to adequately confine unloading of waste to as small an area as practical		
\$ 600	Failure to operate the facility in accordance with the approved Site Development Plan and/or Site Operating Plan		
\$ 600	Failure to maintain proper access control to prevent the disposal of unauthorized waste		
\$ 600	Disposal of waste in unauthorized areas, such as flood plains, unconfined waters, special trenches or near wells		
\$ 600	Failure to provide or maintain required drainage controls		
\$ 600	Failure to control odors		
\$ 600	Failure to provide the required washdown		

(e) A collective review of department records and other factors, including information that may be submitted by the violator, will be conducted and may result

in adjustments to the proposed penalty. The adjustments may be determined in percentages of reduction or addition to the proposed penalty as deemed appropriate in the following four categories.

(1) History or previous violations. Consideration shall be given to such items as the length of time the violations have occurred, inconsistency of site compli-

ance history, and cooperation of the violator.

(2) A penalty amount necessary to deter future violations. Consideration shall be given to such items as financial documents or information provided by the violator and the previous cooperative nature of the violator.

(3) Efforts to correct the violations. Considerations will be given to such items as completeness of corrective effort, cooperation to accomplish corrections, and provision of additional equipment and personnel to accomplish the task.

(4) Other matters that justice may require. Consideration will be given to such items as ability to pay, budgeting restraints, and acts of God that may have caused the violation or affected the effort to correct the violation.

(f) If an adjustment has been determined, then this adjustment shall be applied to the proposed penalty and the result incorporated into an "Agreed Penalty/Corrective Action Report".

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 November 6, 1991.

TRD-9113928

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: January 25, 1992

For further information, please call: (512) 458-7271

Subchapter S. Assistance Grants and Contracts

• 25 TAC §325.890

The amendment is proposed under the Solid Waste Disposal Act, Health and Safety Code, §361.011 which makes the department responsible for managing and controlling municipal solid waste management; §361.024, which provides the Texas Board of Health with authority to adopt rules concerning municipal solid waste management; and §12.001 which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health. The proposed rules affect the Health and Safety Code, Chapter 361.

§325.890. General Program Information.

(a)-(g) (No change.)

(h) Preapplication conferences. The published RFP may indicate mandatory or optional participation in a preapplication conference. If the preapplication conference is identified as mandatory, prospective applicants shall,

prior to submitting the required application information, make arrangements to participate in same, or explain why it is impractical to attend such a conference. If the preapplication conference is identified as optional or recommended, prospective applicants are encouraged to participate in such conferences. Preapplication conferences provide a means to: [Except in those cases where the published RFP does not specify or recommend participation in a preapplication conference, prospective applicants shall, prior to submitting the required application forms, contact the staff of the Bureau of Solid Waste Management and either make arrangements to participate in a preapplication conference, or explain why it is impractical to attend such a conference. While participation in an RFP recommended preapplication conference is not mandatory, such participation is strongly recommended. Such conferences provide a means to:]

(1)-(7) (No change.)

(i) (No change.)

(j) Selection criteria. Criteria utilized in the selection process for solid waste management assistance grants may include, but is not limited to, the following:

(1)-(7) (No change.)

(8) technical, economic, and environmental merit of the proposal; [and]

(9) when appropriate, the applicant organization's level of commitment toward reaching identified state waste reduction and recycling goals. Measures and/or indications of this commitment shall be, but are not limited to:

(A) the implementation of unit-pricing or variable-rate based solid waste collection fees;

(B) the implementation of effective yard waste minimization, diversion, or conversion programs;

(C) the implementation of effective solid waste minimization and recycling programs;

(D) the implementation of effective household hazardous waste minimization or collection programs; and

(E) the implementation of laws, ordinances, or regulations that result in a reduction of materials entering the solid waste stream; and

(10)[(9)] any other information as may be required for the specific project.

(k)-(o) (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 November 6, 1991.

TRD-9113929

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: January 25, 1991

For further information, please call: (512) 458-7271

TITLE 34. PUBLIC FINANCE

Part III. Teacher Retirement System of Texas

Chapter 25. Membership Credit

Unreported [Delinquent Report of] Service

• 34 TAC §§25.43, 25.45, 25.46

The Teacher Retirement System of Texas (TRS) proposes amendments to §§25.43, 25.45, and 25.46, concerning deposits required for unreported service. The amendments as proposed by TRS would change the reference from "delinquent" service to "unreported" service to more accurately reflect the nature of the service.

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

Mr. Fickel 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 that TRS rules will more accurately describe the nature of the service. 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 other than the cost of establishing the unreported service credit, when required. The proposed sections will not have an impact on local economies.

Comments on the proposal may be submitted to Wayne Blevins, Executive Secretary, 1000 Red River Street, Austin, Texas 78701-2698.

The amendments are proposed under the Texas Government Code, §825.102, which provides the Board of Trustees of the Teacher Retirement System with the authority to adopt rules for membership eligibility, the administration of the funds of the retirement system, and the transaction of its business, and §825.403(h), which authorizes the TRS board of trustees to prescribe terms for payment of unreported service.

§25.43. [Delinquent] Deposits for for Unreported Service. A fee will be charged on [delinquent] deposits for unreported service at the rate of 5.0% per annum of the

deposits due from the end of the school year in which the deposits were due or the end of the 1974-1975 school year, whichever is later, until the date of payment.

§25.45. Verification of Claims. Members who claim unreported payments or maintenance as all or part of annual compensation after the school year in which it was actually received must verify the claim by presenting to the Teacher Retirement System such evidence as the staff of the system may require to provide clear and convincing proof of the existence and amount of such compensation, including, but not limited to, a certified copy of the minutes of the governing board of his employing institution, certified copies of any written contracts between the member and the employer, a verified statement by the employer of the reasons why such compensation was not reported earlier, and copies of income tax documents showing that such alleged compensation was reported as income for the member. A fee for [delinquent] deposits for unreported service as provided in §25.43 of this title (relating to [Delinquent] Deposits for Unreported Service) will be assessed when applicable on the value of such payments or maintenance.

§25.46. Determination of Compensation Subject to [Delinquent] Deposit and Credit.

(a) The amount of [delinquent] deposits due for unreported service will be calculated at the member contribution rate in effect for the year in which the service was rendered but for which no deposits or insufficient deposits were made. Contributions will be based on creditable compensation as determined under the law applicable at the time of the service.

(b) Deposits for unreported service [Delinquent deposits] and credit for maintenance for school years in which maintenance is eligible for credit will be based on a valuation made by the executive secretary or a designee. The valuation may not exceed \$400 per month. Maintenance consists of housing furnished the member in lieu of salary as a part of an employment contract between the public school and the member.

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 November 5, 1991.

TRD-9113888 Wayne Blevins
Executive Secretary
Teacher Retirement
System of Texas

Earliest possible date of adoption: December 13, 1991

For further information, please call: (512) 370-0524

Military Service

• 34 TAC §§25.61, 25.63, 25.65, 25.66

The Teacher Retirement System of Texas (TRS) proposes amendments to §§25.61, 25.63, 25.65, and 25.66, concerning military service credit. The amendments as proposed by TRS would change the reference to the number of years of creditable service in TRS required to purchase military service, clarify the type of service credit required for a retiree to be eligible for TRS-Care insurance, expand the type of military service eligible for credit, and permit a legible copy of a military service record to be used to apply for service credit.

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

Mr. Fickel 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 that TRS rules will correctly reflect new statutory provisions regarding purchase of military service credit and will make legible unaltered copies of military service records acceptable proof for the purpose of establishing such service credit. 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 other than the costs required to establish the service credit, if the TRS participant chooses to do so. The proposed sections will not have an impact on local economies.

Comments on the proposal may be submitted to Wayne Blevins, Executive Secretary, 1000 Red River Street, Austin, Texas 78701-2698.

The amendments are proposed under the Texas Government Code, §825.102, which provides the Board of Trustees of the Teacher Retirement System with the authority to adopt rules for membership eligibility, the administration of the funds of the retirement system, and the transaction of its business; §823.301(a), which prescribes the military service eligible for TRS service credit; and §823.302(b), which prescribes the eligibility for establishing military service credit and the nature of service required for eligibility for TRS-Care.

§25.61. Service Credit for Eligible Military Duty.

(a) A member with five [10] years of credit for service in the public schools of Texas may receive additional retirement credit for active military duty in any of the following periods:

(1)-(3) (No change.)

(4) a member's term of volunteer military service on active duty.

(b) Credit for military duty under this section is limited to a maximum of five years. Eligible military duty will be evaluated for crediting only in the school year in which it was rendered. A member must have served a minimum of 4 1/2 months of

military duty in a school year to be eligible to obtain military service credit for that year. No credit may be given for any school year of military duty which duplicates any other credit already granted or in which a year of creditable service is available for service in the public schools of Texas.

(c) (No change.)

§25.63. Required Service in Public Schools. Five years of actual service in the public schools of Texas is required before any member can qualify for service retirement benefits. Ten years of actual service in the public schools of Texas is required before a service retiree can qualify for insurance coverage under the Texas Public School Retired Employees Group Insurance Program (TRS-Care).

§25.65. Effective Dates of Laws Extending Military Duty Credit. The board of trustees recognizes the following dates as important in making certain military service eligible for credit.

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

(5) November 12, 1991—volunteer service on active duty made eligible.

§25.66. Application for Military Credit. Members desiring to make deposits for military credit should request in writing to be billed for the cost of the credit. Requests should be addressed to Teacher Retirement System of Texas, 1000 Red River Street, Austin, Texas 78701-2698. Included with the request should be a certified or legible unaltered copy or copies of the member's service record showing the dates and nature of the member's active military duty. The system may require the member to make available to it such other evidence as may be required to establish the member's eligibility for retirement credit and the amount of deposits due. When the system determines the duty eligible for credit, it shall bill members for the total amounts of deposits and fees due for the credit at the last address of the member of which the system has record. The member must sign the statements contained on the bill certifying the accuracy of the information provided on the bill and return the bill to the system with the total amount due for the military duty credit. A member who requests a bill and submits all necessary evidence for crediting his or her military duty before the end of a school year shall have 30 days from the date the bill is transmitted by the system in which to submit the amount due without owing any additional fees otherwise becoming due because of the intervening termination of the school year. Deposits for military duty credit will not be accepted after date of death or date of service retirement of a member.

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 November 5, 1991.

TRD-9113889

Wayne Blevins
Executive Secretary
Teacher Retirement
System of Texas

Earliest possible date of adoption: December 13, 1991

For further information, please call: (512) 370-0524

Veteran's Service Credit

• 34 TAC §§25.71-25.76

The Teacher Retirement System of Texas (TRS) proposes new §§25.71-25.76, concerning service credit for military service under the Veteran's Reemployment Rights Act (VRRRA), 38 United States Code, §2021 et seq. The sections as proposed by TRS would describe the eligibility, cost, and application procedure for establishing TRS service credit pursuant to a statutory amendment permitting the establishment of such service credit.

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

Mr. Fickel 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 that TRS rules will reflect new statutory provisions permitting returning veterans to establish TRS service credit for military duty performed as a result of being called to active duty from TRS-covered employment. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the proposed sections will consist of deposits and fees necessary to establish the TRS service credit. However, it is the decision of the TRS participant whether to establish the service. The proposed sections will not have an impact on local economies.

Comments on the proposal may be submitted to Wayne Blevins, Executive Secretary, 1000 Red River Street, Austin, Texas 78701-2698.

The new sections are proposed under the Texas Government Code, §825.102, which provides the Board of Trustees of the Teacher Retirement System with the authority to adopt rules for membership eligibility, the administration of the funds of the retirement system, and the transaction of its business; §823.301, which authorizes the Board of Trustees to adopt rules expanding the military service creditable in TRS in order to comply with the requirements of federal law; and §823.304, which authorizes an eligible person to establish reemployed veteran's credit.

§25.71. Service Credit for Eligible Active Military Duty Under the Veteran's Reemployment Rights Act.

(a) A member may obtain service credit for active military duty in lieu of or in addition to military service credit under §25.61 of this title (relating to Service Credit for Eligible Military Duty) if the member is eligible to obtain such service credit under the Veteran's Reemployment Rights Act, 38 United States Code, §2021 et seq. (VRRRA).

(b) A member who is inducted in the Armed Services under the Military Selective Service Act for training and service and who leaves a position in the employ of a TRS-covered employer in order to perform such training and service, and who receives an honorable discharge, and who applies for reemployment with a TRS-covered employer within a 90 day period after discharge (or, in the case of hospitalization continuing after discharge, within one year of discharge), is eligible to obtain service credit under this section.

(c) A member who is a member of a reserve component of the Armed Forces or the National Guard and who is called to active duty covered by the VRRRA may obtain service credit if:

(1) the member was called to active duty as a reservist from the employ of a TRS-covered employer for a period of less than 90 days and, on discharge from that active duty, applies for reemployment with a TRS-covered employer within 31 days of discharge; or

(2) the member was called to active duty as a reservist from the employ of a TRS-covered employer for more than 90 days and, on discharge from that active duty, applies for reemployment with a TRS-covered employer within 90 days of discharge.

§25.72. Limitations on Eligible Service.

(a) Under this section, a member whose military service was as an enlistee or draftee and whose service is entitled to coverage under the Veteran's Reemployment Rights Act (VRRRA) can only claim service credit in the amount of:

(1) four years, if the service was performed between June 24, 1948 and August 1, 1961; or

(2) five years if the service was performed after August 1, 1961.

(b) A member whose military service was as a reservist and whose service is entitled to coverage under the VRRRA can only claim credit for four years of such service under this section.

(c) A member who leaves TRS-covered employment for active duty training or inactive duty training has no limitation on eligible service under the VRRRA for the period of active duty training or inactive duty training.

§25.73. Ineligible Military Service. A member who establishes service credit under §25.71 of this title (relating to Service Credit for Eligible Active Military Duty Under the Veteran's Reemployment Rights Act) cannot use the same military service to establish military service credit under §25.61 of this title (relating to Service Credit for Eligible Military Duty). No additional service credit may be given for any school years of military duty eligible for service credit already granted for service in the public schools of Texas.

§25.74. Cost.

(a) To obtain service credit for active military duty under the Veteran's Reemployment Rights Act (VRRRA) and §25.71 of this title (relating to Service Credit for Eligible Active Duty Under the Veteran's Reemployment Rights Act), the member must deposit with the retirement system for each school year of service claimed an amount equal to the sum of the following:

(1) member contributions based on the following:

(i) the percentage of the applicable full annual compensation rate equal to that in effect for deductions from member salaries for the school year in which the military duty was rendered; and

(ii) the full annual compensation rate for each school year of membership service in which the member was on active military duty eligible under VRRRA and §25.71. Membership service does not include service as a substitute. For purposes of determining the full annual compensation rate under this section, the Teacher Retirement System of Texas (TRS) will use the amount of wages and salary the member would have received had he continued to be employed in his former TRS covered position from which he left for active military duty. The member must submit a certification by the employer whose employ he left to enter into active military duty of the wages and salary he would have received had he remained in the TRS covered position;

(2) a fee of 5.0% compounded annually of the contributions from the date the member was first eligible to establish service credit to the date of deposit.

(b) To obtain credit for member compensation for active military duty under VRRRA and §25.71, the member must deposit with the retirement system for each school year of salary credit claimed an amount equal to the sum of the following:

(1) member contributions based on the following:

(i) the percentage of the applicable full annual compensation rate equal to that in effect for deductions from member salaries for the school year in which the military duty was rendered; and

(ii) the full annual compensation rate for each school year of membership service in which the member was on active military duty eligible under VRRRA and §25.71. Membership service does not include service as a substitute. For purposes of determining the full annual compensation rate under this section, TRS will use the amount of wages and salary the member would have received had he continued to be employed in his former TRS covered position from which he left for active military duty. The member must submit a certification by the employer whose employ he left to enter into active military duty of the wages and salary he would have received had he remained in the TRS covered position;

(2) a fee of 5.0% compounded annually of the contributions from the date the member was first eligible to establish credit for member compensation to the date of deposit.

(c) Credit for member compensation may be established for any school year of active military duty eligible under VRRRA and §25.71, even if service credit has already been granted for the school year for service in the public schools of Texas.

(d) Establishment of compensation credit does not entitle a member to service credit for a school year unless no service credit has been granted for the school year through sufficient service in the public schools of Texas.

(e) A member is first eligible to establish credit under §25.71 on the date of application for reemployment in a TRS covered position or on November 12, 1991, whichever is later.

§25.75. Application for Eligible Active Military Duty Under the Veteran's Reemployment Rights Act. Members desiring to make deposits for service credit for eligible military duty under the Veteran's Reemployment Rights Act should request in writing to be billed for the cost of the credit. Requests should be addressed to Teacher Retirement System of Texas, 1000 Red River Street, Austin, Texas 78701-2698. Included with the request should be a certified or legible unaltered copy or copies of the member's service record showing the dates and nature of the member's military duty. Also included with the request should be a certification of the date of the member's application for reemployment with a Teachers Retirement System of Texas (TRS)-covered employer or other proof of the date of employment with a TRS-covered employer. The system may also require the member to make available to it such other evidence as may be required to establish the member's eligibility under VRRRA and §25.71 of this title (relating to Service Credit for Eligible Active Duty Under the Veteran's Reemployment Rights Act) for retirement credit and the amount of the

deposits due. When the system determines the duty is eligible for credit, it shall bill the member for the total amounts of deposits and fees due for the credit at the last known address of the member of which the system has record. The member must sign the statements contained in the bill certifying the accuracy of the information provided in the bill and return the bill to the system with the total amount due for eligible credit. A member who requests a bill and submits all necessary evidence for crediting his military duty eligible under VRRRA and §25.71 before the end of a school year shall have 30 days from the date the bill is transmitted by the system in which to submit the amount due without owing any additional fees otherwise becoming due because of the intervening termination of the school year. Deposits for military duty eligible for credit under VRRRA and §25.71 will not be accepted after the date of death of a member.

§25.76. Eligibility of Retiree. A retiree may establish credit under §25.71 of this title (relating to Service Credit for Eligible Active Duty Under the Veteran's Reemployment Rights Act), if eligible. The requirements of this title (relating to Service Credit for Eligible Active Duty Under the Veteran's Reemployment Rights Act; Limitations on Eligible Service; Ineligible Military Service; Cost; and Application for Eligible Active Military Duty Under the Veteran's Reemployment Rights Act) apply equally to a retiree establishing such credit. A retiree who establishes service credit under §25.71 may receive an adjusted benefit on a prospective basis only after such credit has been established.

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 November 5, 1991.

TRD-9113890

Wayne Blevins
Executive Secretary
Teacher Retirement
System of Texas

Earliest possible date of adoption: December 13, 1991

For further information, please call: (512) 370-0524

Chapter 29. Benefits

Service Retirement

• 34 TAC §§29.7, 29.14, 29.16

The Teacher Retirement System of Texas (TRS) proposes amendments to §29.7 and §29.14, and new §29.16, concerning minimum service benefit requirements, eligibility for retirement at the end of May, and payment of unpaid benefits. The sections as proposed by TRS would establish a minimum service retirement benefit of \$150 per month for certain service retirees, clarify the wording regarding the retirement date for certain

retirees, and authorize TRS to pay an annuitant's designated beneficiary amounts payable to, but not received by, an annuitant before the annuitant's death.

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

Mr. Fickel 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 that a beneficiary may receive payments payable to but not received by the annuitant before the annuitant's death without the need for a probate or similar proceeding. Also the minimum benefit payable to certain service retirees will reflect a new statutory minimum. The wording in the section on eligibility for retirement has been changed for clarification only. 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. The proposed sections will not have an impact on local economies.

Comments on the proposal may be submitted to Wayne Blevins, Executive Secretary, 1000 Red River Street, Austin, Texas 78701-2698.

The sections are proposed under the Texas Government Code, §825.102, which provides the Board of Trustees of the Teacher Retirement System with the authority to adopt rules for membership eligibility, the administration of the funds of the retirement system, and the transaction of its businesses; §824.203, which establishes the minimum service retirement benefit; §824.002, which establishes the effective date of retirement for a retiree; and, §824.505, which authorizes TRS to adopt rules necessary to administer payment to a beneficiary.

§29.7. Minimum Service Retirement Benefits. Minimum service retirement benefits are payable if benefits as calculated by the standard annuity formula in §29.3 of this title (relating to Standards Annuity) are below the following amounts: \$6.50 per month multiplied times the member's creditable years of service but, if the member is 65 years of age or older, no less than \$150 [\$75] per month. Example: 27 [22] years of creditable service times \$6.50 equals \$175.50 [\$143] per month.

§29.14. Eligibility for Retirement at [on] the End of May. Any member who completes all service required by his or her contract for the full school year by the 15th of June, terminates his or her employment in public education in Texas by the 15th of June, and satisfies all other requirements for retirement before the 31st of May shall be eligible for retirement on the last day of May. In other circumstances, the retirement date shall be the last day of the month in which the member is last employed and satisfies all conditions for retirement. No member who has accumulated 12 months of service in the final school year before retirement may use this rule to add compensa-

tion for any additional period of service to his annual compensation.

§29.16. Unpaid Benefits.

(a) If the Teacher Retirement System of Texas (TRS) determines that amounts payable to an annuitant were not received by the annuitant before the annuitant's death, TRS may pay the amounts to the annuitant's designated beneficiary for benefits payable under the Texas Government Code, §824.501. Before paying the designated beneficiary, TRS shall make the following determinations:

(1) the amount payable is no greater than \$10,000;

(2) the designated beneficiary has survived the annuitant; and

(3) TRS has received no notice of a probate or similar proceeding in which payment could be made to the annuitant's estate.

(b) TRS may require proof from the designated beneficiary necessary to make the determinations.

(c) TRS may determine that payment should not be made to the designated beneficiary if doing so would violate the Internal Revenue Code of 1986, §401(a)(26) United States Code §401).

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 November 5, 1991.

TRD-9113891 Wayne Blevins
Executive Secretary
Teacher Retirement
System of Texas

Proposed date of adoption: December 13, 1991

For further information, please call: (512) 370-0524

Disability Retirement

• 34 TAC §29.21

The Teacher Retirement System of Texas (TRS) proposes an amendment to §29.21, concerning the effective date for disability retirement. The amendment as proposed by TRS would improve the wording regarding submission of the application form and describe the effective date of retirement for a member whose employment ends June 15, in accordance with a statutory amendment permitting the effective date to be May 31.

Wayne Fickel, TRS controller, 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. Fickel also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result

of enforcing the section will be that new statutory provisions regarding the effective date of retirement for disability retirees will be implemented. The section will clarify the form required to apply for disability retirement. 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. The proposed section will not have an impact on local economies.

Comments on the proposal may be submitted to Wayne Blevins, Executive Secretary, 1000 Red River Street, Austin, Texas 78701-2698.

The amendment is proposed under the Texas Government Code, §825.102, which provides the Board of Trustees of the Teacher Retirement System with the authority to adopt rules for membership eligibility, the administration of the funds of the retirement system, and the transaction of its businesses, and §824.002, which establishes the effective date of retirement for retirees.

§29.21. Effective Date for Disability Retirement.

(a) The effective date for disability retirements is the later of the following:

(1) the end of the month in which the member's application for disability retirement form [Statement of Member (Form) (TRS 59) is filed with [received in] the [this] office of the Teacher Retirement System of Texas;

(2) (No change.)

(b) A person who works no later than June 15 of a year in order to complete all work required for the school year may be considered to have ended employment on May 31 of that year for the purpose of subsection (a)(2) of this section.

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

Issued in Austin, Texas, on November 5, 1991.

TRD-9113892 Wayne Blevins
Executive Secretary
Teacher Retirement
System of Texas

Proposed date of adoption: December 13, 1991

For further information, please call: (512) 370-0524

Chapter 31. Employment After Retirement

• 34 TAC §§31.2, 31.3, 31.7, 31.9, 31.12, 31.13

The Teacher Retirement System of Texas (TRS) proposes amendments to §§31.2, 31.3, 31.7, 31.9, 31.12, and new §31.13, concerning forfeiture of annuities, permissible substitute employment, regular employment having no effect on annuity, definitions, employment on as much as a full-time basis, and

employment of a disability retiree on a one time three-month trial basis. The sections as proposed by TRS would implement statutory changes regarding employment after retirement.

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

Mr. Fickel 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 administering or enforcing the sections will be that TRS rules will reflect recent statutory changes affecting employment after retirement by both service and disability retirees. There is no anticipated economic cost to persons who are required to comply with the proposed sections. The proposed sections will not have an impact on local economies.

Comments on the proposal may be submitted to Wayne Blevins, Executive Secretary, 1000 Red River Street, Austin, Texas 78701-2698.

The amendments are proposed under the Texas Government Code, §825.102, which provides the board of trustees of the Teacher Retirement System with the authority to adopt rules for membership eligibility, the administration of the funds of the retirement system, and the transaction of its business; and §824.602, which permits retirees to be employed in certain capacities after retirement without loss of benefits.

§31.2. Forfeiture of Annuities. Retirees receiving service retirement annuities forfeit those annuities in any month in which they are employed by a public educational institution covered by the Teacher Retirement System of Texas, except in the cases set forth in §31.3 of this title (relating to Permissible Substitute Employment), §31.7 of this title (relating to Regular Employment Having No Effect on Annuity) and §31.12 of this title (relating to Employment up [Up] to Six [Five] Months on [On] as Much as Full Time). However, the exceptions provided in those sections do not apply to the statutory requirement that a person automatically revokes retirement if employed in any position in Texas public educational institutions in the month immediately following the person's effective [official] date of retirement (or in the two months immediately following the person's effective [official] date of retirement if the date of retirement has been set on May 31 under §29.14 of this title (relating to Eligibility for Retirement at the End of May)).

§31.3. Permissible Substitute Employment. Any person receiving a service retirement annuity may be employed in a month as a substitute in a public educational institution without affecting the annuity payment for that month, provided that the person's total substitute employment in Texas public education in the school year has not exceeded 120 days, that the person does not have other employment in Texas

public education during the month, and that the pay for work as a substitute does not exceed the daily rate of substitute pay established by the employer. A person receiving a disability retirement annuity may be employed as a substitute in a month without affecting the annuity for that month subject to the same conditions as apply to service retirees except that the total substitute employment in the school year may not exceed 90 days. The exception described in this section is not available to persons who have elected the exception described in Section 31.12 of this title (relating to Employment up [Up] to Six [Five] Months on as Much as Full Time). The exception described in this section does not apply for the first month after the person's effective date of retirement (or the first two months if the person's retirement date has been set on May 31 under §29.14 of this title (relating to Eligibility for Retirement at the End of May) or under §29.21 of this title (relating to Effective Date for Disability Retirement)).

§31.7. Regular Employment Having No Effect on Annuity. Any person receiving a service retirement annuity may, without affecting payment of the annuity, be employed during any month in Texas public education on as much as one-half the full-time load for the particular position according to the personnel policies of the employer, provided the person is not also employed as a substitute in that month. The exception described in this section is not available to persons who have elected the exception described in §31.12 of this title (relating to Employment up [Up] to Six [Five] Months on as Much as Full Time). The exception described in this section does not apply for the first month after the person's effective date of retirement (or the first two months if the person's retirement date has been set on May 31 under §29.14 [§29.1] of this title (relating to Eligibility for Retirement at the End of May)).

§31.9. Definitions [Public Educational Institution].

(a) The definition of "public educational institution" is any educational institution in the State of Texas supported wholly or partly from public funds.

(b) The definition of "school year" for purposes of employment after retirement is a 12-month period beginning on September 1 and ending on August 31 of the next calendar year.

§31.12. Employment up to Six [Five] Months on as Much as Full Time.

(a) Any person receiving a service retirement annuity may, without affecting payment of the annuity, be employed on as much as full time for [a period of] no more than six [five consecutive] months in a school year if the work meets the require-

ments in subsection (b) of this section and the person complies with the requirements of subsection (c) of this section.

(b) The work must occur:

(1) in no more than [a period, designated by the employee in advance, of] six [five consecutive] months in a school year [between September and June, inclusive]; and

(2) in a school year that begins after the retiree's effective [official] date of retirement or no earlier than October 1 if the effective date of retirement is August 31.; and

[(3) more than one month after the person's effective date of retirement (or two months after a retirement date set on May 31 under §29.14 of this title (relating to Eligibility for Retirement at the End of May)).]

(c) A person must elect in writing on a form prescribed by the Teacher Retirement System of Texas (TRS) to take advantage of the exception described by this section. A person who, during a school year, has already used the exception described in §31.3 of this title (relating to Permissible Substitute Employment) for substitute work or in §31.7 of this title (relating to Regular Employment Having No Effect on Annuity) for work at no more than half time is [not] eligible to elect this exception during the same school year; however, the permissible substitute employment or the employment for work at no more than half time during the same school year must be included in the six months of employment allowed under this section. A person who has been employed in Texas public education during a school year and has forfeited service retirement benefits because the person did not qualify for one of the exceptions described in §31.3 of this title or §31.7 of this title is eligible to elect this exception during the same school year. To avoid an interruption of annuity payments, the [The] election must be made on or before the last day of the first month of full-time employment [that the person begins the work to be] subject to the exception described in this section. The person making the election must designate on the form the six months [five-month period] during which the exception is to apply. For the election to be effective, the [prospective] employer of the person must certify on the election form that the employment will be reported to TRS [contemplated employment after retirement is in the best interests of the employer]. A separate election form must be filed for each school year that the person wishes this exception to apply.

(d) A person will forfeit annuity payment for any month in the school year outside the six [five consecutive] month period designated on the person's election form during which the person works in any position in a Texas public educational insti-

tution. This applies even if the work would otherwise qualify for an exception under §31.3 of this title for substitute work or §31.7 of this title for no more than half time employment. However, substituting or work at no more than half time during the designated six months [five-month period] will be treated as any other employment permitted during that period.

(e) The election of the exception described in this section may not be modified or revoked after the person receives an annuity payment under it. A person may not designate a period of less than six [five] months for the exception to apply unless the remaining time in the school year during which it can apply requires it.

(f) Employers must submit to TRS the election forms signed by their [prospective] employees if and when certified by the employer as required by subsection (c) of this section. Employers will report separately to TRS all work in a school year by persons with an election of this exception in effect. Substituting or work at no more than half time by a person with the election in effect will not be reported under those categories, but as work under this exception.

§31.13. Employment up to Three Months on a One-Time Only Trial Basis for Disability Retirees.

(a) A person receiving a disability retirement annuity may not exercise the exceptions described in §31.7 of this title (relating to Regular Employment Having No Effect on Annuity) and in §31.12 of this title (relating to Employment up to Six Months on as Much as Full Time).

(b) Any person receiving a disability retirement annuity may without affecting payment of the annuity be employed on a one-time only trial basis on as much as full time for a period of no more than three consecutive months in a school year if the work meets the requirements in subsection (c) of this section and the person complies with the requirements of subsection (d) of this section.

(c) The work must occur:

(1) in a period, designated by the employee in advance, of three consecutive months of a school year; and

(2) in a school year that begins after the retiree's effective date of retirement or no earlier than October 1 if the effective date of retirement is August 31.

(d) A person must elect in writing on a form prescribed by the Teacher Retirement System of Texas to take advantage of the exception described by this section no later than the end of the first month of employment under this section or thirty days after the date of employment, whichever is later.

(e) Working any portion of a month counts as working a full month for purposes of this section.

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

Issued in Austin, Texas, on November 5, 1991.

TRD-9113893

Wayne Blevins
Executive Secretary
Teacher Retirement
System of Texas

Earliest possible date of adoption: December 31, 1991

For further information, please call: (512) 370-0524

Chapter 39. Proof of Age

• 34 TAC §39.1

The Teacher Retirement System of Texas (TRS) proposes an amendment to §39.1, concerning acceptable methods for establishing date of birth. The amendment as proposed by TRS would expand the methods available to an individual for establishing date of birth for TRS purposes.

Wayne Fickel, TRS controller, 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. Fickel also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that TRS will accept additional documents as proof of date of birth for TRS purposes. 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 Wayne Blevins, Executive Secretary, 1000 Red River Street, Austin, Texas 78701-2698.

The amendment is proposed under the Texas Government Code, §825.102, which provides the board of trustees of the Teacher Retirement System with the authority to adopt rules for membership eligibility, the administration of the funds of the retirement system, and the transaction of its business.

§39.1. Establishment of Date of Birth. Date of birth may be established by any one of the following:

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

(6) a report from the Bureau of Census, Pittsburgh, Kansas, stating the age of the individual at a census year when the individual [member] was less than 20 years of age [old];

(7) a signed letter from the Social Security Administration indicating a date of birth which has been accepted by social security;

(8) an affidavit made by a TRS employee from naturalization or citizenship papers;

(9) for a member, an original birth certificate or a legible unaltered copy thereof when there is no given name listed for the infant as long as it is consistent with other birth information in the TRS file;

(10) an alien registration card;

(11) a hospital birth record signed by the administrator or custodian of records of the hospital;

(12)[(7)] in the event none of these is obtainable, such other evidence of age as may be approved by the executive secretary;

(13)[(8)] if there is any question concerning a copy of the documents listed in this section, a certified copy may be required.

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

Issued in Austin, Texas, on November 5, 1991.

TRD-9113894

Wayne Blevins
Executive Secretary
Teacher Retirement
System of Texas

Proposed date of adoption: December 13, 1991

For further information, please call: (512) 370-0524

Chapter 41. Insurance

• 34 TAC §41.8

The Teacher Retirement System of Texas (TRS) proposes new §41.8, concerning eligibility for coverage under the Texas Public School Retired Employees Group Insurance Program (TRS-Care). The new section as proposed by TRS would describe the eligibility requirement for participation in TRS-Care.

Wayne Fickel, TRS controller, has determined that for the first five-year period the proposed 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. Fickel 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 administering or enforcing the section will be that TRS rules will concisely describe the eligibility requirements for TRS-Care participation. 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. The proposed section will not have an impact on local economies.

Comments on the proposal may be submitted to Wayne Blevins, Executive Secretary, 1000 Red River Street, Austin, Texas 78701-2698.

The new section is proposed under the Texas Insurance Code, Article 3.50-4, §5, which provides the Board of Trustees of the Teacher Retirement System with the author-

ity to adopt rules relating to the TRS-Care Program.

§41.8. Eligibility for Coverage under the Texas Public School Retired Employees Group Insurance Program.

(a) The following persons are eligible to be enrolled in the Texas Public School Retired Employees Group Insurance Program (TRS-Care):

(1) service retirees of the Teacher Retirement System who are not eligible to be enrolled as an employee or retiree by a plan provided under the Texas Employees Uniform Group Insurance Benefits Act (Texas Insurance Code, Article 3.50-2), or under the Texas State College and University Uniform Insurance Benefits Act (Texas Insurance Code, Article 3.50-3);

(2) disability retirees of the Teacher Retirement System who are not eligible to be enrolled as an employee or retiree by a plan provided under the Texas Employees Uniform Group Insurance Benefits Act (Texas Insurance Code, Article 3.50-2), or under the Texas State College and University Uniform Insurance Benefits Act (Texas Insurance Code, Article 3.50-3);

(3) surviving spouses of deceased service or disability retirees of the Teacher Retirement System; and

(4) surviving dependent children of a deceased service or disability retiree or of a deceased active TRS member.

(b) To be eligible for coverage under TRS-Care under this section a service retiree of the Teacher Retirement System must have 10 years of service credit for actual service in the public schools of Texas.

(c) A disability retiree with less than 10 years of service credit will not be eligible for coverage under TRS-Care when disability retirement benefits terminate.

(d) A surviving spouse of a deceased TRS service or disability retiree is eligible to enroll in TRS-Care if the deceased TRS service or disability retiree was eligible to enroll or would have been eligible to enroll in TRS-Care at the time of the retiree's death.

(e) A surviving spouse of a deceased active TRS member is eligible to enroll in TRS-Care if the deceased active member:

(1) died on or after September 1, 1986;

(2) had 10 or more years of actual service credit in TRS; and

(3) made contributions to TRS-Care at the member's last place of employment in public education in Texas.

(f) Surviving dependent children of deceased TRS retirees or deceased active TRS members are eligible to enroll in TRS-Care if the deceased retiree met the conditions of subsection (d) of this section or the deceased active member met the conditions of subsection (e) of this section. Surviving dependent children must also meet the following conditions:

(1) the child(ren) must be a natural or adopted child(ren) of the deceased retiree or member or must be a foster, step-child(ren) or other child(ren) who lived in a parent-child relationship with the retiree or member; and

(2) the child(ren) must be unmarried and under age 25 or must be age 25 or older but still unmarried and mentally retarded or physically disabled to such an extent as to have been dependent upon the deceased retiree or member for support at the time of the retiree's or member's death.

(g) If a service or disability retiree has a legal spouse or if a retiree or surviving spouse has an eligible child or children when the retiree or surviving spouse becomes eligible but does not elect to cover that spouse or that child or children within 31 days, TRS-Care coverage may not be obtained for the spouse or child(ren) until a subsequent enrollment period.

(h) If a service or disability retiree has no spouse or if a retiree or surviving spouse has no eligible child or children when he or she first becomes eligible, but acquires a spouse or child or children at a later date, the retiree can obtain spouse or child or children coverage if he, or she makes application within 31 days of the date the spouse or first eligible child is acquired.

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 November 5, 1991.

TRD-9113895

Wayne Blevins
Executive Secretary
Teacher Retirement
System of Texas

Earliest possible date of adoption: December 13, 1991

For further information, please call: (512) 370-0524

Chapter 43. Adjudicative Hearings

- 34 TAC §§43.1, 43.5, 43.10, 43.45, 43.46

The Teacher Retirement System of Texas (TRS) proposes amendments to §§43.1, 43.5, 43.10, 43.45, and 43.46, concerning administrative review of individual complaints, requests for an adjudicative hearing, the authority of the executive secretary or hearing

officer to grant relief, final decisions and appeals to the board of trustees, and rehearings. The new sections as proposed by TRS would provide instructions for appealing a supervisor's decision to a division head; reduce the amount of time available for appealing a division head's decision to the executive secretary; eliminate the authority of a hearing officer to grant relief sought by a petitioner; provide for the filing of exceptions to a proposal for decision; alter the deadline for filing a motion for rehearing; and provide for the overruling of a motion for rehearing by operation of law.

Wayne Fickel, TRS controller, 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.

Fickel 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 administering or enforcing the sections will be that the procedures related to adjudicative hearings will be more clearly and more fully explained in the TRS rules. Time limits consistent with the need to resolve issues promptly will be established. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections. The proposed sections will not have an impact on local economies.

Comments on the proposal may be submitted to Wayne Blevins, Executive Secretary, 1000 Red River Street, Austin, Texas 78701-2698.

The amendments are proposed under the Texas Government Code, §825.102, which provides the board of trustees of the Teacher Retirement System with the authority to adopt rules for membership eligibility, the administration of the funds of the retirement system, and the transaction of its business.

§43.1. Administrative Review of Individual Complaints. The Teacher Retirement System of Texas (TRS) is divided into administrative divisions which are further divided into departments for the efficient implementation of its duties. Any person who desires any action from TRS must consult with the proper department within TRS and comply with all proper requirements for completing forms and providing information to that department. In the event that a person is not satisfied with the determination, decision, or action of department personnel, the person may complain to the appropriate supervisors within the department and division. If not satisfied after consulting with the proper supervisory personnel, the person may appeal the decision to [consult with] the administrative head of the appropriate division within the time period established by the supervisory personnel. The division head [who] shall mail a written final administrative decision.

§43.5. Request for Adjudicative Hearing. A party may appeal the final decision of a division head by filing a petition for adjudicative hearing with the executive sec-

retary within 45 [90] days from the date the division head's final administrative decision is mailed. The petition should conform to the requirements of §43.12 of this title (relating to Form of Petitions and Other Pleadings).

§43.10. Authority of Executive Secretary [or Hearing Officer] to Grant Relief. At any time after the petition is filed and before the hearing is conducted, the executive secretary [or hearing officer] may grant the relief sought by the petitioner and dismiss the petition, provided that the interests of other individual parties are not adversely affected.

§43.45. Final Decisions and Appeals to the Board of Trustees.

(a) (No change.)

(b) Within 75 days of the completion of the hearing, the hearing officer shall forward his [report,] proposal for decision[,] and the record to the executive secretary. The hearing officer shall also serve a copy of the proposal for decision on the parties. The parties shall have 15 days from the date the proposal was served to file exceptions to or present briefs on the proposal and 25 days from the date the proposal was served to file replies, unless the executive secretary modifies the filing deadlines. The [Upon review of the record, the] executive secretary may reverse or affirm the decision being appealed. The executive secretary shall then render a decision in each case or shall submit the case to the board of trustees for consideration with a proposal for decision. A copy of the decision or the proposal for decision shall be served on the parties by the executive secretary.

(c) Any party adversely affected by a decision of the executive secretary, other than the Teacher Retirement System of Texas (TRS), may appeal the decision to the board of trustees, provided that a written notice of appeal is filed with the executive secretary and served on all other parties within 10 days after the decision of the executive secretary is issued. If no such notice of appeal is timely filed, or if the next regularly scheduled meeting of the board of trustees will occur after the deadline for a final decision established under this section, and the parties, other than TRS, are unwilling to waive the deadline for a final decision until that meeting, the decision of the executive secretary shall be the final decision of TRS. If notice of appeal is timely filed, the decision of the executive secretary shall serve as a proposal for decision.

(d) If a decision of the executive secretary is appealed, the parties may file additional exceptions or briefs and replies if the executive secretary rejected the hearing officer's proposed decision or modified the hearing officer's statement

of reasons for the proposed decision or the proposed findings of fact or conclusions of law. Additional exceptions or briefs must be filed and served at the same time as the notice of appeal. Replies, if any, must be filed no later than 20 days after the decision of the executive secretary is issued. The executive secretary may modify the filing deadlines.

(e) The final decision by the board of trustees in an appeal or in a case originally set before the board of trustees shall be based upon the existing record in the case, unless the board of trustees orders the hearing to be reopened.

§43.46. Rehearings. A party adversely affected by a final decision in a case must file a motion for rehearing within 20 [15] days after the date the party or his attorney of record is notified of the final decision. [such decision is rendered.] If substantially new or amended evidence is presented in the motion which, in the judgment of the executive secretary, may cause the board of trustees to reverse the previous decision, the motion shall be granted. A grant or denial of the motion shall be issued within 45 days after the date the final decision is rendered. If action by the board of trustees is not taken within the 45-day period and the period for taking action has not been extended by the board, the motion for rehearing is overruled by operation of law 45 days after the date the party or his attorney of record is notified of the final decision.

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 November 5, 1991.

TRD-9113896

Wayne Blevins
Executive Secretary
Teacher Retirement
System of Texas

Earliest possible date of adoption: December 13, 1991

For further information, please call: (512) 370-0524

Chapter 47. Qualified Domestic Relations Orders

• 34 TAC §47.2, §47.6

The Teacher Retirement System of Texas (TRS) proposes amendments to §47.2 and §47.6, concerning the submission of domestic relations orders to TRS and the procedure for an appeal of a notice that an order is not a qualified order. The new sections as proposed by TRS would remove the reference to a "district" court clerk's certification of an order and would extend the time for filing a motion for reconsideration of a determination from 15 to 20 days.

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

Mr. Fickel 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 administering or enforcing the sections will be that the filing time for a motion for reconsideration will be the same as that for a motion for rehearing, thus eliminating potential confusion. Also, the removal of the reference to a "district" court recognizes that TRS may receive orders from other courts with jurisdiction over domestic relations matters. There will be no effect on small business. There is anticipated economic cost to persons who are required to comply with the sections as proposed. The proposed sections will not have an impact on local economies.

Comments on the proposal may be submitted to Wayne Blevins, Executive Secretary, 1000 Red River Street, Austin, Texas 78701-2698.

The amendments are proposed under the Texas Government Code, §825.102, which provides the board of trustees of the Teacher Retirement System with the authority to adopt rules for membership eligibility, the administration of the funds of the retirement system, and the transaction of its business; and §804.003, which provides the board of trustees with the authority to promulgate rules necessary to implement the provisions of the law on qualified domestic relations orders.

§47.2. Submission of Orders. A person who wishes to have the Teacher Retirement System of Texas (TRS) review a domestic relations order to determine whether it is a qualified domestic relations order for the purpose of receiving TRS benefits or payments shall submit a copy of a signed domestic relations order to TRS. The copy shall be certified by the clerk of the [district] court that entered the order. TRS shall not make a determination for orders not yet entered by the court.

§47.6. Appeal of Notice that Order Is Not Qualified. A determination by the executive secretary or the executive secretary's designee that an order is not a qualified domestic relations order may be appealed directly to a district court of Travis County. No appeal to the board of trustees of the Teacher Retirement System of Texas is required prior to appeal to a district court. However, a party adversely affected by a determination of the executive secretary or the designee must file a motion for reconsideration with the executive secretary no later than 20 [15] days after the date such determination is rendered as a prerequisite to an appeal to a district court.

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 November 5, 1991.

TRD-9113897

Wayne Blevins
Executive Secretary
Teacher Retirement
System of Texas

Earliest possible date of adoption: December 13, 1991

For further information, please call: (512) 370-0524

Part XII. State Auditor's Office

Chapter 351. Administration

• 34 TAC §351.1

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

The State Auditor's Office proposes the repeal of §351.1, concerning the filing of audit reports under the Texas Political Subdivision Employees Uniform Group Benefits Program (Chapter 172, Local Government Code). Senate Bill Number 1004, 72nd Legislature, Regular Session, transferred rulemaking authority relating to the filing of audit reports under this program from the State Auditor's Office to the Department of Insurance. As of the effective date of Senate Bill Number 1004, September 1, 1991, the statutory authority under which the State Auditor's Office originally adopted this rule was rescinded. To ensure compliance with any applicable provisions of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, the State Auditor's office is formally proposing the repeal of this rule.

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

Mr. Alwin 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 is inapplicable. There will be no effect on small business. 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 Lawrence F. Alwin, State Auditor, P.O. Box 12067, Austin, Texas 78711.

The repeal is proposed under the Local Government Code, §172.010 as amended, which transfers rulemaking authority to the Department of Insurance.

§351.1. Filing of Audit Reports for Trustees of Risk Pools.

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 October 31, 1991.
TRD-9113807

Lawrence F. Alwin
State Auditor
State Auditor's Office

Earliest possible date of adoption: December 13, 1991

For further information, please call: (512) 479-4700

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 81. Administrative Provisions

General

• 37 TAC §81.13

(Editor's Note: The Texas Youth Commission proposes for permanent adoption the new section it adopts on an emergency basis in this issue. The text of the new section is in the Emergency Rules section of this issue.)

The Texas Youth Commission (TYC) proposes new §81.13, concerning the selection process of an architect/engineer. The new rule will allow the commission to select architects and engineers necessary to begin construction of four new dormitories and a new facility in Beaumont as authorized by the 72nd Legislature.

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

Mr. Franks also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the ability to detain committed youth longer periods of time in residential facilities due to additional bed space. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The new section is proposed under the Human Resources Code, §61.048, which provides the Texas Youth Commission with the authority to promulgate rules relating to award of contracts for construction.

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 November 1, 1991.

TRD-9113779

Ron Jackson
Executive Director
Texas Youth Commission

Earliest possible date of adoption: December 13, 1991

For further information, please call: (512) 483-5244

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) proposes amendments to §3.704 and §3.902, concerning income and resources that are exempt in determining eligibility for the aid to families with dependent children (AFDC) program.

The amendments to §3.704 and §3.902 exclude the following income and resources for Native Americans who receive AFDC: income and resources distributed under the Alaska Native Claims Settlement Act, and Indian judgement funds that are held in trust or distributed to tribal members. In addition, §3.704 is amended to exempt from resources those lump sum payments which are intended and used to repair or replace resources that would not otherwise deny eligibility. These changes result from federal regulation changes mandated to become effective January 1, 1992.

Burton F. Raiford, interim commissioner, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Raiford also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that DHS is in compliance with federal regulations governing administration of the AFDC Program. 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.

Questions about the content of the proposal may be directed to Rita King at (512) 450-4148 in DHS's Client Self-support Services. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-297, Texas Department of Human Services E-311, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

• 40 TAC §3.704

The amendment is proposed 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.

§3.704. Types.

(a) (No change.)

(b) Aid to families with dependent

children. Exclusions from resources in AFDC are:

(1)-(9) (No change.)

(10) resources exempted by federal law. DHS exempts government payments by the Individual and Family Grant Program or the Small Business Administration provided to rebuild a home or replace personal possessions damaged in a disaster, if the household is subject to legal sanction if the funds are not used as intended. DHS exempts payments made under the following Acts:

(A) Alaska Native Claims Settlement Act (Public Law 92-203, as amended by Public Law 100-241);

(B)-(F) (No change.)

(G) DHS exempts funds distributed by the secretary of the interior, as stipulated in Public Law 98-64, §2 (relating to Tribal Trust Funds) and in Public Law 97-458, §4 (relating to Judgement Funds Granted due to a Claim Against the United States);

(H)[(G)] DHS exempts reimbursements from the Uniform Relocation Assistance and Real Properties Acquisition Policy Act of 1970;

(I)[(H)] DHS exempts payments or allowances made under any federal law for the purpose of energy assistance;

(11) (No change.)

(12) reimbursements for repairing or replacing a lost or damaged resource which would not otherwise affect eligibility are exempt if the applicant uses the reimbursement for the intended purpose.

(c)-(d) (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 November 5, 1991.

TRD-9113859

Nancy Murphy
Agency liaison, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption: January 1, 1992

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

Subchapter I. Income

• 40 TAC §3.902

The amendment is proposed 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) (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 [tax-exempt portions of] pay-

ments made under the Alaska Native Claims Settlement Act (Public Law 92-203, as amended by Public Law 100-241) and funds distributed or held in trust by the Indian Claims Commission for members of Indian tribes under Public Laws [Law] 92-254; [or Public Law 93-135] 94-540; 94-114, §6; 98- 64, §2; and 93-134, §7 (as amended by Public Law 97-458, §4);

(11)-(17) (No change.)

(c)-(d) (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 November 5, 1991.

TRD-9113858

Nancy Murphy
Agency liaison, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption: January 1, 1992

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



State Board of Insurance Exempt Filing

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

(Editor's Note: As required by the Insurance Code, Article 5.96 and 5.97, the Texas Register publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the Texas Register not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the Texas Register not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure and Texas Register Act, Article 6252-13a, Texas Civil Statutes, does not apply to board action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.

The State Board of Insurance, at a Board meeting scheduled for December 6, 1991, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, will consider amendments to the Motor Vehicle Dealer's Surety Bond form. The filing was submitted by the Department of Transportation, Division of Motor Vehicle Titles and Registration.

The bond form has been revised to incorporate changes necessitated by House Bill 1941, as passed by the 72nd Legislature, Regular Session, 1991. House Bill 1931 amends Texas Civil Statutes, Article 6686. The bond form has been revised to include coverage for checks. The bond form has also been revised to clarify that each bond constitutes a new and separate obligation.

Copies of the full text of the proposed Motor Vehicle Dealer's Surety Bond form are available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

Issued in Austin, Texas, on November 5, 1991.

TRD-9113866

Angelia Johnson
Assistant Chief Clerk
Texas Department of Insurance

For further information, please call: (512) 463-6328



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 4. AGRICULTURE

Part II. Animal Health Commission

Chapter 35. Brucellosis

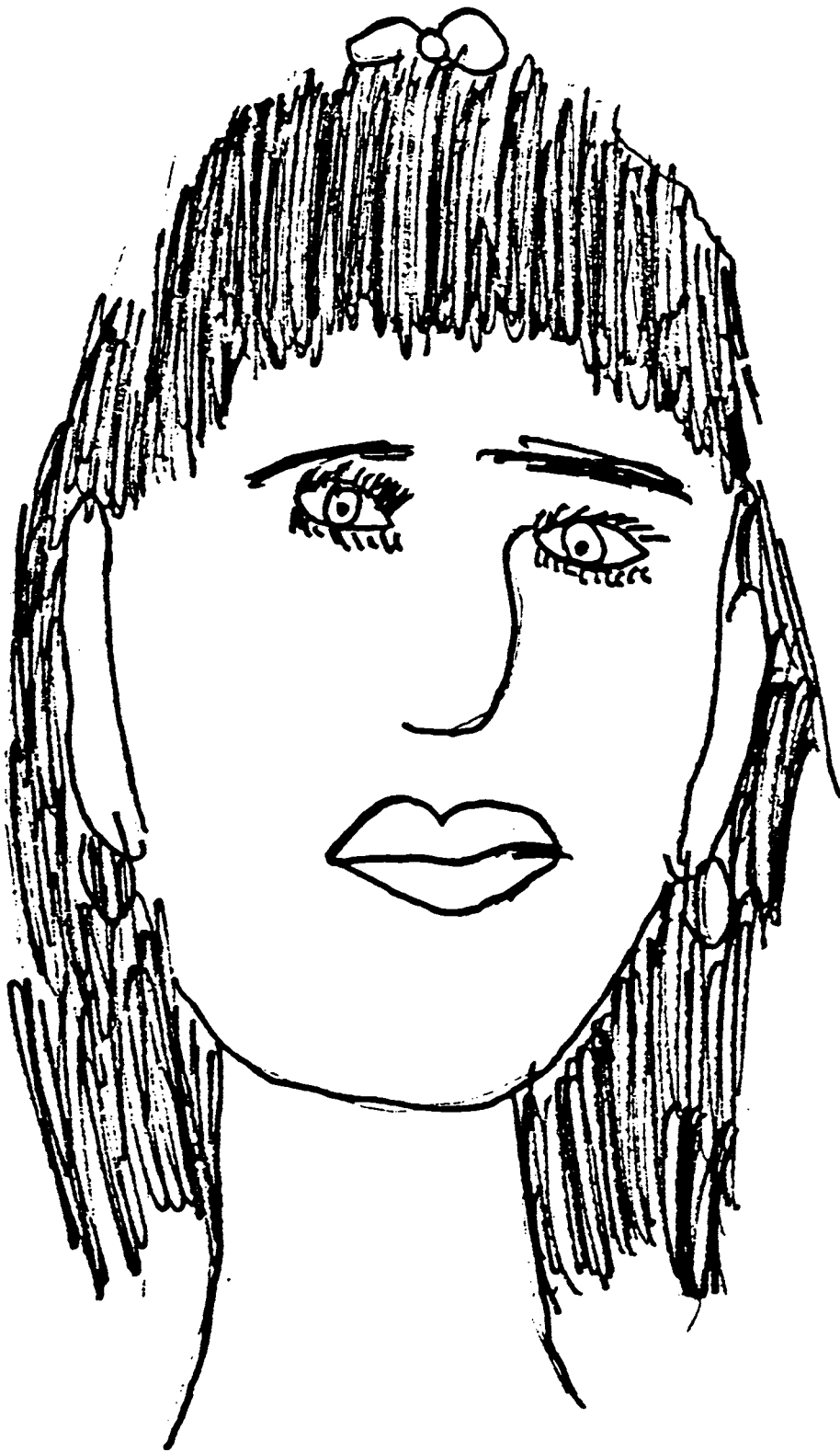
Subchapter A. Eradication of Brucellosis in Cattle

- 4 TAC §35.1

Pursuant to Texas Civil Statutes, Article 6252-13, §5(b), and 1 TAC §91. 24(b), the proposed amendment to §35.1, submitted by the Animal Health Commission has been automatically withdrawn, effective November 5, 1991. The amendment as proposed appeared in the May 3, 1991, issue of the *Texas Register* (16 TexReg 2453).

TRD-9113878





Name: Val Jones

Grade: 5

School: RISD Summer School, Richardson 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 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 11. Surface Mining and Reclamation Division

Subchapter E. Quarry and Pit Safety

- 16 TAC §§11.1001-11.1005,
11.1021, 11.1031-11.1045, 11.
1061-11.1065, 11.1081

The Railroad Commission of Texas adopts new §§11.1001-11.1005, 11.1021, 11.1031-11.1045, 11.1061-11.1065, and 11.1081. Sections 11.1004, 11.1021, 11.1031, 11.1035, 11.1036, 11.1038, 11.1040, 11.1043, 11.1063, 11.1064, and 11.1081 are adopted with changes to the proposed text as published in the September 17, 1991, issue of the *Texas Register* (16 TexReg 5117). Sections 11.1001, 11.1002, 11.1003, 11.1021, 11.1032-11.1034, 11.1037, 11.1039, 11.1041, 11.1042, 11.1044, 11.1045, 11.1061, 11.1062, and 11.1065 are adopted without changes and will not be republished.

The regulations will result in the efficient and timely processing of applications for safety certificates. The changes correct minor clerical errors in the text of the proposal and will eliminate ambiguity presented by some elements of the statute.

The regulations provide requirements consistent with the Texas Aggregate Quarry and Pit Safety Act of the identification, certification and construction necessary to regulate public access to certain aggregate quarries and pits.

Comments were received regarding the insufficiency of the barriers or berms to redirect traffic or to prevent vehicles from being overturned and coming over the barriers or berm. Comments were also received advocating review of the barrier or berm designs by the Texas Department of Transportation.

Commenting against the new sections were the Texas Department of Transportation and the Texas Transportation Institute.

The review of barrier or berm designs by other agencies is impractical due to the statutory ten-day review requirement. The comments addressing vehicle impacts do not directly address the requirements specified in the statute, and generally pertain to impacts occurring in roadway conditions rather than in a pit after leaving public roads and their associated barriers. The barrier requirements have been improved by increasing the size of the post and the depth of the posts in the ground.

The new sections are adopted under the Texas Natural Resource Code, §131.011, which provides the Railroad Commission of Texas with the authority to adopt rules and regulations consistent with the Texas Aggregate Quarry and Pit Safety Act.

§11.1004. Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Abandoned—Having relinquished all right, title, claim, and possession with the intent of never again claiming a future right or title or resuming possession.

Act—The Texas Aggregate Quarry and Pit Safety Act.

Aggregates—Any commonly recognized construction material originating from a quarry or pit by the disturbance of the surface, including dirt, soil, rock asphalt, clay, granite, gravel, gypsum, marble, sand, shale, stone, caliche, limestone, dolomite, rock, riprap, or other nonmineral substance.

Barrier—An object of substantial construction that will obstruct, restrain, and prevent the normal passage of persons or vehicular traffic and may include guardrails, fences, or berms or barricades composed of consolidated material or overburden.

Berm—A ridge of refuse, overburden, consolidated material, or other material in a lengthened elevation designed to act as a dike or barrier, capable of moderating or limiting the force of a vehicle in order to impede the passage of the vehicle.

Commission—Railroad Commission of Texas.

Consolidated material—Material of sufficient hardness or ability to resist weathering and to inhibit erosion or sloughing.

Division—Surface Mining and Reclamation Division, Railroad Commission of Texas, or such department, bureau or commission as may lawfully succeed to the powers and duties of such division.

Director—Director, Surface Mining and Reclamation Division, Railroad Commission of Texas, or the Commission's representative.

Federal act—Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87), and any amendment thereof.

Fund—Abandoned mine reclamation fund established pursuant to Section 401 of the federal act, and any amendment thereof.

Guardrail—A system of posts and metal rails as defined by the State Depart-

ment of Highways and Public Transportation.

Inactive quarry or pit—A site or any portion of a site that although previously in aggregate production is not currently being quarried by any ownership, lease, joint venturer, or some other legal arrangement.

In hazardous proximity to a public road—That distance beginning 200 feet from the outer right-of-way line of a public road or highway to the pit perimeter.

Operator—Any person, partnership, firm, or corporation engaged in and responsible for the physical operation and control of the extraction of aggregates.

Overburden—All materials displaced in an aggregate extraction operation that are not or reasonably would not be expected to be removed from the affected area.

Owner—Any person, partnership, firm, or corporation having title, in whole or in part, to the land on which an aggregate operation exists or has existed.

Person responsible for quarry or pit—The current operator of the quarry or pit, or the owner of the land in which the pit exists if the quarry or pit was abandoned on or before January 1, 1991, or became inactive before that date and has not resumed operations, or if no operator exists.

Pit—An open excavation not less than five feet below the adjacent and natural ground level from which aggregates have been or are being extracted.

Public road or right-of-way—Every way publicly maintained or any part thereof as defined by Section 13(a), Uniform Act Regulating Traffic on Highways (Texas Civil Statutes, Article 6701d), and the decisions thereunder.

Quarrying—The current and ongoing surface excavation and development without shafts, drafts, or tunnels, with or without slopes, for the extraction of aggregates from natural deposits occurring in the earth.

Quarry—The site where aggregates are being or have been removed or extracted from the earth to form the pit, including the entire excavation, stripped areas, haulage ramps, the land immediately adjacent thereto upon which the plant processing the raw materials is located, exclusive of any land owned or leased by the responsible party not being currently used in the production of aggregates.

Refuse—All waste material directly connected with the production, cleaning, or preparation of aggregates that have been produced by quarrying.

Responsible party—The operator, lessor, owner, or lessee as may be subject to the provisions of the Act.

Ridge—A lengthened elevation of overburden created in the aggregate production process.

Setback distance—Distance from the outer right-of-way line of a public road or highway up to a distance of 25 feet.

Site—The tract of land on which is located a pit and includes the immediate area on which the plant used in the extraction of aggregates is located.

Unacceptable unsafe location—A condition where the edge of a pit is located within 200 feet of a right-of-way intersection with a public road in a manner which, in the judgment of the commission:

(A) presents a significant risk of harm to public motorists by reason of the proximity of the pit to the roadway intersection; and

(B) has no naturally occurring or artificially constructed barrier or berm between the road and pit that would likely prevent a motor vehicle from accidentally entering the pit as the result of a motor vehicle collision at or near the intersection; or which,

(C) in the opinion of the commission, is also at any other location constituting a substantial dangerous risk to the driving public, which condition can be rectified by the placement of berms, barriers, guardrails, or other devices as prescribed by these regulations.

§11.1031. Initial Inventory Report Requirements.

(a) On or before March 1, 1992, the person responsible for an abandoned quarry or pit shall file an initial inventory report with the commission.

(b) On or before March 1, 1992, the person responsible for a quarry or pit that became inactive before January 1, 1991, and did not resume operations before June 30, 1991, shall file an initial inventory report with the commission.

(c) The person responsible for a quarry or pit that was active on June 30, 1991, shall file an initial inventory report with the commission, and enforcement proceedings will be deferred for a period of 60 days from the adoption of these regulations.

§11.1035. Prohibition Against Opening Pits.

(a) No person responsible may open a new pit on a site for the extraction of aggregates in this state wherein the pit perimeter will be less than 25 feet from the outer right-of-way line of any public road or highway (the setback distance).

(b) No person responsible may open a new pit on a site for the extraction of aggregates in this state wherein the pit perimeter is in hazardous proximity to a public road without first filing a quarry safety plan (detailing how the applicant intends to comply with the safety provisions of these regulations in the opening and closing of the pit) and receiving a safety certificate.

§11.1036. Quarry Safety Plan.

(a) The quarry safety plan required to be filed for new pits in hazardous proximity to a public road opened from and after November 1, 1991, must contain the information required by the safety certificate application, and must be filed on SMRD Form-SC1.

(b) The quarry safety plan must be in writing, certified and sworn to by the applicant and must be filed with the Surface Mining and Reclamation Division at least 60 days prior to the opening of the pit.

§11.1038. Safety Certificate Required.

(a) Unless a person responsible for a quarry or pit has obtained from the commission a certificate that a quarry or pit complies with this chapter and rules or orders adopted under this chapter, and subject to subsection (b) of this section, the person responsible may not:

(1) open a new pit in hazardous proximity to a public road; and

(2) locate a pit in an area where it is in an unacceptable unsafe location; or

(3) reopen, operate, or abandon a quarry or pit that is in hazardous proximity to a public road and in an unacceptable unsafe location; and

(4) provided, however, that the person responsible must have received a notice from the commission that the quarry or pit requires the operator to obtain a safety certificate, before that person is prohibited from operating or maintaining an existing quarry or pit without a safety certificate.

(b) Any person responsible who is utilizing a portion of a site for quarrying operations, including the stockpiling, sale, or processing of aggregates or a combination thereof, or who has a current, valid, or outstanding agreement or legal right to develop, utilize, or quarry the property, shall be responsible for obtaining a safety certificate limited to that specific pit area he is using or excavating or intends to use or excavate.

(c) Any person responsible for a quarry or pit may operate the pit during a period that is described in §11.1044 of this title (relating to Recertification after Transfer of Title).

§11.1040. Form and Content of Safety Certificate Applications.

(a) Each pit for which a safety certificate is requested shall be addressed in a separate application.

(b) An application for a safety certificate must be on the form furnished by the commission and contain:

(1) the name, address, and telephone number of the person responsible for the quarry or pit;

(2) the name, address, and telephone number of the owner or owners if different from the person responsible for the quarry or pit;

(3) the type of quarrying activities, if any, occurring on the site, or proposed to occur on the site;

(4) a brief description of the site, including the acreage outside and inside the pit;

(5) the distance of each pit perimeter from the nearest right-of-way line of each public road that the site adjoins and the nearest intersection of any public road that the site adjoins and the nearest intersection of any public or private road or driveway;

(6) the depth in feet, below the elevation of the right-of-way line, of the deepest excavation in the pit;

(7) a description of and a construction plan for any barrier or other device allowed by these regulations to be constructed, specifying the material to be used and the expected date of completion; and

(8) for new pits in hazardous proximity to a public road: a statement as to the yearly progress of the encroachment of the pit perimeter within the hazardous proximity to the public road, if any;

(9) any other information or condition that, in the opinion of the operator or owner, constitutes an unacceptable unsafe location.

§11.1043. Transfer of Certificate after Transfer of Title.

(a) A person holding a safety certificate has the full right, power, and authority to transfer the certificate upon the sale, lease, or other transfer of title to the site, provided the new owner, operator, lessor or lessee, or party in interest files with the director a written affidavit that:

(1) all barriers between a pit and the nearest right-of-way line of any public road comply with the act, and rules and orders adopted by the commission; and

(2) there will be no change, on or after the day of the transfer of title or operation, in:

(A) the condition or location of a barrier; and

(B) the distance of a pit perimeter from the nearest right-of-way line of a public road or public or private intersection of a public road or driveway that adjoins the site.

(b) The transfer affidavit must be filed not later than the 30th day after the day on which the transfer of title to or operation of the quarry or pit occurs.

(c) The commission will process and approve a transfer of a safety certificate not later than the 10th day after the day on which the commission receives a completed transfer affidavit, including the application fee.

(d) At its option, the commission may refuse to issue or approve the transfer of a certificate to a person who has violated the act or a rule or order adopted by the commission.

(e) The hypothecating, mortgaging, or other transfer of equitable title or a pledge of any assets to credits of the operator or owner shall not require the filing of a transfer affidavit.

(f) The commission may revoke or disapprove the transfer of a safety certificate only if, after notice and hearing, the commission determines that the holder of the certificate has violated the act or a rule or order adopted by the commission.

§11.1063. Injunctive Relief.

(a) The commission may enforce the act or a rule or order adopted by the commission by seeking an injunction or other appropriate remedy.

(b) On application for injunctive or other relief and a finding that a person is violating or has violated the act or a rule or order adopted by the commission, a court may grant the injunctive or other relief warranted by the facts.

§11.1064. Recover of Costs. A person responsible for a quarry or pit is liable to the state for customary, ordinary, and reasonable costs incurred by the commission in undertaking corrective or enforcement action, including staff expenses, and for court costs and attorney's fees.

§11.1081. Forms.

(a) The forms of Appendix A have been adopted by the commission for use pursuant to the act and this chapter. Reproduction of these forms is authorized for use by applicants to complete the filings required.

(b) The forms have been designated as follows:

(1) safety certificate application—SMRD Form-SC1;

(2) safety certificate transfer application—SMRD Form-TSC1;

(3) notice of cessation of operations—SMRD Form-CSC1;



RAILROAD COMMISSION OF TEXAS
SURFACE MINING AND RECLAMATION DIVISION

Appendix A

FAX (512)463-6709

PHONE (512)463-6901

1701 N. CONGRESS

CAPITOL STATION - P.O. BOX 12967

AUSTIN, TEXAS 78711-2967

APPLICATION FOR QUARRY AND PIT SAFETY CERTIFICATE

For Railroad Commission Use Only: Not to be filled out by applicant

Application Number _____ Date Filed _____

Pit Number _____

I. Person responsible for quarry or pit:

Name: _____

Address (Street): _____

City: _____ State: _____

Zip: _____ Telephone Number: _____

II. Owner of pit (if different than person responsible for pit):

Name: _____

Address (Street): _____

City: _____ State: _____

Zip: _____ Telephone Number: _____

III. Quarry/Pit Address: _____

APPLICATION FOR QUARRY AND PIT SAFETY CERTIFICATE

- X. Provide a brief description of the quarry or pit site, including the acreage outside and inside the pit. The description shall include the quarry/pit location marked on either USGS 7-1/2 minute map, USGS 15 minute map, or Texas Highway Department 1/2 scale county map.

APPLICATION FOR QUARRY AND PIT SAFETY CERTIFICATE

- XI. Provide a detailed description of and a construction plan for the barrier or other device to be constructed in accordance with the Regulations and the Act. The barrier must meet the regulation Barrier Construction Standards (Section 11.1034). The construction plan shall include an accurate map drawing or aerial photograph (scale no greater than 1"=100') of the quarry/pit site indicating the following features: public road right-of-way lines, intersections of public or private roads or driveways, quarry/pit location and barrier location and any other information or condition that in the opinion of the operator or owner, constitutes an unacceptable unsafe location. The drawing shall include a north arrow and bar scale. (Attach additional sheets and/or construction plans as necessary.)

APPLICATION FOR QUARRY AND PIT SAFETY CERTIFICATE

- XII. Quarry Safety Plan:** Applications for safety certificates for new pits in hazardous proximity to a public road opened from and after November 1, 1991 must provide the following additional information:

A statement as to the yearly progress of the encroachment of the pit perimeter within the hazardous proximity to the public road.



RAILROAD COMMISSION OF TEXAS
SURFACE MINING AND RECLAMATION DIVISION

FAX (512)463-6709

PHONE (512)463-6901

1701 N. CONGRESS

CAPITOL STATION - P.O. BOX 12967

AUSTIN, TEXAS 78711-2967

APPLICATION FOR TRANSFER OF QUARRY AND PIT SAFETY CERTIFICATE

For Railroad Commission Use Only: Not to be filled out by applicant

Application Number _____ Date Filed _____

Pit Number _____

I. Quarry/Pit Safety Certificate Number: _____

II. Person responsible for quarry or pit:

Name: _____

Address (Street): _____

City: _____ State: _____

Zip: _____ Telephone Number: _____

III. Owner of pit (if different than person responsible for pit):

Name: _____

Address (Street): _____

City: _____ State: _____

Zip: _____ Telephone Number: _____

IV. Date on which transfer of title or operation
of the quarry or pit occurs (day/month/year) _____

V. The new owner, operator, lessor or lessee, or party in interest must execute the transfer affidavit.

APPLICATION FOR TRANSFER OF QUARRY AND PIT SAFETY CERTIFICATION

TRANSFER AFFIDAVIT

STATE OF TEXAS

COUNTY OF _____

BEFORE ME, the undersigned authority, on this day appeared

_____, and stated on oath as follows:
(new owner, operator, lessor or lessee, or party in interest)

1. My name is _____ I am acting as
(name of person executing affidavit)

_____. The mailing address of
(state capacity in which affidavit is acting, if as an individual, state so)

_____ is _____
(new owner, operator, lessor or lessee, or party in interest) (Street or P. O. Box)

(City) (State) (Zip)

2. Pursuant to an agreement dated _____ with
(month, day, year)

_____ to transfer the title to the site
(previous owner, operator, lessor or lessee, or party in interest)

covered by Quarry/Pit Safety Certificate Number _____,

_____ will continue operations
(new owner, operator, lessor or lessee, or party in interest)

at the site covered by the Safety Certificate.

3. I have been authorized by _____
(new owner, operator, lessor or lessee, or party in interest)

to execute this affidavit in compliance with the terms of Tex. Nat. Res. Code Ann. Section 133.051.

4. I certify that all barriers between the pit and the nearest right-of-way line of any public road comply with the Texas Aggregate Quarry and Pit Safety Act and the rules and orders adopted by the Railroad Commission of Texas.

APPLICATION FOR TRANSFER OF QUARRY AND PIT SAFETY CERTIFICATION

5. I further certify that there will be no change, on or after the day of transfer of title or operation, in: a) the condition or location of a barrier; and b) the distance of a pit perimeter from the nearest right-of-way line of a public road or public or private intersection of a public road or driveway that adjoins the site.

(Signature of affiant)

(typed name of affiant) (affiant's capacity if not acting as an individual)

(new owner, operator, lessor or lessee, or party in interest)

SUBSCRIBED AND SWORN TO before me on _____, _____
(month,day) (year)

(signature of Notary)

Notary Public in and for
the State of Texas

My Commission Expires:

Affix Notary Seal Above

_____, _____
(month, day) (year)



RAILROAD COMMISSION OF TEXAS
SURFACE MINING AND RECLAMATION DIVISION

FAX (512)463-6709

PHONE (512)463-6901

1701 N. CONGRESS

CAPITOL STATION - P.O. BOX 12967

AUSTIN, TEXAS 78711-2967

APPLICATION FOR CESSATION OF OPERATIONS

For Railroad Commission Use Only: Not to be filled out by applicant

Application Number _____ Date Filed _____
Pit Number _____

I. Quarry/Pit Safety Certificate Number: _____

II. Name and address of responsible party who plans or intends to cease active operations:

Name: _____

Address (Street): _____

City: _____ State: _____

Zip: _____ Telephone Number: _____

III. Date on which the quarry/pit will
cease active operations (day/month/year) _____

IV. Has the responsible party attached any additional plans determined necessary to protect the
public good and welfare after the cessation of operations?

YES

NO

Signature of Responsible Party

Date

[graphic]

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 November 4, 1991.

TRD-9113924 Martha V. Swanger
Hearings Examiner, Gas
Utilities/LP-Gas Section
Legal Division
Railroad Commission of
Texas

Effective date: November 27, 1991

Proposal publication date: September 17, 1991

For further information, please call: (512) 463-6841

Part IV. Texas Department of Licensing and Regulation

Chapter 69. Manufactured Housing

Fee Structure

• 16 TAC §69.38

The commissioner of the Texas Department of Licensing and Regulation adopts an amendment to §69.38, without changes to the proposed text as published in the September 13, 1991, issue of the *Texas Register* (16 TexReg 5029).

The amendment allows a manufacturer to request training be performed at his or her facility in lieu of attending the course of instruction in the law and consumer protection regulations for registration applicants.

Department personnel will travel to the manufacturing facility to conduct training at the expense of the manufacturer.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 5221f, which provide the commissioner of the Texas Department of Licensing and Regulation with the authority to promulgate rules necessary to effectuate the purpose of the Act.

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

Issued in Austin, Texas, on November 4, 1991.

TRD-9113774 Larry E. Kosta
Executive Director
Texas Department of
Licensing and
Regulation

Effective date: November 22, 1991

Proposal publication date: September 13, 1991

For further information, please call: (512) 463-3127

General Requirements

• 16 TAC §69.125

The commissioner of the Texas Department of Licensing and Regulation adopts an amendment to §69.125, without changes to the proposed text as published in the September 13, 1991, issue of the *Texas Register* (16 TexReg 5029).

The amendment is adopted to allow manufacturers to request a one-day in-plant training session in lieu of completing the instruction requirements for registration.

The section will function the same with the addition of allowing manufacturers to request in-plant training.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 5221f, which provide the commissioner of the Texas Department of Licensing and Regulation with the authority to promulgate rules necessary to effectuate the purpose of the Act.

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

Issued in Austin, Texas, on November 4, 1991.

TRD-9113775 Larry E. Kosta
Executive Director
Texas Department of
Licensing and
Regulation

Effective date: November 22, 1991

Proposal publication date: September 13, 1991

For further information, please call: (512) 463-3127

Consumer Notice Requirements

• 16 TAC §69.186

The commissioner of the Texas Department of Licensing and Regulation adopts an amendment to §69.186, without changes to the proposed text as published in the September 13, 1991, issue of the *Texas Register* (16 TexReg 5030).

The section allows the commissioner to authorize a registered retailer to sell or exchange a used manufactured home which is not or may not be habitable to governmental agencies or authorities or to nonprofit organizations providing housing for the homeless.

Applications will be reviewed/authorized on an individual basis.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 5221f, which provide the commissioner of the Texas Department of Licensing and Regulation with the authority to promulgate rules necessary to effectuate the purpose of the Act.

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

Issued in Austin, Texas, on November 4, 1991.

TRD-9113776 Larry E. Kosta
Executive Director
Texas Department of
Licensing and
Regulation

Effective date: November 22, 1991

Proposal publication date: September 13, 1991

For further information, please call: (512) 463-3127

Titling

• 16 TAC §69.208

The commissioner of the Texas Department of Licensing and Regulation adopts an amendment to §69.208, without changes to the proposed text as published in the September 13, 1991, issue of the *Texas Register* (16 TexReg 5030).

The amendment assures that the local taxing authority collects the taxes due on a manufactured home prior to the title being transferred.

Collectors for taxing units must file any lien for taxes for the prior calendar year by September 1 and extinguishes any lien not received and recorded by the department by the September 1 deadline.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 5221f, which provide the commissioner of the Texas Department of Licensing and Regulation with the authority to promulgate rules necessary to effectuate the purpose of the Act.

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

Issued in Austin, Texas, on November 4, 1991.

TRD-9113777 Larry E. Kosta
Executive Director
Texas Department of
Licensing and
Regulation

Effective date: November 22, 1991

Proposal publication date: September 13, 1991

For further information, please call: (512) 463-3127

Part VI. Texas Motor Vehicle Commission

Chapter 107. Warranty Performance Obligations

• 16 TAC §107.7

The Texas Motor Vehicle Commission adopts the repeal of §107.7, concerning Hearing Officer's Proposal for Decision in lemon law

cases, without changes to the proposed text as published in the September 27, 1991, issue of the *Texas Register* (16 TexReg 5309).

The repeal is adopted in conjunction with a concurrent submission which is entitled "Contested Cases: Decisions and Final Orders." The new section changes the manner in which hearings officers render decisions in lemon law cases.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 4413(36), §6.07(e), which provides the commission with authority to adopt rules necessary and convenient to effectuate the provisions of the Texas Motor Vehicle Commission Code, §6.07.

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 November 6, 1991.

TRD-9113931 Ruth Casarez
Assistant Director-
Consumer Affairs
Texas Motor Vehicle
Commission

Effective date: November 27, 1991

Proposal publication date: September 27, 1991

For further information, please call: (512) 476-3616.

The Texas Motor Vehicle Commission adopts new §107.7, concerning final decisions in lemon law complaint cases, with changes to the proposed text as published in the September 27, 1991, issue of the *Texas Register* (16 TexReg 5309).

The new section is adopted to implement legislative amendments concerning final decisions enacted during the regular session of the 72nd Legislature.

Recognizing the need to resolve lemon law complaints more expeditiously, the new section enables the executive director to delegate final decision-making authority to the hearings officers who actually conduct the lemon law hearings. This procedure eliminates the need for and time required for hearings officers to prepare proposals for decisions which are then forwarded to the executive director for entry of a final order. It provides instead that after conducting a hearing, the hearings officer is to prepare a written decision outlining what evidence he took into account in reaching his decision. The written decision, accompanied by a final order which includes the hearings officer's findings of fact and conclusions of law, as well as the relief that is granted or denied, is then mailed to the parties. The section speeds up the decision-making process by at least 20 days.

The new section also provides a mechanism for review of the hearings officers' actions. A party who disagrees with a decision and final order entered by a hearings officer is given the opportunity to file a motion for rehearing within a specified period of time. A motion for

rehearing may be directed to the executive director or to the commission as a body, at the election of the movant. The section details what is required in such motions and sets out the time frames for consideration and decision of motions for rehearing. It also provides how an appeal of a final order may be taken by a party aggrieved by a commission order.

Comments on the proposed new section were received from Ford Motor Company, Consumers Union, Southern Regional Office, and from the commission's Consumer Affairs staff. In general, the comments were in favor of the rule as proposed. Ford supported the rule because it provided a way to expedite the resolution of lemon law cases. Consumers Union commented that the rule which allows the executive director to delegate final decision-making authority to hearings officers was consistent with the legislative intent to expedite the lemon law hearing process. In addition, it pointed out that by allowing a party who disagreed with the hearings officer's decision to file a motion for rehearing with either the executive director or with the commission, an important form of review was preserved from the consumers' viewpoint. It was noted that although going to the commission on a motion for rehearing would take longer than going to the director, a party at least had the option to present his argument to the commission whether he exercised it or not. If evidence resulted showing, for example, that respondents were routinely abusing the election to prolong the process, the commission could take corrective action at a later date. Commission's Consumer Affairs staff were in favor of the rule as a way to process lemon law complaints more quickly and as a way to insure a review process that consumers would perceive as fair and impartial.

The commission agreed with the written and oral comments received at the October 30, 1991 meeting and adopted the rule as proposed with the addition of explanatory language relating to what should be included in a motion for rehearing. With this minor amendment, the commission voted to adopt new §107.7, entitled, "Contested Cases: Decisions and Final Orders."

The new section is adopted under Texas Civil Statutes, Article 4413(36), §6.07(e)(2), which provides that the commission shall adopt rules for procedures to be used by the executive director in the conduct of hearings and issuance of final orders in cases filed under the Texas Motor Vehicle Commission Code, §6.07.

§107.7. Contested Cases: Decisions and Final Orders. To expedite the resolution of lemon law cases, the executive director is authorized to delegate final decision-making authority to hearings officers. Review of the hearings officers' decisions and final orders shall be according to the procedures set forth as follows.

(1) A hearings officer will prepare a written decision and final order as soon as possible but not later than 60 days after the hearing is closed. The decision and order will include the hearings officer's findings of fact and conclusions of law.

(2) The decision and final order shall be sent to all parties of record by certified mail.

(3) The decision and order is final and binding on the parties, in the absence of a timely motion for rehearing, on the expiration of the period for filing a motion for rehearing.

(4) A party who disagrees with the decision and final order may file a motion for rehearing within 20 days from the date of the mailing of the final order. A motion for rehearing must include all the specific reasons, exceptions, or grounds that are asserted by a party as the basis of the request for a rehearing. It shall recite, if applicable, the specific findings of fact, conclusions of law, or any other portions of the decision to which the party objects. Replies to a motion for rehearing must be filed with the agency within 30 days after the date of the mailing of the final order.

(5) A motion for rehearing may be directed either to the executive director or to the commission, as a body, at the election of the party filing the motion. If the party filing the motion does not include a specific request for a rehearing by the members of the commission, the motion shall be deemed to be a request for a rehearing by the executive director.

(6) The executive director or the commission, as appropriate, must act on the motion within 45 days after the mailing of the final order or it is overruled by operation of law. The executive director or the commission, as appropriate, may, by written order, extend the period for filing, replying to and taking action on a motion for rehearing, not to exceed 90 days after the date of mailing the final order. In the event of an extension of time, the motion for rehearing is overruled by operation of law on the date fixed by the written order of extension, or in the absence of a fixed date, 90 days after the mailing of the final order.

(7) If the executive director or the commission grants a motion for rehearing, the parties will be notified by first class mail. A rehearing before the executive director will be scheduled as promptly as possible. A rehearing before the commission will be scheduled at the earliest possible meeting of the commission. After rehearing, the executive director or commission shall issue a final order any additional findings of fact or conclusions of law necessary to support the decision. The executive director or the commission may also issue an order granting relief requested in a motion for rehearing or replies thereto without the need for a rehearing. If a motion for rehearing and the relief requested is denied, an order so stating will be issued.

(8) A person who has exhausted all administrative remedies, and who is aggrieved by a final decision in a contested case from which appeal may be taken is entitled to judicial review under the sub-

stantial evidence rule. The petition shall be filed in a district court of Travis County, within 30 days after the decision or order of the agency is final and appealable. A copy of the petition must be served on the agency and any other parties of record. After service of the petition on the agency and within the time permitted for filing an answer, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding. If the court orders new evidence to be presented to the agency, the agency may modify its findings and decision or order by reason of the new evidence, and shall transmit the additional record to the court.

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 November 6, 1991.

TRD-9113930 Ruth Casarez
Assistant Director-
Consumer Affairs
Texas Motor Vehicle
Commission

Effective date: November 27, 1991

Proposal publication date: September 27, 1991

For further information, please call: (512) 476-3618.

◆ ◆ ◆
TITLE 19. EDUCATION
Part II. Texas Education
Agency

Chapter 129. Student
Attendance

Subchapter AA. Commission-
er's Rules

◆ ◆ ◆
• 19 TAC §129.1021

The Texas Education Agency (TEA) adopts new §129.1021, concerning commissioner's rules, without changes to the proposed text as published in the October 4, 1991, issue of the *Texas Register* (16 TexReg 5456).

The new section creates an alternative method for calculating average daily attendance for districts with greater than 5.0% migrant enrollment. In qualifying districts, the district could use four of the six-week periods in lieu of full-year average daily attendance.

Justification for the new section will be the implementation of policies that allow school districts with greater than 5.0% migrant enrollment an alternative method for calculating their average daily attendance.

The amendment will function by allowing school districts with greater than 5.0% migrant enrollment to use four of the six-week periods in lieu of full-year average daily attendance, as long as the annual average daily attendance (ADA) calculated by using the best four of the six-week periods does not exceed the sum of the number of students who have certificates of eligibility plus the ADA calculated by using all six six-week periods.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Education Code, §16.06(c), which provides the commissioner with the authority to establish policies regarding the determination of average daily attendance for school districts.

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 October 18, 1991.

TRD-9113773 Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

Effective date: November 25, 1991

Proposal publication date: October 4, 1991

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

◆ ◆ ◆
Texas Department of Insurance Exempt Filing
◆ ◆ ◆

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

(Editor's note: As required by the Insurance Code, Article 5.96 and Article 5.97, the Register publishes notices of actions taken by the State Board of Insurance pursuant to Chapter 5, Subchapter L, of the Code. Board action taken under these articles is not subject to the Administrative Procedure and Texas Register Act.)

These actions become effective 15 days after the date of publication or on a later specified date.

The text of the material being adopted will not be published, but may be examined in the offices of the State Board of Insurance, 333 Guadalupe, Austin.)

The State Board of Insurance has approved a filing by the Crum and Forster Insurance

TITLE 40. SOCIAL SER-
VICES AND ASSIS-
TANCE

Part I. Texas Department
of Human Services

Chapter 48. Community Care
for Aged and Disabled

Release Hearings

◆ ◆ ◆
• 40 TAC §48.4101

The Texas Department of Human Services (DHS) adopts a new undesignated head, Release Hearings, and new §48.4101 concerning adult protective services, release hearings, without changes to the proposed text as published in the October 1, 1991, issue of the *Texas Register* (16 TexReg 5393).

Justification for the new section is to protect aged or disabled clients and the perpetrator's right to due process.

The new section will function by providing protection for aged and disabled adults by permitting the department to notify an employer or other entity of Adult Protective Services findings of abuse, neglect, or exploitation, and by providing the perpetrator with the right of due process.

No comments were received regarding adoption of the new section. The department did, however, make one editorial change to §48.4101(b).

The new section is adopted under the Human Resources Code, Title 2, Chapters 22 and 48, which authorizes the department to administer public and protective services for the aged and disabled.

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 November 5, 1991.

TRD-9113819 Nancy Murphy
Agency Liaison, Policy and
Document Support
Texas Department of
Human Services

Effective date: December 1, 1991

Proposal publication date: October 1, 1991

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

◆ ◆ ◆
Group of Companies of Basking Ridge, New Jersey proposing a rate revision to the Standard Insurance Agents and Brokers Errors and Omissions Program. This rate revision increases the increased limits factors by 15.5%, with a corresponding decrease in the base rates.

This filing was approved to become effective December 1, 1991.

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

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

Issued in Austin, Texas, on November 5, 1991.

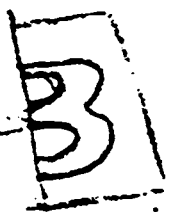
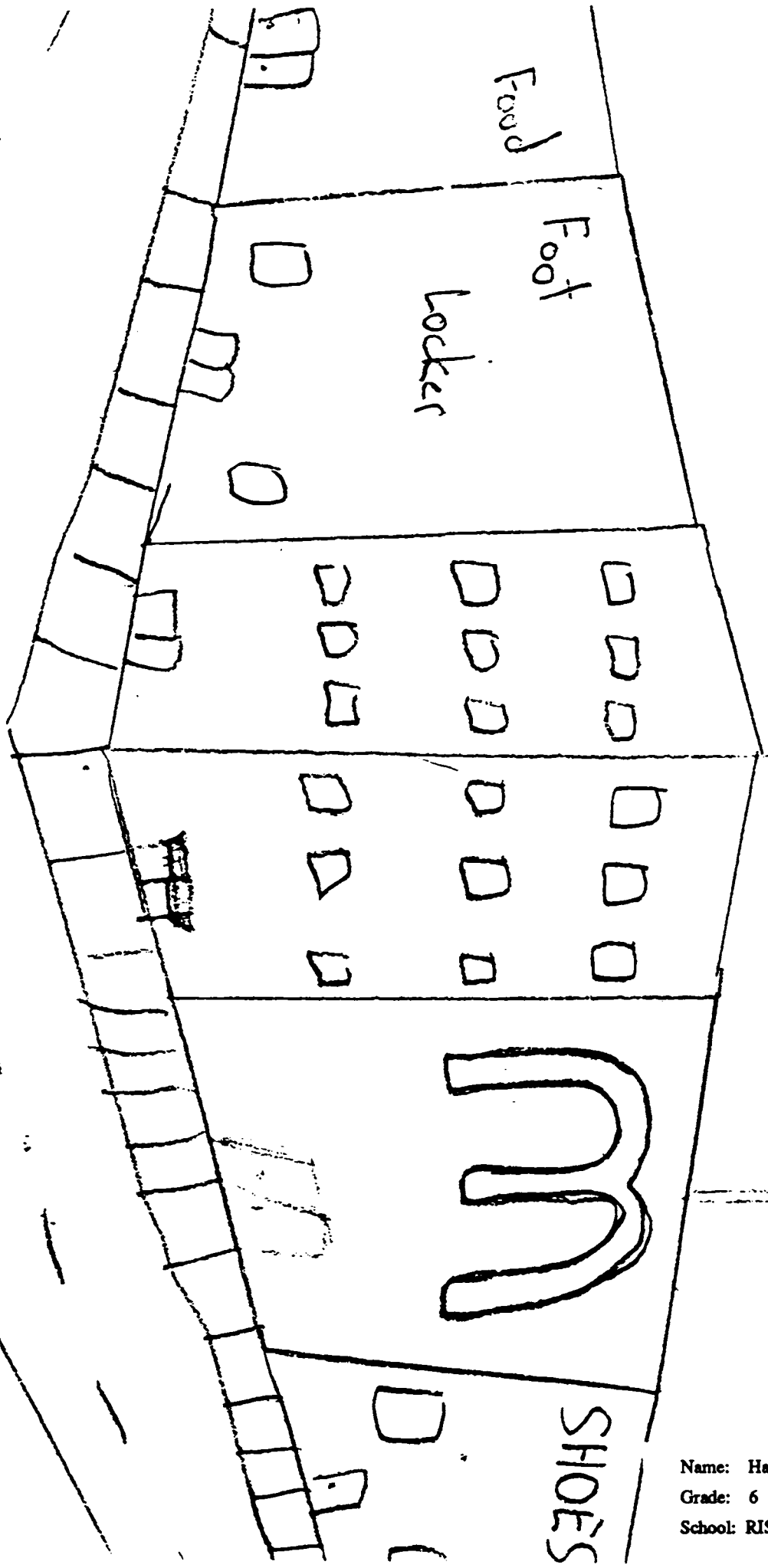
TRD-9113967

Angela Johnson
Assistant Chief Clerk
Texas Department of
Insurance

Effective date: December 1, 1991

For further information, please call: (512)
463-6327

◆ ◆ ◆



Name: Hank Benjamin
 Grade: 6
 School: RISD Summer School, Richardson ISD



Name: Amy Gilbert

Grade: 5

School: RISD Summer School, Richardson 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 outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol, Austin. These notices may contain more detailed agenda than what is published in the *Texas Register*.

Texas State Board of Public Accountancy

Friday, November 15, 1991, 11 a.m. The Full Board of the Texas State Board of Public Accountancy will meet at 1033 La Posada, Suite 340, Austin. According to the agenda summary, the board will approve the October 3, 1991 board meeting minutes; hear committee reports (executive, technical standards review, behavioral enforcement committee, examination, licensee education, licensing, constructive enforcement, and nominating committee); ratification of board orders; consent orders and proposals for decision; review of certain board communications; review of future meeting/hearing schedules; briefing on the November 16, 1991 swearing in ceremony; conduction of the swearing in ceremony for new CPAs; discussion of the Administrative Procedure and Texas Register Act and its effect on the board; and discussion of detail needed in Board Agenda books on TSR Committee items.

Contact: William Treacy, 1033 La Posada, Suite 340, Austin, Texas 78752-3893, (512) 451-0241.

Filed: November 7, 1991, 9:48 a.m.

TRD-9114004

Texas Department of Agriculture

Tuesday, November 19, 1991, 9 a.m. The Texas Com Producers Board of the Texas Department of Agriculture will meet at the Harvey Hotel, 3100 I-40 West, Amarillo. According to the agenda summary, the board will approve minutes; review financial statement; approval on detail of 1991-1992 budget; discuss activity reports; deferred compensation discussion; discussion on new projects to be funded; update on Texas Supreme; presentation for proposal on northern leaf blight and stalk rot; approval of date and work plan for voting districts; proposal presentation on spidermites; proposal presentation on plant banding; Mexican Rootworm results; discussion of other business; and set date and location of next meeting.

Contact: Carl King, 218 East Bedford, Dimmitt, Texas 79027, (806) 647-4224.

Filed: November 6, 1991, 9:44 a.m.

TRD-9113926

State Bar of Texas

Thursday-Friday, November 14-15, 1991, 10 a.m. The Commission for Lawyer Discipline of the State Bar of Texas will meet at the Texas Law Center, 1414 Colorado Street, Rooms 204/104, Austin. According to the agenda summary, the commission will receive public comment; approve prior minutes; discuss pending and resolved cases; review statistical reports; discuss pending litigation pursuant to Article 6252-17(2)(e); discuss pending grievance matters; discuss personnel matters; authorization of settlements; authorization of committee judgments; review Advisory Committee reports; review operating rules and procedures; review authority of commission; review budget of general counsel's office; review membership on the commission; discuss new and existing appointments; discuss Grievance Committees; discuss commission procedures; review commission's compliance with State Bar Act and orders of the Supreme Court; receive public comment; and adjourn.

Contact: Lori Markham, 400 West 15th Street, Suite 1500, Austin, Texas 78711, (512) 463-1381.

Filed: November 6, 1991, 4:53 p.m.

TRD-9114000

Thursday, November 14, 1991, 1 p.m. The Executive Committee of the State Bar of Texas will meet at the Sheraton Hotel, Creekside Room, Lobby Level, 500 North IH-35, Austin. According to the agenda summary, the committee will call the meeting to order; hear report of: chair of the board; president; president elect; executive director; general counsel; meet in executive session, closed pursuant to Article 6252-17 (2)(g), to discuss personnel matters; and executive session closed pursuant to Article 6252-17(2)(e), to discuss potential and/or pending litigation; hear report of

board committees; report of immediate past president; report of immediate past chair of the board; and report of Supreme Court liaison.

Contact: Pat Hiller, 1414 Colorado Street, Austin, Texas 78701, (512) 463-1541.

Filed: November 5, 1991, 3:59 p.m.

TRD-9113856

Friday, November 15, 1991, 9 a.m. The Board of Directors of the State Bar of Texas will meet at the Sheraton Hotel, Colorado Room 10th Floor, 500 North IH-35, Austin. According to the agenda summary, the board will call the meeting to order; take roll call; give invocation; hear report of Chair of Board; report of president, president elect; report of executive director; report of general counsel; meet in executive session (closed pursuant to Article 6252-17(2)(g)); discuss personnel matters; executive session, closed pursuant to Article 6252-17(2)(e); potential and/or pending litigation matters; reconvene in open session to hear report from board committees; report from bar committees/sections/divisions; status report on pro bono; reports from: Commission for Lawyer Discipline, immediate past president, immediate past chair of the board, TYLA president, supreme court liaison, court of criminal appeals liaison, judicial section liaison, federal judicial liaison; remarks from the general public; and adjourn.

Contact: Pat Hiller, 1414 Colorado Street, Austin, Texas 78701, (512) 463-1541.

Filed: November 6, 1991, 4:54 p.m.

TRD-9114001

Battleship Texas Advisory Board

Thursday, November 21, 1991, 3 p.m. The Battleship Texas Advisory Board will meet at the Offices of Liddell, Sapp, 3200 Texas Commerce Tower, 600 Travis Street, 32nd Floor Conference Room, Houston. According to the agenda summary, the board will review and discuss various items with respect to the Battleship Texas restoration.

Contact: Robert D. Miller, 3200 Texas Commerce Tower, Houston, Texas 77002, (713) 226-1186.

Filed: November 5, 1991, 10:46 a.m.

TRD-9113837

Texas Commission for the Blind

Monday, November 18, 1991, 10 a.m. The Board of the Texas Commission for the Blind will meet at the Holiday Inn, 1902 West Tyler Street, Harlingen. According to the complete agenda, the board will hold registration for public comments; make introductions; approval of minutes of September 23, 1991; discussion of activities relating to legislation passed during the 72nd Legislature; hear public comments regarding agency programs and services; executive director's year-end report on agency activities, and discussion; committee reports: legislative, audit, finance, policy, public relations; discussion of nominees for and approval of Employers of the Year awards; discussion and action on proposed amendments to rules of the Vocational Rehabilitation Program and proposed new rules for the Independent Living Rehabilitation Program; meet in executive session pursuant to Article 6252-17, §2(e) and (g), Vernon's Annotated Civil Statutes, to discuss personnel and pending legal matters; appointment of director of internal audit; appointment of executive director for fiscal year 1992; and election of vice-chairman.

Contact: Jean Wakefield, P.O. Box 12866, Austin, Texas 78711, (512) 459-2600.

Filed: November 6, 1991, 1:59 p.m.

TRD-9113948

Texas Department of Commerce

Thursday, November 14, 1991, 10 a.m. The Joint Meeting of the State Joint Training Coordinating Council Strategic Planning/Coordination and Executive Committees of the Texas Department of Commerce will meet at First City Centre, 816 Congress Avenue, Suite 1140, Austin. According to the complete agenda, the committees will discuss the FY 1992-1993 Job Training Partnership Act mission, goals and objectives and a discussion of employment generating activities. No action will be taken at this meeting.

Contact: Alexa Ray, P.O. Box 12728, Austin, Texas 78711, (512) 320-9884.

Filed: November 6, 1991, 1:56 p.m.

TRD-9113946

Thursday, November 14, 1991, 1 p.m. The State Job Training Coordinating Council Executive Committee of the Texas De-

partment of Commerce will meet at the First City Centre, 816 Congress Avenue, Suite 1140, Austin. According to the complete agenda, the committee will discuss the upcoming council agenda items for the next council meeting in December, 1991; and discuss strategic planning issues. No action will be taken at this meeting.

Contact: Alexa Ray, P.O. Box 12728, Austin, Texas 78711, (512) 320-9884.

Filed: November 6, 1991, 1:56 p.m.

TRD-9113947

Texas State Board of Examiners of Professional Counselors

Thursday, November 7, 1991, 10:30 a.m. The Texas State Board of Examiners of Professional Counselors held an emergency meeting at the Holiday Inn, 1015 Elm Street, Room 1623, Dallas. According to the complete agenda, the board discussed in executive session and possibly acted on in open session a personnel matter concerning evaluation of executive secretary; and discussed and possibly acted on, in open session, item concerning board policy. The emergency status was necessary as unforeseeable circumstances of the board having to participate in the evaluation of the executive secretary.

Contact: Don Rettberg, 1100 West 49th Street, Austin, Texas 78756, (512) 459-2900.

Filed: November 7, 1991, 8:18 a.m.

TRD-9114002

Texas Commission for the Deaf and Hearing Impaired

Friday, November 15, 1991, 5 p.m. The Board for Evaluation of Interpreters (BEI) of the Texas Commission for the Deaf and Hearing Impaired will meet at the TCDHI Conference Room, 1524 South IH-35, #200, Austin. According to the complete agenda, the board will approve the September 28, 1991 minutes; have public comments; hear chairperson's report; hear BEI staff report; discuss calendar update and schedule; and review BEI budget. An executive session will address the review of applicant testing materials. Final open session items will be old business; new business consisting of approval of new BEI board members; payment of evaluators; approval of new evaluators and Level I certification changed from Level I to Level I-beginner.

Contact: Larry D. Evans, 1524 South IH-35, #200, Austin, Texas 78712, (512) 444-3323 V/TDD.

Filed: November 5, 1991, 2:49 p.m.

TRD-9113844

Texas Planning Council for Developmental Disabilities

Thursday, November 14, 1991, 9 a.m. The Advocacy and Public Information Committee of the Texas Planning Council for Developmental Disabilities will meet at the Austin Marriott at the Capitol, 701 East 11th Street, Ballroom D, Austin. According to the complete agenda, the committee will call the meeting to order; approve minutes; discuss/approve position statement on education; designation of nominating committee representative; discuss state policy/legislation; federal policy/legislation; review public information activities; hear chairman's report; and adjourn.

Contact: Roger Webb, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 483-4081.

Filed: November 6, 1991, 2:43 p.m.

TRD-9113987

Thursday-Friday, November 14-15, 1991, 1 p.m. and 9 a.m. respectively. The Texas Planning Council for Developmental Disabilities will meet at the Austin Marriott at the Capitol, 701 East 11th Street, Ballroom D, Austin. According to the complete agenda, on Thursday, the council will call the meeting to order; introduce council members, staff, and guests; hear public comments; approve the minutes of August 15-16, 1991 meeting; special presentation; and hear executive committee report. On Friday, the council will introduce council members, staff, and guests; hear public comments; continuation of unfinished business from November 14, 1991; planning and evaluation committee report; information and referral network project funding activity proposal; assistive technology act funding activity; other discussion items: education position statement, and other discussion items; hear chairman's report; executive director's report; and adjourn.

Contact: Roger Webb, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 483-4081.

Filed: November 6, 1991, 2:39 p.m.

TRD-9113986

Texas Education Agency

Thursday, November 14, 1991, 11 a.m. The Commission on Standards For Teaching Profession (Committee on Recruiting and Training Members of Visiting Teams) of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-110, Austin. According to the complete agenda, the committee will discuss self-study questions generated by commission members; and discussion of future directions.

Contact: Edward M. Vodicka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9337.

Filed: November 6, 1991, 2:03 p.m.

TRD-9113950

Thursday, November 14, 1991, 1 p.m. The Commission on Standards For Teaching Profession (Committee on Certification Programs and Requirements) of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-110, Austin. According to the complete agenda, the committee will give a report on certification testing and other teacher assessment activities and individual programs (1987 standards) are as follows: Prairie View A&M University, Prairie View; and the University of Texas at Brownsville.

Contact: Edward M. Vodicka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9337.

Filed: November 6, 1991, 2:04 p.m.

TRD-9113955

Thursday, November 14, 1991, 3 p.m. The Commission on Standards For Teaching Profession Committee on Standards and Procedures for Institutional Approval of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-110, Austin. According to the complete agenda, the committee will give a progress report on pilot program in generic special education from University of Houston, Victoria; discussion of plans for team visits to Le Tourneau University and Southwestern Assemblies of God College; and discussion of House Bill 2885, Centers for Professional Development and Technology.

Contact: Edward M. Vodicka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9337.

Filed: November 6, 1991, 2:03 p.m.

TRD-9113952

Thursday, November 14, 1991, 4 p.m. The Commission on Standards For Teaching Profession Committee on Membership of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-110, Austin. According to the complete agenda, the committee will review and recommend nominees for commission membership.

Contact: Edward M. Vodicka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9337.

Filed: November 6, 1991, 2:04 p.m.

TRD-9113953

Friday, November 15, 1991, 8 a.m. The Commission on Standards For Teaching Profession Executive Committee of the Texas Education Agency will meet at the William B. Travis Building, 1701 North

Congress Avenue, Room 1-110, Austin. According to the complete agenda, the committee will review agenda items with committee chairs.

Contact: Edward M. Vodicka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9337.

Filed: November 6, 1991, 2:03 p.m.

TRD-9113951

Friday, November 15, 1991, 9 a.m. The Commission on Standards For Teaching Profession of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-104, Austin. According to the agenda summary, the commission will take roll call; adoption of agenda; approval of minutes, September 20, 1991, meeting; discussion of future directions with Commissioner Lionel R. Meno; review of state board of education actions; review of agency reorganization; report of the committees on: Recruiting and Training Members of Visiting Teams; Certification Programs and Requirements; Standards and Procedures for Institutional Approval; Membership, Nominating Committee; and Executive Committee.

Contact: Edward M. Vodicka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9337.

Filed: November 6, 1991, 2:04 p.m.

TRD-9113954

Texas Funeral Service Commission

Thursday, December 5, 1991, 9 a.m. The Texas Funeral Service Commission will meet at the Texas Department of Criminal Justice, 8100 Cameron Road, Building B-600, Austin. According to the agenda summary, the commission will approve minutes; introduce Commissioner Ted Karpf; meet in executive session; items for consideration to include: public comment period; hear executive director's report; committee reports; discuss proposed rule changes; proposed administrative penalties; and cases recommended to be closed.

Contact: Larry A. Farrow, 8100 Cameron Road, Building B, Suite 550, Austin, Texas 78753, (512) 834-9992.

Filed: November 6, 1991, 8:39 a.m.

TRD-9113868

Governor's Office

Thursday, November 14, 1991, 9 a.m. The Texas Mental Health and Mental Retardation Facility Review Task Force of the Office of the Governor will meet at the State Insurance Building, 1110 San Jacinto Street, Room 442, Austin. According to the agenda summary, the task force will have

an informational meeting of the Texas MHMR Facility Review Task Force.

Contact: Nicholas Hoover, P.O. Box 12428, Austin, Texas 78711, (512) 463-1778.

Filed: November 6, 1991, 9:51 a.m.

TRD-9113932

Thursday-Friday, November 14-15, 1991, 9 a.m. and 8:30 a.m. respectively. The Governor's Commission for Women of the Governor's Office will meet at 401 West 15th Street, 10th Floor, Austin. According to the agenda summary, on Thursday, the commission will have a continental breakfast; hear Carl Richie, Deputy Chief of Staff, Heidi Kirkpatrick, Executive Director of New Texas Foundation, introduction by Dr. Jeanie Stanley; hear committee report; working lunch with guest speaker; review and discuss setting goals for commission; and adjourn. On Friday, the commission will have a continental breakfast; continue discussing setting goals; and adjourn.

Contact: Cynthia W. Galvan, P.O. Box 12428, Austin, Texas 78711, (512) 463-1782.

Filed: November 5, 1991, 5:32 p.m.

TRD-9113864

Texas Statewide Health Coordinating Council

Thursday, November 14, 1991, 8 a.m. The Ad Hoc Committee on Health Concerns of the Elderly of the Texas Statewide Health Coordinating Council will meet at the Texas Department of Health, 1100 West 49th Street, Room M-368, Austin. According to the complete agenda, the committee will hold an organizational meeting.

Contact: Don Kretsinger, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7261.

Filed: November 6, 1991, 3:02 p.m.

TRD-9113988

Thursday, November 14, 1991, 9:15 a.m. The Nominating Committee of the Texas Statewide Health Coordinating Council will meet at the Texas Department of Health, 1100 West 49th Street, Room M-117, Austin. According to the complete agenda, the committee will develop a slate of officers including the chair, first and second vice-chairs and secretary.

Contact: Don Kretsinger, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7261.

Filed: November 6, 1991, 3:03 p.m.

TRD-9113990

Thursday, November 14, 1991, 10 a.m. The Plan Development Committee of the Texas Statewide Health Coordinating Council will meet at the Texas Department of

Health, 1100 West 49th Street, Room M-117, Austin. According to the complete agenda, the committee will consider and possibly act on: 1993-1994 state health plan (subcommittees; procedure; schedule); and 1993-1994 state health plan issue selection (staff reports; regional focus groups).

Contact: Don Kretsinger, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7261.

Filed: November 6, 1991, 3:03 p.m.

TRD-9113989

Thursday, November 14, 1991, 1 p.m. The Texas Statewide Health Coordinating Council will meet at the Texas Department of Health, 1100 West 49th Street, Room G-107, Austin. According to the complete agenda, the council will approve minutes of October 24, 1991 meeting; hear report of Chief, Bureau of State Health Data and Policy Analysis, Texas Department of Health; report of ad hoc nominating committee and election of officers; adoption of vision/position statements; report of plan development committee; report of ad hoc committee on health concerns of the elderly; and selection of next meeting date.

Contact: Don Kretsinger, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7261.

Filed: November 6, 1991, 3:04 p.m.

TRD-9113991

Texas Historical Commission

Saturday, November 23, 1991, 9 a.m. The State Board of Review of the Texas Historical Commission will meet at the Magnolia Lounge, Fair Park Grounds, Dallas. According to the agenda summary, the board will make announcements; elect officers; approve minutes of the previous meeting; and review nominations to the National Register.

Contact: Marlene Casarez, P.O. Box 12276, Austin, Texas 78711, (512) 463-6094.

Filed: November 7, 1991, 9:54 a.m.

TRD-9114006

Texas Department of Housing and Community Affairs

Wednesday-Thursday, November 13-14, 1991, 9 a.m. The Audit Committee of the Texas Department of Housing and Community Affairs will meet at the George Washington Carver Library, 1161 Angelina, Austin. According to the agenda summary, the committee will consider and possibly act on the following items: organizational chart; fiscal year 1991 budget; audits, reports, House and Senate bills; policy and

procedure manuals; internal audit charter; audit plan; and hear reports from work groups.

Contact: Mario Aguilar, P.O. Box 13941, Austin, Texas 78711, (512) 474-2974.

Filed: November 5, 1991, 3:08 p.m.

TRD-9113846

Texas Department of Human Services

Thursday, November 14, 1991, 10 a.m. The Post-Adoption Services Advisory Committee of the Texas Department of Human Services will meet at the Joe C. Thompson Center, 26th and Red River Streets, Room 3.1227, Austin. According to the complete agenda, the committee will hold review sessions; program update; review and approve minutes; risk assessment presentation; Medicaid program overview; hear provider report; information sharing; and adjourn.

Contact: Susan Klickman, P.O. Box 149030, Austin, Texas 78714-9030, (512) 459-3302.

Filed: November 5, 1991, 11:04 a.m.

TRD-9113838

Friday, November 15, 1991, 9 a.m. The Texas Board of Human Services of the Texas Department of Human Services will meet at the City Council Chambers, 2 Civic Center Plaza, Second Floor, El Paso. According to the complete agenda, the board will consider action on approval of October 18, 1991 minutes; hear comments and announcements by the chairman; remarks from the community; presentation by Royal Ferguson on foster care; FY's 1990 and 1991 budget adjustments; reimbursement methodology for physicians and other practitioners; expansion of Medicaid eligibility for pregnant women and infants; physician certification requirements for practitioners providing care to pregnant and postpartum women and children under age 21; reimbursement rates for case management for high-risk pregnant women and infants; amendments to LTC-NFR; removal of the relationship requirement for certain Medicaid-eligible children; expanding income eligibility for child care services; JOBS child care in Non-JOBS counties; schedule for analysis of commercial activities; amendments to policies and procedures; commissioner's report; the board will then go into closed executive session to meet with its attorney concerning George Green versus DHS; Fred Cunningham versus DHS; THA versus NHIC; THCA et al versus DHS; Christian Care Centers versus DHS; ARA Living Centers versus DHS; THCA versus DHS; the board will then reconvene in open session to take action resulting from discussion in executive session.

Contact: Sherron Heinemann, P.O. Box 149030, Austin, Texas 78714-9030, (512) 459-3048.

Filed: November 7, 1991, 9:50 a.m.

TRD-9114005

Texas Department of Insurance

Thursday, November 14, 1991, 8:30 a.m. The State Board of Insurance of the Texas Department of Insurance will meet at the William P. Hobby Building, 333 Guadalupe Street, Room 100, Austin. According to the agenda summary, the board will review and discuss pending and contemplated litigation; discuss solvency matters; commissioner's orders; consider and review board and commissioner planning calendar; consider possible action on implementation of a total quality management program at the Texas Department of Insurance; discuss personnel; consider job posting number 018 concerning the position of Chief of Staff.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: November 6, 1991, 12:56 p.m.

TRD-9113941

Texas Commission on Jail Standards

Tuesday, November 19, 1991, 3 p.m. The New Commissioner Orientation of the Texas Commission on Jail Standards will meet at 611 South Congress Avenue, Suite 200, Austin. According to the complete agenda, the commission will call the meeting to order; take roll call; introduce staff; give a historical overview of commission; review statutory basis and recent changes; discuss administrative rules process; variance procedures; inspection and enforcement process; jail planning assistance; House Bill 93 impact; and adjourn.

Contact: Jack E. Crump, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

Filed: November 5, 1991, 2:13 p.m.

TRD-9113840

Wednesday, November 20, 1991, 9 a.m. The Texas Commission on Jail Standards will meet at the Employees Retirement Building, 18th and Brazos Streets, Room 100, Austin. According to the agenda summary, the commission will call the meeting to order; take roll call of members; introduction and status of staff members; introduction of legal counsel for House Bill 93; hold administrative hearing: Potter County; discuss old business: Bexar County, Camp County, Kerr County, Polk county; review of conditional certification policy, change to standards; House Bill 93; suicide prevention guide; completed jail projects; jail population report and active remedial orders; discuss new business: Harris County, delegation of authority to transfer inmates;

commission members with direct jail responsibilities and results of orientation and in-service training; consider applications for variances: Bexar County-Central Texas Parole Violators Facility; hear director's report; discuss other business; meet in executive session; and adjourn.

Contact: Jack E. Crump, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

Filed: November 5, 1991, 2:13 p.m.

TRD-9113839

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Texas Commission on Law Enforcement Officer Standards and Education

Thursday, November 21, 1991, 9 a.m. The Texas Peace Officers' Memorial Advisory Committee of the Texas Commission on Law Enforcement Officer Standards and Education will meet at the Doubletree Hotel, 6505 IH-35 North, Austin. According to the agenda summary, the committee will call the meeting to order; take roll call of members; recognition of visitors; approval of minutes of the September 26, 1991 meeting; introduction of new committee members and election of vice-chairman and secretary (if necessary); introduction of regional directors; director's activity report; discuss and adopt TPOM logo registration; regional director's reports; discuss and adopt strategic plan; discuss and endorse research committee proposal; adjourn for lunch at 11:30 a.m. and reconvene at 1 p.m.; receive public comments on premiums, fund raising, and design competition; continue discussion on McDonnell print from September 26, 1991 meeting; discussion and adoption of design competition authorization; and adjourn.

Contact: Edward T. Laine, 1033 La Posada, Suite 175, Austin, Texas 78752, (512) 406-3615.

Filed: November 6, 1991, 8:41 a.m.

TRD-9113869

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Texas Department of Licensing and Regulation

Thursday, November 21, 1991, 10 a.m. The Texas Industrialized Building Code Council of the Texas Department of Licensing and Regulation will meet at the E. O. Thompson Building, 920 Colorado Street, Room 1012, Austin. According to the complete agenda, the council will review minutes of last meeting; give department update; discuss old business: adoption of 1991 editions of the following codes and their appendices: Uniform Building Code, Uniform Plumbing Code, and Uniform Mechanical Code, and the Standard Building Code, Standard Plumbing Code, Standard Mechanical Code, and Standard Gas Code;

adoption of the rule change concerning approvals of manufacturers' plans and specifications to new code editions; discuss new business: reevaluation of criteria for approval for design review agencies, third party inspection agencies, and third party inspectors; approval of GRANEX Exposed Aggregate Panels for Steelgard, Inc.: as an alternate material in accordance with UBC 105 and SBC 102.6; as a variance for building constructed for certification inspection in accordance with SBC 105.3; and review of DRA performance; approval of third parties; and hear public comments.

Contact: Jimmy G. Martin, P.O. Box 12157, Austin, Texas 78711, (512) 463-7348.

Filed: November 6, 1991, 2:25 p.m.

TRD-9113985

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Public Utility Commission of Texas

Tuesday, November 5, 1991, 6:30 p.m. The Public Utility Commission of Texas held an emergency meeting at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the commission considered the request of El Paso to postpone the re-convening the final order meeting in Docket Number 9945-application of El Paso Electric Company for authority to change rates, from the currently scheduled 3 p.m. on Wednesday, November 6, 1991 to 3 p.m. on Friday, November 8, 1991. The emergency status was necessary as a request filed by El Paso for postponement in reconvening the final order meeting needed immediate commission action.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 5, 1991, 4:10 p.m.

TRD-9113861

Friday, November 15, 1991, 1:30 p.m. The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the commission will hold a prehearing conference in Docket Number 9981-petition of general counsel to inquire into the reasonableness of the rates and services of Central Telephone Company of Texas.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 5, 1991, 3:18 p.m.

TRD-9113853

Friday, November 22, 1991, 1:30 p.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the commission will hold a hearing on the merits

will be convened in Docket Numbers 9863 and 10395: Docket Number 9863-petition of Houston Lighting and Power Company to resolve fuel cost over-recovery; and Docket Number 10395-petition of Houston Lighting and Power Company to make a fuel credit.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 5, 1991, 3:17 p.m.

TRD-9113852

Tuesday, February 18, 1991, 10 a.m. The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the commission will hold a hearing on the merits in Docket Number 10429-application of Sugar Land Telephone Company for approval of revisions to 911 service.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 5, 1991, 3:17 p.m.

TRD-9113851

Tuesday, February 25, 1992, 10 a.m. The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the commission will hold a hearing on the merits in Docket Number 10461-application of Southwestern Bell Telephone Company to introduce a new optional service, digital loop service, as part of the new integrated services tariff.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 5, 1991, 3:17 p.m.

TRD-9113850

Monday, July 13, 1991, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will hold a hearing on the merits in Docket Number 10646-petition of general counsel to inquire into the reasonableness of the rates and service of Contel of Texas, Inc.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 5, 1991, 3:16 p.m.

TRD-9113848

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Texas Low-Level Radioactive Waste Disposal Authority

Tuesday, November 19, 1991, 8:30 a.m. The Board of Directors of the Texas Low-Level Radioactive Waste Disposal Authority will meet at the Midland Hilton Hotel,

117 West Wall, Midland. According to the agenda summary, the board will meet in *executive session*; convene in *open session* to approve minutes; hear committee reports; hear the general manager's report on year-to-date financial status; FY 1992 budget adjustments; status of interstate and Texas compact negotiations; legal challenges to the constitutionality of the federal act; site evaluation and the recommendation for site characterization of the Faskin Ranch; and discuss the license application. Under new business, Mr. Anthony Safi will give a presentation; the selection of two potential sites will be considered; approval to submit a license application The Texas Department of Health; approval of site characterization scope of work; approval to continue evaluations; approval to negotiate for the purchase of the Faskin Ranch; approval of contracts; adoption of amendments to board rules and new rules; approval of signature authorizations; hear public comments; and adjourn.

Contact: L. R. Jacobi, Jr., 7701 North Lamar Boulevard, Suite 300, Austin, Texas 78752, (512) 451-5292.

Filed: November 6, 1991, 11:45 a.m.

TRD-9113938

Texas Real Estate Commission

Friday, November 15, 1991, 9:30 a.m. The Texas Real Estate Commission will meet at the TREC Headquarters Office, 1101 Camino La Costa, Conference Room 235, Austin. According to the agenda summary, the commission will consider possible action to adopt proposed amendments to 22 TAC, Chapter 537 concerning standard contract forms, and new §535.205 concerning inspectors licensed under prior law; discussion of proposed new 22 TAC §534.206-535.226 concerning real estate inspectors, and repeal of §§535.202-535.204; discussion of proposed amendments to §535.92 concerning renewal applications, and to §535.51 concerning application forms; possible action to propose new §535.95 concerning licensees on military duty and defaults on students loans, new §535.216 concerning inspector renewals, and new §534.218 concerning inspector continuing education; discussion of Senate Bill 3; approval of MCE providers and courses or accredited schools or courses; meet in executive session to discuss pending litigation; and authorization of payments from recovery funds.

Contact: Camilla Shannon, P.O. Box 12188, Austin, Texas 78711-2188 (512) 465-3900.

Filed: November 5, 1991, 2:27 p.m.

TRD-9113843

Texas Rehabilitation Commission

Friday, November 15, 1991, 8:30 a.m. The Complaint Review Committee of the Texas Advisory Board of Occupational Therapy of the Texas Rehabilitation Commission will meet at 4900 North Lamar Boulevard, Rooms 5501-02, Austin. According to the agenda summary, the committee will call the meeting to order; review and discuss complaints; and adjourn.

Contact: Linda Vaclavik, 4900 North Lamar Boulevard, Austin, Texas 78751-2316, (512) 483-4072.

Filed: November 6, 1991, 3:29 p.m.

TRD-9113992

Friday, November 15, 1991, 9 a.m. The Application Review Committee of the Texas Advisory Board of Occupational Therapy of the Texas Rehabilitation Commission will meet at 4900 North Lamar Boulevard, Rooms 5501-02, Austin. According to the agenda summary, the committee will call the meeting to order; review and discuss special consideration; and adjourn.

Contact: Linda Vaclavik, 4900 North Lamar Boulevard, Austin, Texas 78751-2316, (512) 483-4072.

Filed: November 6, 1991, 3:29 p.m.

TRD-9113993

Friday, November 15, 1991, 10 a.m. The Texas Advisory Board of Occupational Therapy of the Texas Rehabilitation Commission will meet at 4900 North Lamar Boulevard, Rooms 5501-02, Austin. According to the agenda summary, the board will call the meeting to order; approve minutes; hear report from Application Review Committee; requested appearance by Harmon Victor Sturm; recess to executive session; approval/disapproval of license application; report from Complaint Review Committee; report from the Texas Occupational Therapy Association; hear office report; and adjourn.

Contact: Linda Vaclavik, 4900 North Lamar Boulevard, Austin, Texas 78751-2316, (512) 483-4072.

Filed: November 6, 3:30 p.m.

TRD-9113994

Structural Pest Control Board

Tuesday, November 19, 1991, 9 a.m. The Structural Pest Control Board will meet at the Texas Agricultural Extension Center, #2 Abercrombie Road, Houston. According to the complete agenda, the board will approve the minutes of October 15, 1991, board meeting; consider for adoption the following rules and regulations: Sections 591.9,

591.1, 591.12, 591.13, and 591.21; Sections 593.1, 593.2, 593.3, 593.4, 593.6, 593.7, 593.9, and 593.10, and 593.21-593.24; Sections 595.2-595.21; and Sections 597.1 and 597.3; hear executive director's report; and set date for next board meeting.

Contact: Benny M. Mathis, Jr., 9101 Burnet Road, Austin, Texas 78758, (512) 835-4066.

Filed: November 5, 1991, 2:14 p.m.

TRD-9113841

Texas Woman's University

Wednesday, November 13, 1991, 9 a.m. The Board of Regents Student Affairs Committee of the Texas Woman's University will meet at Texas Woman's University, Administration Conference Tower, 14th Floor, Denton. According to the complete agenda, the committee will consider approval of the minutes of the meeting of August 14, 1991; report on TWU's diversity statement; report on human relations committee; and a report of the committee chair.

Contact: Shirley S. Chater, P.O. Box 23925, Denton, Texas 76204, (817) 898-2000.

Filed: November 6, 1991, 9:12 a.m.

TRD-9113883

Wednesday, November 13, 1991, 9:20 a.m. The Board of Regents Committee on Institutional Advancement of Texas Woman's University will meet at Texas Woman's University, Administration Conference Tower, 14th Floor, Denton. According to the complete agenda, the committee will consider approval of the minutes of the meeting of August 14, 1991; hear report on the alumnae relations, development and public information activities of the Office of Institutional Advancement; and report of the chair.

Contact: Shirley S. Chater, P.O. Box 23925, Denton, Texas 76204, (817) 898-2000.

Filed: November 6, 1991, 9:09 a.m.

TRD-9113884

Wednesday, November 13, 1991, 9:40 a.m. The Board of Regents Academic Affairs Committee of Texas Woman's University will meet at Texas Woman's University, Administration Conference Tower, 14th Floor, Denton. According to the complete agenda, the committee will consider approval of the minutes of the meeting of August 14, 1991; consider recommending approval of the Small Class Report (Exhibit B); hear reports on program review and strategic planning and SACS self-study; and report of the committee chair.

Contact: Shirley S. Chater, P.O. Box 23925, Denton, Texas 76204, (817) 898-2000.

Filed: November 6, 1991, 9:12 a.m.

TRD-9113885

Wednesday, November 13, 1991, 10:30 a.m. The Board of Regents Finance Committee of Texas Woman's University will meet at Texas Woman's University, Administration Conference Tower, 14th Floor, Denton. According to the agenda summary, the committee will consider approval of the minutes of the meetings of August 14, 1991 and August 29, 1991; consider recommending approval of personnel additions and changes, gifts and grants, agreements and contracts; allocations of federal funds; renewal and extension of insurance; Certificates of Substantial Completion, opening a bank account at First State Bank, Denton, to accommodate credit card payments and consider granting authority for R. W. Petersen, Controller, S. S. Fry, Accountant, and C. W. Coleman, Accountant, to sign checks on same; report of internal auditor activities and approval of 1991-1992 audit plan; and report of the committee chair.

Contact: Shirley S. Chater, P.O. Box 23925, Denton, Texas 76204, (817) 898-2000.

Filed: November 6, 1991, 9:12 a.m.

TRD-9113886

Wednesday, November 13, 1991, 1:30 p.m. The Board of Regents of Texas Woman's University will meet at Texas Woman's University, Administration Conference Tower, 14th Floor, Denton. According to the agenda summary, the board will consider legal, personnel, and real estate matters; consider approval of the minutes of the meeting of August 14, 1991; consider approval of TWU's diversity statement; consider approval of the Small Class Report; consider approval of personnel additions and changes, gifts and grants, agreements and contracts; allocations of federal funds; renewal and extension of insurance; Certificates of Substantial Completion, opening a new bank account at First State Bank, Denton, and granting authority to R. W. Petersen, Controller, S. S. Fry, Accountant, and C. W. Coleman, Accountant, to sign checks on same; consider approval of 1991-1992 audit plan; hear reports of the committee chairs; and report from the president.

Contact: Shirley S. Chater, P.O. Box 23925, Denton, Texas 76204, (817) 898-2000.

Filed: November 6, 1991, 9:13 a.m.

TRD-9113887

Texas Water Commission

Wednesday, November 20, 1991, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the com-

mission will consider various matters within the regulatory jurisdiction of the commission, including specifically the adoption of new or amended agency regulations. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including, but not limited to, rescheduling an item in its entirety or for particular action at a future date or time.

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

Filed: November 6, 1991, 4:51 p.m.

TRD-9113998

Wednesday, November 20, 1991, 3 p.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the commission will consider various matters within the regulatory jurisdiction of the commission, including specifically the adoption of new or amended agency regulations. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including, but not limited to, rescheduling an item in its entirety or for particular action at a future date or time.

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

Filed: November 6, 1991, 4:51 p.m.

TRD-9113999

Texas Workers' Compensation Insurance Facility

Tuesday, November 12, 1991, 9 a.m. The Governing Committee of the Texas Workers' Compensation Insurance Facility will meet at the Radisson Plaza Hotel, 700 San Jacinto Street, Austin. According to the complete agenda, the committee will approve minutes; hear reports from: ad hoc rating committee; contracts with auditors and actuary; status or servicing company bids; third quarter financial results; appeal concerning tax-exempt status; preliminary discussion on proposed by-laws, rules and regulations; and report on adoption of new rules by State Board of Insurance.

Contact: Miles L. Mathews, 8303 MoPac Expressway, Suite 310, Austin, Texas 78759, (512) 345-1222.

Filed: November 5, 1991, 2:21 p.m.

TRD-9113842

Regional Meetings

Meetings Filed November 5, 1991

The Concho Valley Council of Governments Executive Committee will meet at 5014 Knickerbocker Road, San Angelo, November 13, 1991, at 7 p.m. Information may be obtained from Robert R. Weaver, P.O. Box 60050, San Angelo, Texas 76906, (915) 944-9666. TRD-9113857.

Meetings Filed November 6, 1991

The Blanco County Appraisal District Board of Directors will meet at the Courthouse Annex in Blanco County, Avenue G and Seventh Street, Johnson City, November 12, 1991, at 6 p.m. Information may be obtained from Hollis Boatright, P.O. Box 338, Johnson City, Texas 78636, (512) 868-4624. TRD-9113881.

The Brazos Valley Development Council Executive Committee will meet at 3006 East 29th Street, Suite #2, Bryan, November 14, 1991, at 1:30 p.m. Information may be obtained from Glenn J. Cook, P.O. Drawer 4128, Bryan, Texas 77805, (409) 776-2277. TRD-9113880.

The Brown County Appraisal District Board of Directors met at 403 Fisk Avenue, Brownwood, November 11, 1991, at 7 p.m. Information may be obtained from Linda Meeks, 403 Fisk Avenue, Brownwood, Texas 76801, (915) 643-5676. TRD-9113997.

The Cass County Appraisal District Board of Directors met at the Cass County Appraisal District Office, 502 North Main Street, Linden, November 11, 1991, at 7 p.m. Information may be obtained from Janelle Clements, P.O. Box 1150, Linden, Texas 75563, (903) 756-7545. TRD-9113979.

The Central Appraisal District of Taylor County Board of Directors met at 1534 South Treadaway, Abilene, November 13, 1991, at 3:30 p.m. Information may be obtained from Richard Petree, 1534 South Treadaway, Abilene, Texas 79601, (915) 676-9381. TRD-9113995.

The Denton Central Appraisal District Appraisal Review Board will meet at 3911 Morse Street, Denton, November 20, 1991, at 9 a.m. Information may be obtained from John D. Brown, 3911 Morse Street, Denton, Texas 76205, (817) 566-0904. TRD-9113978.

The Erath County Appraisal District Board of Directors will meet at 1390 Harbin Drive, Board Room, Stephenville, November 13, 1991, at 4:30 p.m. Information may be obtained from Jerry Lee, 1390 Harbin Drive, Stephenville, Texas 76401, (817) 965-5434. TRD-9113981.

The Grayson Appraisal District Board of Directors will meet at 205 North Travis Street, Sherman, November 20, 1991, at 7:15 a.m. Information may be obtained from Angie Keeton, 205 North Travis Street, Sherman, Texas 75090, (903) 893-9673. TRD-9113982.

The Hansford County Appraisal District Board will meet at 709 West Seventh Street, Spearman, November 13, 1991, at 9 a.m. Information may be obtained from Alice Peddy, P.O. Box 567, Spearman, Texas 79081, (806) 659-5575. TRD-9113977.

The High Plains Underground Water Conservation District Number One Board of Directors will meet at 2930 Avenue Q, Conference Room, Lubbock, November 12, 1991, at 10 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, (806) 762-0181. TRD-9113940.

The Hunt County Tax Appraisal District Appraisal Review Board will meet at the Hunt County Tax Appraisal District, Board Room, 4801 King Street, Greenville, November 21, 1991, at 9 a.m. Information may be obtained from Melda Hart, P.O. Box

1339, Greenville, Texas 75401, (903) 454-3510. TRD-9113933.

The Nolan County Central Appraisal District Board of Directors met at the Nolan County Courthouse, Third Floor, Sweetwater, November 12, 1919, at 7 p.m. Information may be obtained from Patricia Davis, P.O. Box 1256, Sweetwater, Texas 79556, (915) 235-8421. TRD-9113996.

The Rio Grande Council of Governments Board of Directors will meet at 1014 North Stanton Street, El Paso, November 15, 1991, at 9:30 a.m. (MST). Information may be obtained from Cecile C. Gamez, 1014 North Stanton Street, Suite 100, El Paso, Texas 79902, (915) 533-0998. TRD-9113937.

The Rusk County Appraisal District Board of Directors will meet at the Administrative Office, 107 North Van Buren, Henderson, November 14, 1991, at 1:30 p.m. Information may be obtained from Melvin R. Cooper, P.O. Box 7, Henderson, Texas 75653-0007, (903) 657-3578. TRD-9113983.

The San Patricio County Appraisal District Board of Directors will meet at 1146

East Market Street, Sinton, November 14, 1991, at 9:30 a.m. Information may be obtained from Kathryn Vermillion, P.O. Box 938, Sinton, Texas 78387, (512) 364-5402. TRD-9113980.

The South East Texas Regional Planning Commission Executive Committee will meet at the City of Beaumont Council Chambers, Beaumont, November 20, 1991, at 7 p.m. Information may be obtained from Jackie Vice, P.O. Drawer 1387, Nederland, Texas 77627, (409) 727-2384. TRD-9113882.

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**Meetings Filed November 7,
1991**

The Canyon Regional Water Authority Board met at the Marion Independent School District Central Offices, FM 465 and FM 78, Marion, November 11, 1991, at 7:30 p.m. Information may be obtained from David Davenport, P.O. Box 188, Marion, Texas 78124, (512) 420-2323. TRD-9114003.

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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.

Texas Commission on Alcohol and Drug Abuse

Consultant Proposal Request

Pursuant to Texas Civil Statutes, Article 6252-11c, the Texas Commission on Alcohol and Drug Abuse (TCADA) invites proposals to provide the following consultant services.

Description of Work. The selected consultant will conduct a management and programmatic review which shall include, but not be limited to, the following: conduct an assessment to identify issues to be included in the management review. The assessment shall encompass: written documentation of the scope and detail of the assessment to insure reviews of all major areas including, but not limited to: a review of the developmental history of the chemical dependency treatment program of the Texas Department of Criminal Justice (TDCJ); a review of the current administrative and management structure of the Chemical Dependency Treatment Program of TDCJ; a review of the current program content of TDCJ's Chemical Dependency Treatment Program; a review of the current program delivery; identification of the factors that effect the outcome of major program areas and procedural controls of those program areas; development of a plan of recommendations for program improvement with a proposed implementation schedule based on the results of the assessment; approval of the plan by TCADA in conjunction with TDCJ commissioners.

All reviews and recommendations for charge as determined from the previous study will be based on nationally recognized and accepted standards for chemical dependency treatment for facilities or personnel.

This contract will begin December 1, 1991, and end March 31, 1992.

Person to be Contacted. Detailed specifications are contained in the request for proposal (RFP) available on or after November 4, 1991, from the Fiscal and Support Services Office, 2nd Floor, 1705 Guadalupe, Austin, between the hours of 8 a.m. and 5 p.m., Monday-Friday. For additional information, contact John B. Hopkins, Director of Fiscal and Support Services, (512) 867-8715.

The commission has budgeted a maximum amount of \$35,000 for this project.

Closing Date. Proposal to perform these consulting services will be accepted only if actually received in writing in the Fiscal and Support Services Office no later than 4 p.m., November 25, 1991. Bids should be submitted with an original and three copies. The Texas Commission on Alcohol and Drug Abuse reserves the right to reject any or all proposals.

Procedures for Selection of Consultant. The Texas Commission on Alcohol and Drug Abuse will consider the demonstrated competence, knowledge, and qualifications to complete the work satisfactorily and on time. These factors will be used for each individual who will be

assigned to the project, and for the firm as a whole, and well as the reasonableness of the proposed fee. The consultant firm which best meets these criteria will be selected for fee and contract negotiation. The Texas Commission on Alcohol and Drug Abuse has the sole discretion and reserves the right to cancel the request if it is considered in the best interest of the agency to do so.

Issued in Austin, Texas, on November 4, 1991.

TRD-9113833 Bob Dickson
Executive Director
Texas Commission on Alcohol and Drug Abuse

Filed: November 5, 1991

For further information, please call: (512) 867-8700

Texas Department of Criminal Justice Request for Information

This is a request for information only. Do not submit any pricing information unless entering pricing data for general information. Specifications will be distributed as necessary.

Recent legislation by the 72nd Legislature (House Bill 225) amended Texas Civil Statutes, Chapter 3, Article 6675a-3E, §5, 43rd Legislature.

Said amendment requires that the validation sticker no longer be applied to the license plate. Instead, the sticker will be an inside mount window decal to be applied above the inspection sticker on the front windshield. The quantity manufactured will be approximately 17 million decals.

The manufacturing of these decals will be accomplished by the Texas Department of Criminal Justice (TDCJ) validation sticker plant. This requirement is by Texas State Law.

The TDCJ validation sticker plant is requesting information pertaining to the manufacture of these decals. Information being requested includes types of sheeting, design and format, types of equipment necessary, and, any other information that might be relevant to this project.

The Texas Department of Transportation has requested certain requirements for the sheeting to be used in the making of these decals. The sheeting must have at least a one-year durability, to be removable without use of a razor blade, and shall destruct upon removing. Sheeting may be required to be back printed and it may be necessary to have some measure of anti-counterfeiting incorporated.

Format and design of the decals has not been determined and suggestions are open to review. Prior stickers have been manufactured in book form and this method is still open for review. Pad form and roll form are also being considered. Information concerning design, size, ink colors, etc., is being requested.

The TDCJ validation sticker plant currently has the equipment listed as follows. This facility would prefer to use

existing equipment, however, information concerning equipment that might be necessary to accomplish this project is also being requested. This facility is knowledge in the following processor: letterpress printing, offset printing, flexographic printing, screen printing, and hot stamp printing.

The validation sticker plant currently employs six industrial supervisors as well as approximately 80 inmates.

The manufacturing of the window decals will begin as soon as possible after January 1993, therefore, time is a factor and information is needed promptly.

All information or questions about this project should be addressed to: M. L. McDowell, Validation Sticker Plant, TDCJ-Wynee Unit, Huntsville, Texas 77349, (409) 291-5137, (409) 291-5137 (FAX).

Responders should reference a point of contact, along with a telephone number.

We request that all responses to this request for information be in writing, with or without brochures, pamphlets, etc., and be returned by December 15, 1991.

Equipment: letterpress: (2) Heidelberg SBB-22 1/2-inch by 32-1/4 inch with J.R. Wald wicket dryer ovens; (1) Heidelberg SBB-22 1/2-inch by 32-1/4 inch, converted to die cutter; (1) Heidelberg SBBS-22 1/2-inch by 32 1/4 inch, (1) Heidelberg SSB-Combi, 22 1/2-inch by 32-1/4 inch; (1) Heidelberg KSBA, 18-inch by 23-inch; (2) Heidelberg Windmill, 10-inch by 15-inch; offset: (1) Heidelberg SORM, 29 inches; (1) A. B. Dick 360 CD; flexographic: (1) Mark Andy 830; hot stamp: (1) markem LP-375TS; (1) Franklin, Model 164, dual six-inch by eight-inch print heads; screen print: (1) Masterprint, one man draw; coater: (1) J. R. Wald with suction feed and J. R. Wald wicket dryer oven.

Issued in Austin, Texas, on November 4, 1991.

TRD-9113805 Jackee Cox
General Counsel
Texas Department of Criminal Justice

Filed: November 4, 1991

For further information, please call: (512) 463-9988

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Texas Department of Health
Correction of Error

The Texas Department of Health submitted a Notice of Intent to Revoke Certificates of Registration for the Bureau of Radiation Control, which appeared in the October 18, 1991, *Texas Register* (16 TexReg 5870).

Due to a typesetting error by the Register the first sentence of the document was printed as follows.

"Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13, (25 TAC §289.112), the Bureau of Radiation Control..."

The sentence should have read: "Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13, (25 TAC §289.112), the Bureau of Radiation Control..."

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State Board of Insurance
Company Licensing

The following applications have been filed with the State Board of Insurance and are under consideration.

1. Application for admission to do business in Texas for Mutual plan Administrators, Inc., a foreign third party administrator. The home office is in Omaha, Nebraska.

2. Application for name change of Kennesaw Life and Accident Insurance Company, a foreign life insurance company. The home office is in Atlanta, Georgia. The proposed new name is Old Colony Life Insurance Company.

3. Application for name change of Safety Mutual Casualty Corporation, a foreign fire insurance company. The home office is in St. Louis, Missouri. The proposed new name is Safety National Casualty Corporation.

4. Application admission to do business in Texas for Surety Bonding Company of America, a foreign fire insurance company. The home office is in Sious Falls, South Dakota.

5. Application admission to do business in Texas for the Travelers Home and Marine Insurance Company, a foreign fire insurance company. The home office is in Indianapolis, Indiana.

Issued in Austin, Texas, on October 29, 1991.

TRD-9113865 Angella Johnson
Assistant Chief Clerk
Texas Department of Insurance

Filed: November 6, 1991

For further information, please call: (512) 463-6327

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Texas Commission on Jail Standards
Correction of Error

The Texas Commission on Jail Standards submitted the adoption of new 37 TAC §§300.1-300.6 for publication in the October 29, 1991, *Texas Register* (16 TexReg 6130).

In the adoption preamble the agency improperly listed the comment submitted by the Bee County Sheriff's Department. The fourth paragraph of the adoption preamble should read as follows.

"Commenting against the new sections was the Bee County Sheriff's Department."

◆ ◆ ◆
Board of Nurse Examiners
Correction of Error

The Board of Nurse Examiners for the State of Texas submitted Emergency amendments to 22 TAC §§217.6-217.8, concerning temporary permits, failure to renew license, and reactivation from inactive status, which appeared in the October 18, 1991, issue of the *Texas Register* (16 TexReg 5143).

In §217.6(d), the first line of the subsection should read "(d) Registered nurses with inactive or delinquent licenses."

In §217.8(a), there should be a closing bracket on the word "[practicing]".

In §217.8(b)(3), a closing bracket should follow the word "...course;"

Public Utility Commission of Texas
Notice of Application to Amend
Certificate of Convenience and
Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on October 30, 1991, to amend a Certificate of Convenience and Necessity pursuant to the Public Utility Regulatory Act, §§16(a), 17(e), 50, 52 and 54. A summary of the application follows.

Docket Title and Number. Application of Lyntegar Electric Cooperative, Inc. to amend Certificate of Convenience and Necessity for proposed transmission line within Terry County, Docket Number 10706 before the Public Utility Commission of Texas.

The Application. In Docket Number 10706, Lyntegar Electric Cooperative requests approval of its application to construct 2.8 miles of 69kV transmission line within Terry County.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0223, or (512) 458-0227 within 15 days of this notice.

Issued in Austin, Texas, on November 4, 1991.

TRD-9113854 Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Filed: November 5, 1991

For further information, please call: (512) 458-0100



**Notice of Intent to File Pursuant to PUC
Substantive Rule 23.27**

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for United States District Court, Houston.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for Approval of Plexar-Custom Service for United States District Court Pursuant to Public Utility Commission Substantive Rule 23.27(k). Tariff Control Number 10712.

The Application. Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for United States District Court. The geographic service market for this specific service is the Houston area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on November 4, 1991.

TRD-9113849 Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Filed: November 5, 1991

For further information, please call: (512) 458-0100



Railroad Commission of Texas
Notice of Hearing

The Railroad Commission of Texas will conduct a public hearing on a proposed amendment to 16 TAC §5.133, concerning prohibited allowances. The amendment will add provisions prohibiting allowances given by specialized motor carriers and affiliated shippers, producers, or other distributors as defined in the amendment, of sand, gravel, and other similar type road building and construction commodities.

The public hearing for comments will begin at 9 a.m., on December 18, 1991. The hearing will be held in the William B. Travis State Office Building, 1701 North Congress Avenue, Austin. Refer to the bulletin board in the first floor lobby for the room assignment. If all comments cannot be heard on the first day, the hearing will continue the following day.

The hearing will be conducted in compliance with the general rules of practice and procedure before the Legal Division. Any interested members of the public may appear and offer comments. Cross-examination of witnesses will not be allowed, although the presiding examiners may ask questions of any person testifying.

Issued in Austin, Texas, on November 6, 1991.

TRD-9113920 Martha V. Swanger
Hearings Examiner, Gas Utilities/LP Gas
Section, Legal Division
Railroad Commission of Texas

Filed: November 6, 1991

For further information, please call: (512) 463-7096



**Senate Interim Committee on Health
and Human**

Notice of Public Hearing

On November 12, the Senate Interim Committee on Health and Human Services will hold a public hearing in San Antonio, on the practices of private psychiatric and substance abuse facilities, including the apprehension, detention, solicitation, and referral of patients and billing and treatment.

The hearing will be held at the Centro De Artes Del Mercado, Market Square (El Mercado). The entrance to this facility is located at 101 South Santa Rosa, between Commerce and Dolorosa Streets. A map of the area is provided on the reverse side of this notice.

Registration for witnesses will begin at 8:30 a.m. and testimony will be taken from 9:30 until all witnesses have had an opportunity to speak.

Because of the significant number of people who have indicated they will be testifying before the committee, witnesses are encouraged to limit their remarks to five minutes to allow everyone an opportunity to participate. The committee also requests that witnesses provide written copies of their statements to ensure the testimony is accurately reflected in the transcript of these proceedings.

Due to the personal and sensitive nature of these topics, state and federal authorities will have investigators available at the hearing to speak privately with individuals who do not wish to present public testimony.

Persons who are not able to attend the hearing may mail a written statement to the committee office at P.O. Box

12068, Austin, Texas 78711. These statements will be made a part of the official hearing record. Please feel free to call our committee office at (512) 463-0360 if we can answer any questions or provide additional information.

Issued in Austin, Texas, on November 5, 1991.

TRD-9113836 Sandra Bernal-Malone
Committee Clerk
Senate Interim Committee on Health and
Human Services

Filed: November 5, 1991

For further information, please call: (512) 463-0360

Texas Department of Transportation Notice of Intent

Pursuant to Title 43, Texas Administrative Code, §11.88, concerning Environmental Impact Statements (EIS), the Texas Department of Transportation (TxDOT) is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Harris County.

The TxDOT, in cooperation with the Federal Highway Administration (FHWA), will prepare an environmental impact statement (EIS) on a proposal to improve Interstate Highway 610 (IH 610W) in Harris County. The proposed improvement would involve the reconstruction of the existing IH 610W from the vicinity of West Belfort Street to US 290 in the vicinity of Dacoma Avenue and IH 610N at West T. C. Jester Boulevard, a distance of approximately 9.2 miles.

Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand. Included in this proposal is the construction of dedicated express lanes between US 59S (Southwest Freeway) through the IH 10W (Katy Freeway) interchange and continuing to US 290 (Northwest Freeway). Alternatives under consideration include: taking no action; widen freeway, with elevated express lanes between US 59S and US 290; and widen freeway with at-grade express lanes from south of IH 10W, transitioning into elevated express lanes from south of IH 10W interchange to US 290/IH 610N. Incorporated into and studied with various build alternatives will be design variations of grade and alignment.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A public meeting will be held in the City of Houston on November 26, 1991. In addition, a public hearing will be held. Public notice will be given of the time and place of the meeting and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time.

To insure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties.

Agency Contact. Comments or questions concerning this proposed action and the EIS should be directed to Kenneth C. Bohuslav, P.E., Texas Department of Transportation, Division of Highway Design, 125 East 11th Street, Austin, Texas 78701, (512) 463-0269.

Issued in Austin, Texas, on November 4, 1991.

TRD-9113847 Diane L. Northam
Legal Administrative Assistant
Texas Department of Transportation

Filed: November 5, 1991

For further information, please call: (512) 463-8630

Texas State Treasury Department Amendment to Legal Banking Holidays

Texas Senate Bill 3, §4.03, 72nd Legislature (1991), requires that, before January 1 of each year, the state treasurer publish a list of the legal banking holidays to be observed by commercial banks in the following calendar year. The legal banking holidays for calendar year 1992 are as follows: Wednesday, January 1—New Year's Day; Monday, January 20—Martin Luther King, Jr. Day; Monday, February 17—Presidents Day; Monday, May 25—Memorial Day; Friday, July 3, Saturday, July 4—Independence Day; Monday, September 7—Labor Day; Monday, October 12—Columbus Day; Wednesday, November 11—Veterans Day; Thursday, November 26—Thanksgiving Day; Friday, December 25—Christmas Day.

Issued in Austin, Texas, on November 4, 1991.

TRD-9113828 Anne L. Schwartz
General Counsel
Texas State Treasury Department

Filed: November 5, 1991

For further information, please call: (512) 463-5791

Texas Water Commission Notice of Application For Waste Disposal Permit

Notice is given by the Texas Water Commission of public notices of waste disposal permit applications issued during the period of October 28–November 1, 1991.

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.

City of Baytown; Pinehurst Wastewater Treatment Facilities, at the intersection of Bayou Vista Drive and Bayou Woods in Baytown, approximately two miles south of the

Interstate Highway 10 in Chambers County; 11774-01; renewal.

City of Blooming Grove; a wastewater treatment facility; on the west bank of Rush Creek, at a point approximately 4,200 feet southeast of the intersection of State Highway 22 and FM Road 55, in Navarro County; 11606-01; renewal.

CNP Utility District; wastewater treatment facilities; are on the south bank of Cypress Creek approximately 2,700 feet west of Interstate Highway 45 in Harris County; 11239-01; renewal.

City of Crockett; wastewater treatment facilities; are on the south bank of Spring Creek, approximately 2,000 feet north of the intersection of the Missouri-Pacific Railroad with State Loop 304 in Houston County; 10154-01; renewal.

City of El Cenizo; El Cenizo Wastewater Treatment Facilities is approximately 3.5 miles west of the intersection of U.S. Highway 183 and Espejo Road on Espejo Road, approximately one mile west of Cadena Street in Webb County; 13577-01; new.

City of Eagle Pass; wastewater treatment facility; is to be on FM Road 1021, approximately five miles southeast of the intersection of FM Road 375 and FM Road 1021 in Maverick County; 10406-02; new.

Ellinger Sewer and Water Supply Corporation; wastewater treatment facilities are approximately 1,400 feet northeast of State Highway 71 and 1,900 feet northwest of FM Road 2503 in Fayette County; 10945-01; renewal.

Fairgreen Utility Company; wastewater treatment facilities; are approximately 1.2 miles west of U.S. Highway 59, on the south side of Greens Bayou in Harris County; 11791-01; renewal.

Global Octanes Corporation; a chemical facility; is at 2621 Tidal Road in the City of Deer Park, Harris County; 03375; new.

City of Groveton; the wastewater treatment facilities; are southeast of the City of Groveton on Coletto Road adjacent to Kickapoo Creek in Trinity County; 10556-01; renewal.

Guadalupe-Blanco River Authority; Springs Hill Wastewater Treatment Facilities; approximately 1,700 feet east-northeast of the intersection of Seguin-Sutherland Spring Road and State Highway 123 in the City of Seguin, in Guadalupe County; 11427-01; renewal.

Gustavo Garcia; wastewater treatment facility; at the intersection of Gulf Road and Interstate Highway 45 in Harris County; 11657-01; renewal.

Holly Farms of Texas, Inc.; a poultry processing facility; at 1019 Shelbyville Street in the City of Center, Shelby County; 02064; amendment.

City of Huntington; a potable water treatment plant; is approximately 3,600 feet south of U.S. Highway 69 and three miles southeast of Loop 287 in Angelina County; 01976; renewal.

City of Laredo; wastewater treatment facility; approximately 10.5 miles west-northwest of the intersection of FM Road 1472 and 3338 and one mile southwest of FM 1472 on an unnamed county road, adjacent to the Rio Grande in Webb County; 10681-06; new.

City of Pleasanton, Atascosa River Wastewater Treatment Plant; approximately 0.4 miles southeast of the intersection of U.S. Highway 281 and the Missouri Pacific Railroad and 0.5 mile northeast of the intersection of State Highway 97 and U.S. Highway 281 in the City of Pleasanton in Atascosa County; 10598-01; amendment.

City of San Antonio; wastewater treatment facility; approximately one mile west of the intersection of Mauerman Road and Pleasanton Road in Bexar County; 10137-03; renewal.

Schendel Brothers Dairy; a dairy; on the west side of an unnamed county road, east of FM Road 2656, approximately three miles south of the intersection of FM Road 2656 and State Highway 119 in Dewitt County; 03409; new.

Texas Commerce Ban; Sunshine Country Acres Wastewater Treatment Facility; is approximately 1.7 miles east of FM Roads 2736 and 917, and 1.2 miles southeast of the intersection of FM Roads 2738 and 917 in Johnson County; 12816-01; renewal.

Texas Department of Transportation; Guadalupe County Rest Area Wastewater Treatment Facility; are adjacent to and on the south side of Interstate Highway 10, between mile markers 621 and 622, approximately 10 miles east of the City of Seguin in Guadalupe County; 12280-01; renewal.

Texas Utilities Electric Company; Martin Lake Steam Electric Power Station; adjacent to Martin lake, east of FM Road 2658 and approximately five miles southwest of the City of Tatum, Rusk-Panola Counties; 01784; renewal.

BASF Corporation; Class I non-hazardous industrial solid waste facility; located on a 401-acre tract of land at 602 Copper Road in the City of Freeport, Brazoria County; HW-50128; amendment; 45-day.

Entech Recovery; a hazardous solid waste storage and processing facility; located on a 2.5 acre trace of land at 1000 North First Street, Garland, Dallas County; HW-50277; new; 45-day.

General Electric Capital Railcar Repair Services Corporation; Class I hazardous and non-hazardous industrial solid waste facility; located on a 60-acre tract of land on Tiffin Road, approximately 1.5 miles north of the City of Ranger, Eastland County; HW-50134; new; 45-day.

Issued in Austin, Texas, on November 4, 1991.

TRD-9113822 Laurie J. Lancaster
Deputy Chief Clerk
Texas Water Commission

Filed: November 5, 1991

For further information, please call: (512) 463-7906



1991 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the January-December 1991 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. A bullet beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
1 *Tuesday, January 1	Friday, December 21	Thursday, December 27
Friday, January 4	NO ISSUE PUBLISHED	
2 Tuesday, January 8	Wednesday, January 2	Thursday, January 3
3 Friday, January 11	Monday, January 7	Tuesday, January
4 Tuesday, January 15	Wednesday, January 9	Thursday, January 10
5 Friday, January 18	Monday, January 14	Tuesday, January 15
6 Tuesday, January 22	Wednesday, January 16	Thursday, January 17
Friday, January 25	1990 ANNUAL INDEX	
7 Tuesday, January 29	Wednesday, January 23	Thursday, January 24
8 Friday, February 1	Monday, January 28	Tuesday, January 29
9 Tuesday, February 5	Wednesday, January 30	Thursday, January 31
10 Friday, February 8	Monday, February 4	Tuesday, February 5
11 Tuesday, February 12	Wednesday, February 6	Thursday, February 7
12 Friday, February 15	Monday, February 11	Tuesday, February 12
13 Tuesday, February 19	Wednesday, February 13	Thursday, February 14
14 *Friday, February 22	Friday, February 15	Tuesday, February 19
15 Tuesday, February 26	Wednesday, February 20	Thursday, February 21
16 Friday, March 1	Monday, February 25	Tuesday, February 26
17 Tuesday, March 5	Wednesday, February 27	Thursday, February 28
18 Friday, March 8	Monday, March 4	Tuesday, March 5
19 Tuesday, March 12	Wednesday, March 6	Thursday, March 7
20 Friday, March 15	Monday, March 11	Tuesday, March 12
21 Tuesday, March 19	Wednesday, March 13	Thursday, March 14
22 Friday, March 22	Monday, March 18	Tuesday, March 19
23 Tuesday, March 26	Wednesday, March 20	Thursday, March 21
24 Friday, March 29	Monday, March 25	Tuesday, March 26
25 Tuesday, April 2	Wednesday, March 27	Thursday, March 28
26 Friday, April 5	Monday, April 1	Tuesday, April 2
27 Tuesday, April 9	Wednesday, April 3	Thursday, April 4
28 Friday, April 12	Monday, April 8	Tuesday, April 9
29 Tuesday, April 16	Wednesday, April 10	Thursday, April 11
*Friday, April 19	FIRST QUARTERLY INDEX	

30 Tuesday, April 23	Wednesday, April 17	Thursday, April 18
31 Friday, April 26	Monday, April 22	Tuesday, April 23
32 Tuesday, April 30	Wednesday, April 24	Thursday, April 25
33 Friday, May 3	Monday, April 29	Tuesday, April 30
34 Tuesday, May 7	Wednesday, May 1	Thursday, May 2
35 Friday, May 10	Monday, May 6	Tuesday, May 7
36 Tuesday, May 14	Wednesday, May 8	Thursday, May 9
37 Friday, May 17	Monday, May 13	Tuesday, May 14
38 Tuesday, May 21	Wednesday, May 15	Thursday, May 16
39 Friday, May 24	Monday, May 20	Tuesday, May 21
40 Tuesday, May 28	Wednesday, May 22	Thursday, May 23
41 *Friday, May 31	Friday, May 24	Tuesday, May 28
42 Tuesday, June 4	Wednesday, May 29	Thursday, May 30
43 Friday, June 7	Monday, June 3	Tuesday, June 4
44 Tuesday, June 11	Wednesday, June 5	Thursday, June 6
45 Friday, June 14	Monday, June 10	Tuesday, June 11
46 Tuesday, June 18	Wednesday, June 12	Thursday, June 13
47 Friday, June 21	Monday, June 17	Tuesday, June 18
48 Tuesday, June 25	Wednesday, June 19	Thursday, June 20
49 Friday, June 28	Monday, June 24	Tuesday, June 25
50 Tuesday, July 2	Wednesday, June 26	Thursday, June 27
51 Friday, July 5	Monday, July 1	Tuesday, July 2
Tuesday, July 9	NO ISSUE PUBLISHED	
52 Friday, July 12	Monday, July 8	Tuesday, July 9
53 Tuesday, July 16	Wednesday, July 10	Thursday, July 11
54 Friday, July 19	Monday, July 15	Tuesday, July 16
Tuesday, July 23	SECOND QUARTERLY INDEX	
55 Friday, July 26	Monday, July 22	Tuesday, July 23
56 Tuesday, July 30	Wednesday, July 24	Thursday, July 25
57 Friday, August 2	Monday, July 29	Tuesday, July 30
58 Tuesday, August 6	Wednesday, July 31	Thursday, August 1
59 Friday, August 9	Monday, August 5	Tuesday, August 6
60 Tuesday, August 13	Wednesday, August 7	Thursday, August 8
61 Friday, August 16	Monday, August 12	Tuesday, August 13
62 Tuesday, August 20	Wednesday, August 14	Thursday, August 15
63 Friday, August 23	Monday, August 19	Tuesday, August 20
64 Tuesday, August 27	Wednesday, August 21	Thursday, August 22
65 Friday, August 30	Monday, August 26	Tuesday, August 27
66 Tuesday, September 3	Wednesday, August 28	Thursday, August 29
Friday, September 6	NO ISSUE PUBLISHED	

67 Tuesday, September 10	Wednesday, September 4	Thursday, September 5
68 Friday, September 13	Monday, September 9	Tuesday, September 10
69 Tuesday, September 17	Wednesday, September 11	Thursday, September 12
70 Friday, September 20	Monday, September 16	Tuesday, September 17
71 Tuesday, September 24	Wednesday, September 18	Thursday, September 19
72 Friday, September 27	Monday, September 23	Tuesday, September 24
73 Tuesday, October 1	Wednesday, September 25	Thursday, September 26
74 Friday, October 4	Monday, September 30	Tuesday, October 1
75 Tuesday, October 8	Wednesday, October 2	Thursday, October 3
76 Friday, October 11	Monday, October 7	Tuesday, October 8
Tuesday, October 15	THIRD QUARTERLY INDEX	
77 Friday, October 18	Monday, October 14	Tuesday, October 15
78 Tuesday, October 22	Wednesday, October 16	Thursday, October 17
79 Friday, October 25	Monday, October 21	Tuesday, October 22
80 Tuesday, October 29	Wednesday, October 23	Thursday, October 24
81 Friday, November 1	Monday, October 28	Tuesday, October 29
82 Tuesday, November 5	Wednesday, October 30	Thursday, October 31
83 Friday, November 8	Monday, November 4	Tuesday, November 5
84 Tuesday, November 12	Wednesday, November 6	Thursday, November 7
85 *Friday, November 15	Friday, November 8	Tuesday, November 12
86 Tuesday, November 19	Wednesday, November 13	Thursday, November 14
87 Friday, November 22	Monday, November 18	Tuesday, November 19
88 Tuesday, November 26	Wednesday, November 20	Thursday, November 21
89 Friday, November 29	Monday, November 25	Tuesday, November 26
Tuesday, December 3	NO ISSUE PUBLISHED	
90 Friday, December 6	Monday, December 2	Tuesday, December 3
91 Tuesday, December 10	Wednesday, December 4	Thursday, December 5
92 Friday, December 13	Monday, December 9	Tuesday, December 10
93 Tuesday, December 17	Wednesday, December 11	Thursday, December 12
94 Friday, December 20	Monday, December 16	Tuesday, December 17
95 Tuesday, December 24	Wednesday, December 18	Thursday, December 19
96 *Friday, December 27	Friday, December 20	Monday, December 23
Tuesday, December 31	NO ISSUE PUBLISHED	
1 *Friday, January 3	Friday, December 27	Tuesday, December 31
2 *Tuesday, January 7	Tuesday, December 31	Thursday, January 2
3 Friday, January 10	Monday, January 6	Tuesday, January 7
4 Tuesday, January 14	Wednesday, January 8	Thursday, January 9
5 Friday, January 17	Monday, January 13	Tuesday, January 14

Texas Register

P.O. Box 13824

Austin, TX 78711-3824

(512)463-5561

The *Texas Register* encourages schools in all of Texas' school districts to participate in the Student Art project. Since its inception in 1987, the project has enjoyed success. More than 24 of Texas' schools districts have participated and artwork has been published in more than 400 issues of the *Texas Register*. The program is sponsored by the *Texas Register* to promote the artistic abilities of Texas students and to help students gain an insight into Texas government.

Student Art project guidelines include:

- ✓ Only students in grades K - 12 are eligible to participate.
- ✓ Only pen and ink drawings will be published.
- ✓ Artwork should be no smaller than 3" x 5" and no larger than 8 1/2" x 11".
- ✓ Each project submitted must be clearly labeled and legibly identified with the artist's name, grade, school, school district, and city.
- ✓ Artwork will be printed in groupings by school district. Each school will receive a free copy of the *Texas Register* when submitted artwork is printed. Schools are limited to three submissions per year.
- ✓ Artwork will not be returned.

The artwork is used to fill what would otherwise be 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 to each issue and in no way increases the cost of the *Texas Register*.

For more information about the student art project, please contact Roberta Knight at (512) 463-5561.



.....

YES, I am interested in submitting artwork from my school. Please send me more information about the Student Art project.

Name

School

District

Address

City, ST Zip

Are you a school official, art teacher, parent, or student?

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