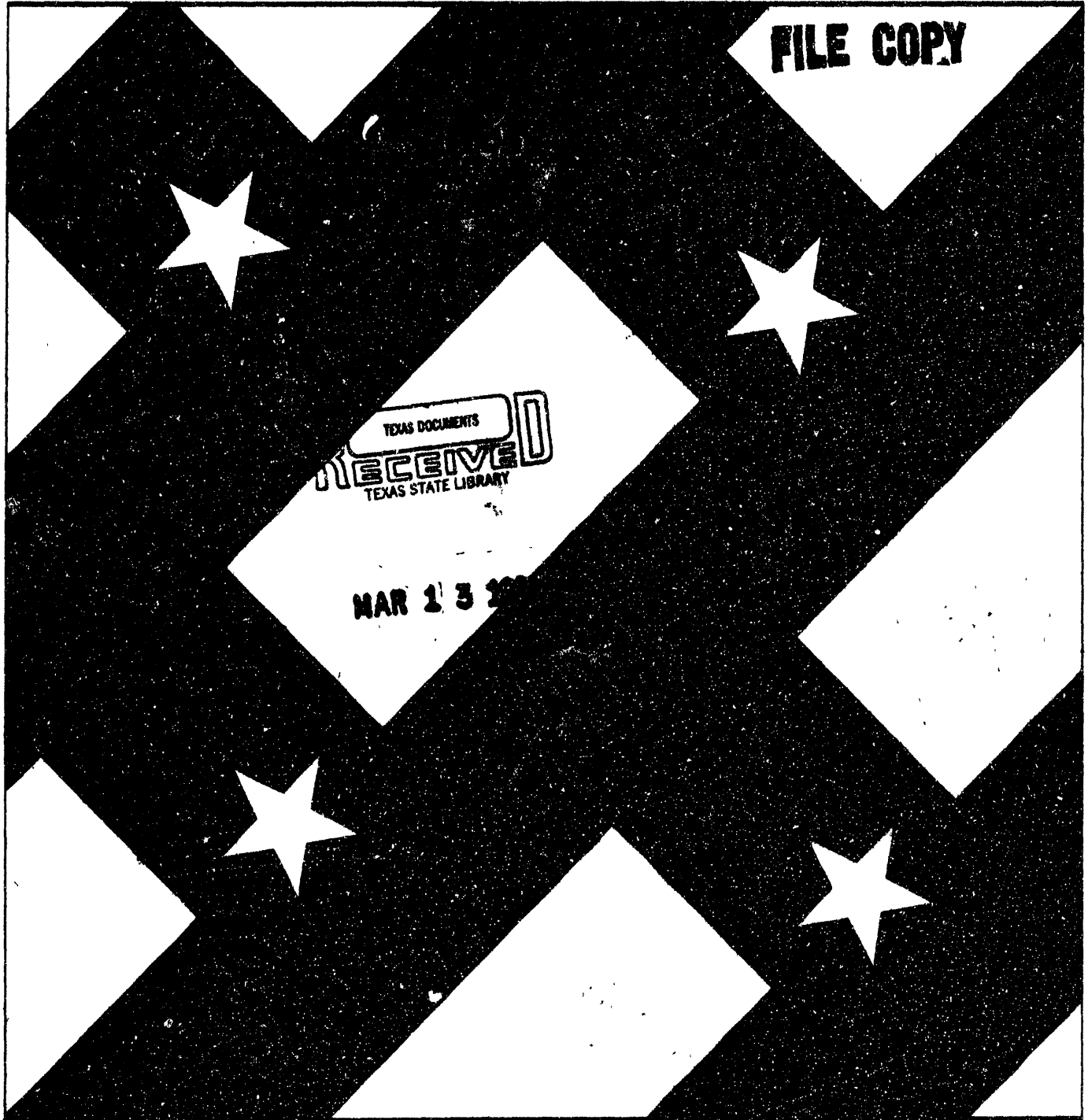


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Texas Register

Volume 11, Number 19, March 11, 1986

Pages 1163-1244



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MAR 13 1986

Highlights

The Parks and Wildlife Department adopts emergency amendments concerning wildlife management areas hunting, fishing, and trapping. Effective date - March 4. **page 1171**

The Texas Water Commission adopts emergency

new sections concerning water rights, substantive. Effective date - March 3. . . **page 1171**

The State Purchasing and General Services Commission proposes an amendment concerning invoicing and payment. Earliest possible date of adoption - April 11. **page 1220**

**Office of
the Secretary
of State**

Texas Register

The *Texas Register* (ISN 0362-4781) is published twice each week at least 100 times a year. Issues will be published on every Tuesday and Friday in 1986 with the exception of June 24, September 2, December 2, and December 30 by the Office of the Secretary of State.

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- Proposed Rules—rules proposed for adoption
- Withdrawn Rules—rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date
- Adopted Rules—rules adopted following a 30-day public comment period
- Open Meetings—notices of open meetings
- The Legislature—bills submitted to, signed by, and vetoed by the Governor and bills that are submitted to the Governor and enacted without his signature
- In Addition—miscellaneous information required to be published by statute or provided as a public service

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Attorney General

Description of attorney general submissions. Under provisions set out in the Texas Constitution, Texas Civil Statutes (Article 4399), and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open record decisions are summarized for publication in the *Register*.

Requests for Opinions

RQ-754. Request from W. N. Kirby, commissioner of education, Texas Education Agency, Austin, concerning whether bonds that have been fully defeased and refunded still are guaranteed by the permanent school fund.

RQ-755. Request from Robert E. Luna, law offices of Earl Luna, P.C., for Angie Warner-Lewisville Independent School District, Dallas, concerning whether the Open Records Act, Texas Civil Statutes, Article 6252-17a, §3(a)(11), permits the Lewisville Independent School District to withhold three internal memoranda.

RQ-756. Request from Bob Bullock, comptroller of public accounts, Austin, concerning application of the franchise tax to oil exchange agreements and oil matching buy/sell contracts.

RQ-757. Request from Bob Bullock, comptroller of public accounts, Austin, concerning whether interest should be paid on taxes collected by the comptroller on behalf of local jurisdiction.

RQ-758. Request from Allen Hightower, chairman, House Committee on Law Enforcement, Austin, concerning compensation of private investigators and experts under the Texas Code of Criminal Procedures, Article 26.055.

RQ-759. Request from Bob Rush, chairman, House Committee on Judiciary, Austin, concerning whether the legislature may authorize a municipality to impose certain court costs on municipal court convictions.

RQ-760. Request from H. Tati Santiesteban, chairman, Committee on Natural Resources, Austin, concerning validity of restrictive covenants by residential subdivisions not subject to a comprehensive zoning ordinance.

TRD-8602196

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Opinions

JM-427 (RQ-640). Request from Clayton T. Garrison, executive director, Employees Retirement System of Texas, Austin, concerning whether the per diem limitations of

the General Appropriations Act Texas Civil Statutes, Article V, §4, apply to members of the board of Trustees of the Employees Retirement System.

Summary of Opinion. The portion of the expense fund established by Title 110B, §25.311, from which the members of the board of trustees of the Employees Retirement System of Texas are to be paid any per diem properly due them, is composed of funds held in trust for the employees of the state to the extent that it consists of membership fees and interest on employees' contributions. Because these are trust funds, rather than appropriated funds within the meaning of the current General Appropriations Act, Article V, the limitations contained in Article V, §4, do not apply to the per diem which may be due a board member.

JM-428 (RQ-700). Request from Guy Hardin, district attorney, Pampa, concerning expenditure of \$27,650 allocated by the legislature for the benefit of the district attorney of the 31st and 223rd judicial districts.

Summary of Opinion. When a district attorney receives state funds for his office expenses under the Government Code, §46.004, the counties composing the district must continue to provide funds for his office in an amount at least equal to the amount of funds provided for the office by the county on the effective date of the act. Funds received under this statute are not subject to appropriation or control by the commissioners court.

JM-431 (RQ-687). Request from Jay T. Kimbrough, Bee County attorney, Beeville, concerning whether a county commissioner may use his office to collect international aid for earthquake victims.

Summary of Opinion. A county commissioner may not expend county funds or utilize county-paid personnel to collect aid for foreign victims of a natural disaster; however, incidental use of space in the county courthouse for such aid collection efforts does not violate relevant Texas constitutional provisions.

JM-432 (RQ-721). Request from E. Bruce Curry, district attorney, Kerrville, concerning whether a county may lease the right to cross county right-of-way to a pipeline company.

Summary of Opinion. Section 111.020 (b)(4) does not authorize a county commissioners court to lease right-of-way crossings to pipeline companies, which are common carriers subject to the Texas Natural Resource Code, Chapter 111.

JM-433 (RQ-664). Request from Don R. Stiles, executive director, Texas Adult Probation Commission, Austin, concerning validity of Senate Bill 454, 69th Legislature, 1985, which added three members to the Texas Adult Probation Commission.

Summary of Opinion. By virtue of the enrolled bill doctrine, Senate Bill 454, which adds three new members to the Texas Adult Probation Commission, is a valid enactment of the 69th Legislature.

JM-434 (RQ-668). Request from Mike Driscoll, Harris County attorney, Houston, concerning whether a county clerk is entitled to receive a fee in connection with administration of trust funds under Texas Civil Statutes, Article 2558a, §4c(a).

Summary of Opinion. Before a district or county clerk may collect a \$50 fee pursuant to Texas Civil Statutes, Article 2558a, §4c(a), the expense of the district or county clerk for handling the trust fund must have been incurred, and there must have been a designation of a responsible party by the court. Texas Civil Statutes, Article 3930(10), requires the county clerk to institute this collection of the fixed fee of \$50 authorized by §4c(a). Texas Civil Statutes, Article 2558a, §4c(a), requires that the county receive a reasonable fee of \$50. No other fee is contemplated by the provision. Finally §4c(a) is read together with the Probate Code, §12(a), the county clerk may collect the \$50 fee in probate proceedings.

JM-435 (RQ-530). Request from Dale Hanna, Johnson County attorney, Cleburne, concerning responsibility for notification of defendants in criminal cases.

Summary of Opinion. The Texas Code of Criminal Procedure, Article 28.01, provides that the court has the responsibility to notify defendants of pretrial hearings. The court also has the responsibility to notify defendants of trial settings. A prosecutor, however, is not ethically prohibited from notifying defendants of pretrial hearings and trial settings.

JM-436 (RQ-690). Request from Sam D. Millsap, Jr., district attorney, Bexar County Courthouse, San Antonio, concerning computation of good time credits under Texas Civil Statutes, Article 5118a, and manual labor credits under Code of Criminal Procedure, Article 43.10.

Summary of Opinion. A county jail inmate may receive good time credits under Texas Civil Statutes, Article 5118a, or manual labor credits under the Code of Criminal Procedure, Article 43.10, but not both. Attorney General Opinion MW-497 (1982) is overruled to the extent it conflicts with this result.

JM-437 (RQ-557). Request from Candy Moore, executive officer, Texas Polygraph Examiners Board, Austin, concerning whether a polygraph examiner is required to display his license at each location where he performs his services.

Summary of Opinion. A polygraph examiner is not necessarily required to display his license at each location where he performs his services.

JM-438 (RQ-723). Request from O. L. McCotter, director, Texas Department of Corrections, Huntsville, concerning validity of Texas Civil Statutes, Article 6166x-1, regarding good time credit.

Summary of Opinion. Texas Civil Statutes, Article 6166x-1, was impliedly repealed in 1943 by the enactment of Texas Civil Statutes, Article 61841. The repeal of Article 61841 in 1977 did not revive Article 6166x-1.

JM-439 (RQ-671). Request from Stephen C. Howard, Orange County attorney, Orange, concerning compliance with Texas Civil Statutes, Article 6701h, §1A, and the dismissal of charges.

Summary of Opinion. If the operator charged with failure to maintain financial responsibility produces an automobile liability insurance policy which met the requirements of the safety responsibility law at the time he operated the vehicle, he is entitled to dismissal of the charge against him through the vehicle (if owned by another) was not in-

sured by the owner. No specific policy language is required so long as it is legally adequate to satisfy the statute.

JM-440 (RQ-705). Request from David W. Wallace, Sutton County attorney, Sonora, concerning whether a commissioners court may set the office hours of the county auditor.

Summary of Opinion. The commissioners court of Sutton County does not have the authority to set the office hours of the office of county auditor.

JM-441 (RQ-658). Request from David Cain, chairman, Committee on Transportation, Texas House of Representatives, Austin, concerning whether administrative fees may be assessed by a justice of the peace or a municipal judge in traffic cases arising under Texas Civil Statutes, Article 6701d, §143A.

Summary of Opinion. Article 6701d does not authorize the imposition of an administrative referral fee in cases arising under the §143A program for the dismissal of certain misdemeanor charges upon completion of a driving safety course by defendant. No such fee may be assessed against §143A defendants or against the providers of driving safety courses without statutory authorization.

JM-442 (RQ-604). Request from Daniel W. Shindler, district attorney, Bay City, concerning whether an elected mayor may receive a salary increase at any time during his term.

Summary of Opinion. The salary of a mayor of a general law city may not be increased during the term for which the mayor is elected.

JM-443 (RQ-680). Request from Brad Wright, chairman, Committee on Public Health, Texas House of Representatives, Austin, concerning whether it is unconstitutional to impose the \$3.00 court cost set out in Texas Civil Statutes, Article 8309-1, §14(b), on persons convicted of certain traffic offenses that occurred before September 1, 1985.

Summary of Opinion. The \$3.00 court cost provided for in Texas Civil Statutes, Article

8309-1, §14(b), is inapplicable to offenses under Texas Civil Statutes, Article 6687b, and Article 6701d, that were committed before September 1, 1985.

JM-444 (RQ-681). Request from Gibson DuTerroil, chairperson, Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons, Austin, concerning applicability to counties, cities, hospital districts, and school districts, of the Human Resources Code, Chapter 122, which relates to the procurement of the products or services of disabled individuals.

Summary of Opinion. General statutes that require counties, cities, hospital districts, and school districts to engage in competitive bidding in order to make certain purchases do not apply to purchases such political subdivisions make pursuant to the Human Resources Code, §122.014.

JM-445 (RQ-627). Request from Marvin J. Titzman, executive director, Texas Surplus Property Agency, San Antonio, concerning whether the Texas Surplus Property Board may make purchases from the trust fund created by Texas Civil Statutes, Article 6252-6b, without approval by the State Purchasing and General Services Commission.

Summary of Opinion. Purchases of supplies, materials, services, and equipment by the Texas Surplus Property Agency are not exempt from applicable purchasing provisions of the State Purchasing and General Services Act.

JM-446 (RQ-175). Request from Homer A. Foerster, executive director, State Purchasing and General Services Commission, Austin, concerning accessibility under the Texas Open Records Act of Texas Supreme Court telephone records.

Summary of Opinion. The release of telephone records of the Supreme Court of Texas is a matter of discretion for the court, not for the State Purchasing and General Services Commission, which acts as the court's agent in collecting such information.

TRD-8602197

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Emergency

Rules An agency may adopt a new or amended rule, or repeal an existing rule on an emergency basis, if it determines that such action is necessary for the public health, safety, or welfare of this state. The rule 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 rules. New language added to an existing rule is indicated by the use of bold text. [Brackets] indicate deletion of existing material within a rule.

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Parks and Wildlife Department

Chapter 65. Wildlife Subchapter H. Wildlife Management Areas Hunting, Fishing, and Trapping

★31 TAC §§65.193, 65.224, 65.226

The Texas Parks and Wildlife Commission adopts on an emergency basis amendments to §§65.193, 65.224, and 65.226. The sections are amended on an emergency basis to allow the department's executive director to close a wildlife management area for public safety, open the James E. Daughtrey Wildlife Management Area to fishing, and place restrictive bag, possession, and size limits on bass and crappie.

The commission found that imminent peril to the public safety, welfare, and depletion of wildlife resources requires the emergency amendments.

The emergency amendments are adopted under the Texas Parks and Wildlife Code, Chapter 81, Subchapter E, which provides the Texas Parks and Wildlife Commission with the authority to regulate seasons, numbers, means, methods, and conditions for taking wildlife resources on wildlife management areas.

§65.193. General Regulations.

(a)-(l) (No change.)

(m) The director may permit public recreational activities on wildlife management areas which are compatible with sound resource management practices and public health and safety. [Water skiing is prohibited except on those leased or licensed management areas when allowed by the leasing or licensing authority, and on NFWFAs].

(n)-(t) (No change.)

§65.224. Fishing Seasons.

(a) General: No closed season except that the Black Gap Area will be closed from June 16 of each year through March 14 of the succeeding year, and there shall be no open season on the Chaparral, [James E. Daughtrey] Gene Howe, Las Palomas, Matador or Sierra Diablo Wildlife Management Areas.

(b)-(l) (No change.)

§65.226. Fish Size and Bag Limits.

(a) Except as noted in this section, size limits and bag limits for fish shall be the same as provided by proclamations issued by the Parks and Wildlife Commission for the county or counties where the management area is located.

(b) James E. Daughtrey Wildlife Management Area size limits and bag limits are as follows.

(1) It is unlawful to retain smallmouth or spotted black bass less than 10 inches in length or largemouth black bass less than 14 inches in length. The daily bag limit for largemouth, spotted, and smallmouth black bass is five in the aggregate. The possession limit is 10 in the aggregate.

(2) It is unlawful to retain crappie less than 10 inches in length. The daily bag limit is 25 and the possession limit is 50.

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Boyd M. Johnson
General Counsel
Texas Parks and Wildlife
Department

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For further information, please call
(512) 479-4770.

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★31 TAC §65.227

The Texas Parks and Wildlife Commission adopts on an emergency basis the repeal of §65.227. The section is repealed to place restrictive bag, possession, and size limits on bass and crappie on the James E. Daughtrey Wildlife Management Area.

The commission found that imminent peril to the public safety, welfare, and depletion of wildlife resources requires the emergency repeal.

The section is repealed on an emergency basis under the Texas Parks and Wildlife Code, Chapter 81, Subchapter E, which provides the Texas Parks and Wildlife Commission with the authority to regulate seasons, numbers, means, methods, and conditions for taking wildlife resources on wildlife management areas.

§65.227. Fish Size Limits.

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Chapter 69. Resource Protection Fish and Wildlife Values

★31 TAC §§69.20-69.28

The Texas Parks and Wildlife Department is renewing the effectiveness of the emergency adoption of amended §§69.20-69.28 for a 60-day period effective March 8, 1986. The text of the amended §§69.20-69.28 was originally published in the November 19, 1985, issue of the *Texas Register* (10 TexReg 4456).

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Part IX. Texas Water Commission

Chapter 297. Water Rights, Substantive

Subchapter A. Definitions

★31 TAC §297.1

The Texas Water Commission, on February 25, 1986, adopted on an emergency basis new §§297.1, 297.11-297.25, 297.31, 297.32, 297.41-297.51, 297.61, 297.62, 297.71-297.74, 297.81-297.83, 297.91-297.94, and 297.101-297.106, concerning water rights, substantive.

New Chapter 297 contains substantive water rights sections and is made up of the substantive provisions from former Texas Department of Water Resources Chapters 303, 305, and 307. Sections con-

cerning application procedures, fees, notice, and actions by the commission in the area of water rights are generally contained in new Chapter 295.

The Texas Water Commission found that an urgent need existed to adopt these new sections on an emergency basis because the emergency rules for Chapters 303, 305, and 307 currently in force will expire on March 3, 1986. The Texas Water Commission proposed permanent rules for the same subject matter in the *Texas Register* on January 10, 1986, and January 17, 1986, and has the authority under law to adopt the proposed permanent rules at the present time. However, the commission has decided to delay adoption of all of its currently proposed rules in order to facilitate public comment, and a lapse in the rules would constitute an imminent peril to the public health, safety, and welfare.

The new section is adopted under the Texas Water Code, §5.103, which provides the Texas Water Commission with the authority to adopt rules necessary to carry out its powers and duties under the code and the laws of the state.

§297.1. Definitions. The following words and terms, when used in this chapter and in Chapter 295 of this title (relating to Water Rights Rules, Procedural), shall have the following meanings, unless the context clearly indicates otherwise.

Appropriations—The process or series of operations by which an appropriative right is acquired. A completed appropriation thus results in an appropriative right; the water to which a completed appropriation in good standing relates is appropriated water.

Appropriative right—The right to impound, divert, or use a specific quantity of state water acquired by law.

Baseflow or normal flow—The portion of streamflow uninfluenced by recent rainfall or flood runoff and is comprised of springflow, seepage, discharge from artesian wells or other groundwater sources, and the delayed drainage of large lakes and swamps. (Accountable effluent discharges from municipal, industrial, irrigation, or other uses of ground or surface waters may be included at times.)

Beneficial use—Use of the amount of water which is economically necessary for a purpose authorized by law, when reasonable intelligence and reasonable diligence are used in applying the water to that purpose.

Certificate of adjudication—An instrument evidencing a water right issued to each person adjudicated a water right in conformity with the provisions of the Texas Water Code, §11.323, or the final judgment and decree in *State of Texas v. Hidalgo County Water Control and Improvement District 18*, 443 S.W.2d 728 (Texas Civil Appeals—Corpus Christi 1969, writ ref. n.r.e.).

Certified filing—A declaration of appropriation or affidavit which was filed with

the State Board of Water Engineers under the provisions of the 33rd Legislature, 1913, General Laws, Chapter 171, §14, as amended.

Claim—A sworn statement filed pursuant to the Texas Water Code, §11.303.

Commencement of construction—An actual, visible step beyond planning or land acquisition, which forms the beginning of the on-going (continuous) construction of a project in the manner specified in the approved plans and specifications, where required, for that project. The action must be performed in good faith with the bona fide intent to proceed with the construction.

Commission—The Texas Water Commission.

Conservation—The development of water resources; and those practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.

Dam—Any artificial structure, together with any appurtenant works, which impounds water. All structures which are necessary to impound a single body of water shall be considered as one dam. A structure used only for diverting water from a watercourse by gravity is a diversion dam.

Diffused surface water—Water on the surface of the land in places other than watercourses. Diffused water may flow vagrantly over broad areas coming to rest in natural depressions, playa lakes, bogs, or marshes. (An essential characteristic of diffused water is that its flow is short-lived.)

Director or executive director—The executive director, or an acting executive director of the Texas Water Commission, or any authorized individual designated by the executive director to act in his place for the commission, unless a direct authorization from the executive director or acting executive director is required by the Texas Water Code or these sections.

District—Any district or authority created by authority of the Texas Constitution, either Article III, §52(b)(1) and (2), or Article X I, §59.

Domestic use—Use of water by an individual or a household for drinking, washing, or culinary purposes; for irrigation of lawns, or of a family garden and/or orchard when the produce is not sold; for watering of domestic animals; and for water recreation for which no consideration is given or received. If the water is diverted, it must be diverted solely through the efforts of the user.

Groundwater—Water under the surface of the ground other than underflow of a stream and underground streams, whatever may be the geologic structure in which it is standing or moving.

Hydropower use—The use of water for hydroelectric and hydromechanical power and for other mechanical devices of like nature.

Industrial use—The use of water in processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including commercial feedlot operations, commercial fish production, and the development of power by means other than hydroelectric.

Irrigation use—The use of water for the irrigation of crops, trees, and pastureland, including, but not limited to, golf courses and parks which do not receive water through a municipal distribution system.

Livestock use—The use of water for the open-range watering of livestock connected with farming, ranching, or dairy enterprises.

Mining use—The use of water for mining processes, including hydraulic use, drilling, washing sand and gravel, and oil field repressuring.

Municipal use—The use of treated water within or without a municipality and its environs whether supplied by a person, privately-owned utility, political subdivision, or other entity as well as the use of municipal sewage effluent for certain purposes specified as follows. It includes the use of treated water for domestic purposes, fighting fires, sprinkling streets, flushing sewers and drains, watering parks and parkways, and recreational purposes, including public and private swimming pools, the use of treated water in industrial and commercial enterprises supplied by a municipal distribution system without special construction to meet its demands, and for the watering of lawns and family gardens. Municipal use also includes the application of municipal sewage effluent upon land sites, pursuant to a Texas Water Code, Chapter 26, permit, where:

(A) the primary purpose of the application is the treatment and/or necessary disposal of such effluent;

(B) the application site is a park, parkway, golf course, or other landscaped area owned by the owner of the permitted sewerage system; or

(C) the effluent applied to such site is generated within an area for which the commission has adopted a no-discharge rule.

Navigable stream—By law, Natural Resources Code, §20.001(3), any stream or streambed as long as it maintains from its mouth upstream an average width of 30 feet or more, at which point it becomes statutorily nonnavigable.

100-year flood—The flood peak discharge of a stream, based upon statistical data, which would have a 1.0% chance of occurring in any given year.

Permit—The authorization by the commission to a person whose application for a permit has been granted.

Person—Any individual, corporation, organization, government, or governmental subdivision or agency, business trust, estate, trust, partnership, and any other legal entity or association.

Priority—As between appropriators, the first in time is the first in right, Texas Water Code, §11.027, except as provided by the Texas Water Code, §11.028.

Recreational use—The use of water impounded in or diverted or released from a reservoir or watercourse for fishing, swimming, water skiing, boating, hunting, and other forms of water recreation, including aesthetic land enhancement of a subdivision, golf course, or similar development.

Register—The *Texas Register*.

Return water or return flow—That portion of state water diverted from a water supply and beneficially used which is not consumed as a consequence of that use and returns to a watercourse. Return flow includes sewage effluent.

Runoff—That portion of streamflow comprised of surface drainage or rainwater from land or other surfaces during or immediately following a rainfall.

Secondary use—The reuse of state water for a purpose after the original, authorized use.

Sewage or sewage effluent—Water-carried human or animal wastes from residences, buildings, industrial establishments, cities, towns, or other places, together with any groundwater infiltration and surface waters with which it may be commingled.

Spreader dam—A levee-type embankment placed on alluvial fans or within a flood plain of a watercourse, common to land use practices, for the purpose of overland spreading of diffused waters and overbank flows.

State water—The water of the ordinary flow, underflow, and tides of every flowing river, natural stream, and lake, and of every bay or arm of the Gulf of Mexico, and the stormwater, floodwater, and rainwater of every river, natural stream, canyon, ravine, depression, and watershed in the state. State water also includes water which is imported from any source outside the boundaries of the state for use in the state and which is transported through the beds and banks of any navigable stream within the state or by utilizing any facility owned or operated by the state.

Stormwater or floodwater—Water flowing in a watercourse as the result of recent rainfall.

Streamflow—The total water flowing within a watercourse.

Surplus water—For the purposes of Chapter 295 of this title (relating to Water Rights, Procedural) and this chapter, water taken from any source in excess of needs and not used beneficially for the purpose authorized by law.

Underflow of a stream—Water in sand, soil, and gravel below the bed of the watercourse, together with the water in the lateral extensions of the water-bearing material on each side of the surface channel, such that the surface flows are in contact with the subsurface flows, the latter flows being confined within a space reasonably

defined and having a direction corresponding to that of the surface flow.

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

Watercourse—A definite channel of a stream in which water flows within a defined bed and banks, originating from a definite source or sources. (The water may flow continuously or intermittently, and if the latter, with some degree of regularity, depending on the characteristics of the sources.)

Water right—A right acquired under the laws of this state to impound, divert, or use state water.

Watershed—A term used to designate the area drained by a stream and its tributaries, or the drainage area upstream from a specified point on a stream.

Water supply—Any body of water, whether static or moving, either on or under the surface of the ground, available for beneficial use on a reasonably dependable basis.

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Subchapter B. Classes of Permits

★ 31 TAC §§297.11-297.20

The new sections are adopted on an emergency basis under the Texas Water Code, §5.103, which provides the Texas Water Commission with the authority to adopt rules necessary to carry out its powers and duties under the code and the laws of the state.

§297.11. Permit under the Texas Water Code, §11.121. A Texas Water Code, §11.121, permit authorizes the appropriation of state water on a repetitive year-round basis or for a term of years. If for a term of years, it does not vest the holder with any permanent water right and expires under its own terms.

§297.12. Seasonal Permit under the Texas Water Code, §11.137. A seasonal permit limits the diversion of state water to the portion or portions of the calendar year stated in the permit. (This type of permit is usually granted where irrigation is desired for sea-

sonal crops or where the applicant proposes to appropriate water to fill an off-channel reservoir during the wet season for later use.)

§297.13. Temporary Permit under the Texas Water Code, §11.138. A temporary permit, as its name implies, is short-lived in nature and designed for purposes of a temporary nature. A temporary permit may not be granted for a period of time exceeding three years. This permit does not vest in the holder any permanent right to the use of state water and expires in accordance with its terms. (It is primarily designed for those persons who require state water for highway construction or oil and gas well drilling projects.) Temporary permits may be issued for beneficial purposes to the extent that they do not interfere with or adversely affect prior appropriations or vested rights on a stream. The period of time to use water authorized by a temporary permit which was initially granted for a period of less than three years may be extended, but in no event shall the entire period exceed three years nor shall an extension of time seek a change of diversion rate, diversion point, or additional water.

§297.14. Contractual Permit. A contractual permit authorizes the use of state water where the source of supply is water lawfully authorized for the use of another person and a written agreement has been entered into with said person. The permit is for a period of time limited by the contract, and no permanent right is acquired by the holder. Although some contractual permits are still in existence, they are no longer being issued by the commission. See Subchapter J of this chapter (relating to Water Supply Contracts and Amendments).

§297.15. Permit under the Texas Water Code, §11.143. A Texas Water Code, §11.143, permit authorizes anyone owning a dam or reservoir on his or her own property which impounds or contains not more than 200 acre-feet of water for domestic and livestock purposes to take state water therefrom for any lawful purpose authorized in the permit. (A permit is not required to use water from such a reservoir for domestic and livestock use.) Reservoirs on navigable streams are not exempt under the Texas Water Code, §11.142. Application requirements and procedures are less detailed than those required for Texas Water Code, §11.121, permits. It may be permanent in nature, seasonal, or granted for a term of years. The owner of an exempt impoundment under the Texas Water Code, §11.142, who subsequently desires to use state water therefrom for other than domestic and livestock purposes may elect to apply for a permit under the Texas Water Code, §11.143, or proceed under the provisions of the Texas Water Code, §11.124, *et seq.*

§297.16. Permit for Storage under the Texas Water Code, §11.140. A permit for storage is a permit issued by the commission solely for the purpose of optimum development of

a project. Upon application, this type of permit may be converted to a permit for beneficial use. See the Texas Water Code, §11.140.

§297.17. *Emergency Permit under the Texas Water Code, §11.139.* An emergency permit authorizes the appropriation of state water for a period of not more than 30 days to alleviate conditions which threaten the public health, safety, and welfare.

§297.18. *Interwatershed Transfers.* A permit is required to transfer state water from one named river basin or coastal basin to another. See the Texas Water Code, §11.085.

§297.19. *Term Permit.* The commission may grant a permit for a limited term of years when it determines that inadequate water is available in the source of supply on a perpetual basis to satisfy an application but that adequate water is available on a limited basis due to the underutilization of existing water rights in the source of supply.

§297.20. *Permit for Diversion from Un-sponsored or Storage-Limited Reservoirs.* A permit is required to divert state water from a reservoir constructed by the federal government for which no local sponsor has been designated nor permit issued or a reservoir permitted for storage solely for the purpose of optimum development of the project. See Subchapter D, §297.31 and §297.32 of this chapter (relating to Diversion from Un-sponsored or Storage-Limited Reservoirs).

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Subchapter C. Type of Uses

★ 31 TAC §§297.21-297.25

The new sections are adopted on an emergency basis under the Texas Water Code, §5.103, which provides the Texas Water Commission with the authority to adopt rules necessary to carry out its powers and duties under the code and the laws of the state.

§297.21. *Direct Diversion.* A permit under the Texas Water Code, §11.121, for direct diversion is required of all persons who propose to divert state water from a watercourse or its underflow, unless the water is to be used for domestic and livestock uses. The manner of diversion may be by pumping or by gravity flow.

§297.22. *Diversion from a Reservoir.* A permit for diversion is required of all persons who propose to divert state water from a reservoir and apply it to an authorized use except as provided by the Texas Water Code,

§11.142. The manner of diversion may be by pumping or by gravity flow. (Although a person may hold a valid permit for a reservoir or storage facility, water cannot be diverted and used from the reservoir unless the permit so authorizes.)

§297.23. *On-Channel Reservoir.* Except as provided by the Texas Water Code, §11.142, a permit is required for a dam and/or a reservoir on a watercourse, except for a natural reservoir or lake. The permit will authorize the appropriation of state water to fill the reservoir, divert and use the water, or use the water in place.

§297.24. *Off-Channel Reservoir.* Except as provided by the Texas Water Code, §11.142, a permit is required for an impounding structure that is not directly on a watercourse, if the reservoir is to impound state water and the commission deems that the impoundment is necessary to grant authorization to divert and use state water. The permit will authorize the appropriation of state water to fill the reservoir, divert and use the water, or use the water in place. This definition does not include in-system balancing reservoirs operating under authorized permits.

§297.25. *Storage in Another's Reservoir.* A permit is required to appropriate state water for storage in another's lawful reservoir and to divert and use water therefrom. Consent of the reservoir owner must be obtained. If the reservoir is a project of the Soil Conservation Service, United States Department of Agriculture, consent must be obtained from the Soil and Water Conservation District and any others having jurisdiction over the reservoir before a permit can be acquired.

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Subchapter D. Diversion From Un-sponsored or Storage-Limited Reservoirs

★ 31 TAC §297.31, §297.32

The new sections are adopted on an emergency basis under the Texas Water Code, §5.103, which provides the Texas Water Commission with the authority to adopt rules necessary to carry out its powers and duties under the code and the laws of the state.

§297.31. *Use Other Than Domestic or Livestock.* A person desiring to divert state water for other than domestic and livestock uses from a reservoir constructed by the federal government for which no local sponsor

has been designated nor permit issued or a reservoir permitted for storage solely for the purpose of optimum development of the project shall make application for a permit pursuant to the Texas Water Code, §11.124.

§297.32. *Domestic or Livestock Use.* A person seeking permission to use state water for domestic or livestock use from a reservoir constructed by the federal government for which no local sponsor has been designated nor permit or a reservoir permitted for storage solely for the purpose of optimum development of the project issued shall apply for authorization. If a request for domestic use is received, and upon investigation it is determined that an existing water supply system is reasonably available to the property, the request shall be denied. In considering the quantity of water to be used for domestic use, the commission will apply a standard of 125 gallons per capita per day unless persuasive reasons for a different daily allocation exist. See §295.81 of this title (relating to Application).

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Subchapter E. Issuance and Conditions of Water Permit or Certificate of Adjudication

★ 31 TAC §§297.41-297.52

The new sections are adopted on an emergency basis under the Texas Water Code, §5.103, which provides the Texas Water Commission with the authority to adopt rules necessary to carry out its powers and duties under the code and the laws of the state.

§297.41. *Subject to Prior and Superior Water Rights.* A permit or certificate of adjudication to appropriate state water granted by the commission shall be subject to all prior and superior rights of others using water on the stream or other source of supply.

§297.42. *Additional Limitations.* The commission will incorporate into every permit or certificate of adjudication any condition, restriction, limitation, or provision reasonably necessary for the enforcement and administration of the water laws of the state and the rules of the commission.

§297.43. *Requiring Storage Facilities.* Except for an application for an emergency, temporary, seasonal, or term permit, the commission may require an applicant to provide storage sufficient to yield the requested annual diversion.

§297.44. Acceptance of Permit or Certificate of Adjudication. Acceptance of the permit or certificate of adjudication by the water rights holder will be an acknowledgment and agreement that the holder will comply with all the terms, provisions, conditions, limitations, and restrictions embodied in such permit or certificate of adjudication. The exercise of rights under a permit authorizing the inundation or installation of a structure upon the land of another will be conditioned upon the continued effectiveness of an easement or agreement between the parties.

§297.45. Return and Surplus Waters.

(a) A right to take and use water is limited to the extent and purposes stated in the permit. For example, if an entity has used state water permitted for a municipal use, it shall not use or sell the effluent for any other purpose without first obtaining a permit from the commission; however, the application of municipal sewage effluent upon land sites is considered a municipal use of water, when conducted pursuant to a Texas Water Code, Chapter 26, permit, where:

(1) the primary purpose of the application is the treatment and/or necessary disposal of such effluent;

(2) the application site is a park, parkway, golf course, or other landscaped area owned by the owner of the permitted sewerage system; or

(3) the effluent applied to such site is generated within an area for which the commission has adopted a no-discharge rule.

(b) All return and surplus water shall be returned to a source of water supply or watercourse at the point or points stated in the permit, certificate of adjudication, or amendatory orders of the commission. Return water shall conform to quality standards set by the state.

§297.46. Suppliers of Water for Irrigation. Persons supplying state water for irrigation purposes shall charge the purchaser on a volumetric basis. The commission may direct suppliers of state water to implement appropriate procedures for determining the volume of water delivered.

§297.47. Time Limitations for Commencement or Completion of Construction. When a permit is issued for appropriation by direct diversion or construction, modification or repair of a storage reservoir, or any work in which a time limitation is set by permit for commencement or completion of construction, a permittee shall commence and complete actual construction of the proposed facilities within the time fixed by the commission. Failure to commence or complete construction within the time specified in the permit or extension granted by the commission shall cause permittee to forfeit all rights to the permit, subject to notice and hearing. See §295.202 of this title (relating to Reports).

§297.48. Low-Flow Outlets for Dams. All dams proposed for authorization by the

commission shall provide for outlets of size and location sufficient to pass such flows of water as the commission finds necessary to satisfy the rights of downstream domestic and livestock users and the senior and superior rights of other authorized users.

§297.49. Habitat Mitigation. In its consideration of an application for a permit or amendment to store, take, or divert state water, the commission shall assess the effects, if any, of the issuance of the permit on fish and wildlife habitats. For an application for a permit or amendment to store, take, or divert state water in excess of 5,000 acre-feet per year, the commission may require the applicant to take reasonable actions to mitigate adverse impacts if any, on such habitat. In determining whether to require an applicant to mitigate adverse impacts on a habitat, the commission may consider any net benefit to the habitat produced by the project. The commission shall offset any mitigation it requires by any mitigation required by the United States Fish and Wildlife Service pursuant to 33 Code of Federal Regulations §§320-330.

§297.50. Water Quality Effects. In its consideration of an application for a permit to store, take, or divert water, the commission shall assess the effects, if any, of the issuance of the permit on water quality of the stream or river to which the application applies.

§297.51. Estuarine Considerations. In its consideration of an application for a permit to store, take, or divert water, the commission shall assess the effects, if any, of the issuance of the permit on the bays and estuaries of Texas.

§297.52. Instream Uses. In its consideration of an application for a permit to store, take, or divert water, the commission shall consider the effects, if any, of the issuance of the permit on existing instream uses of the stream or river to which the application applies.

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Subchapter F. Amendments to Water Rights; Corrections to Water Rights

★ 31 TAC §297.61, §297.62

The new sections are adopted on an emergency basis under the Texas Water Code, §5.103, which provides the Texas Water Commission with the authority to adopt rules necessary to carry out its powers

and duties under the code and the laws of the state.

§297.61. Amendments by Executive Director.

(a) On the petition of the executive director, the commission may amend a permit, certified filing, or certificate of adjudication in order to:

(1) protect superior and senior water rights in the river basin, or in the case of transwatershed diversions of water, in the basis of origin;

(2) provide a reasonable means for the enforcement of the terms, conditions, provisions, and limitations contained in the water right;

(3) provide for the keeping and reporting of information and measurements in connection with the use of water;

(4) provide a reasonable means for the enforcement of applicable law;

(5) correct errors inadvertently made in the preparation of a water right, such as in the name of the water right holder, boundary description, or other detail incorrectly transcribed; or

(6) cure ambiguities or ineffective provisions in a water right.

(b) See §295.71 of this title (relating to Requirements for Applications for Amendments to Water Use Permits); see also §295.158 of this title (relating to Notice of Amendments to Water Rights).

§297.62. Corrections of Water Rights by the Commission. The commission may make corrections to permits, certified filings, amendments, and certificates of adjudication by reissuing the water right or by amending the water right, without observing formal amendment procedures, to state more accurately any provision in the water right but without changing the substance of any such provision, or to correct errors inadvertently made in preparation of the water right, such as in the name of the holder, boundary description, or other detail incorrectly stated. See §295.158 of this title (relating to Notice of Amendments to Water Rights).

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Subchapter G. Cancellation and Revocation of Water Rights

★ 31 TAC §§297.71-297.74

The new sections are adopted on an emergency basis under the Texas Water Code, §5.103, which provides the Texas Water Commission with the authority to adopt rules necessary to carry out its powers

and duties under the code and the laws of the state.

§297.71. *Cancellation with Consent.* If the commission's records reflect that the amount of water authorized to be appropriated under a water right is not being used, either in whole or in part, the executive director may send an appropriate form to the holder of the water right by which the holder or the holder's authorized agent may request cancellation of the unused portion of the right or the entire right.

§297.72. *Cancellation under the Texas Water Code, §11.146.* A hearing is required in order to determine whether a permit has been or should be forfeited and canceled in whole or in part for failure of the permittee to commence or complete construction, unless the permittee executes a form abandoning all or a portion of the rights under the permit and waiving right to notice and hearing thereon.

§297.73. *Cancellation under the Texas Water Code, §§11.171-11.186.* A water right is subject to cancellation in whole or in part for 10 years nonuse. When the records of the commission show that all or part of the water authorized to be appropriated has not been used during the immediately preceding 10 years, the executive director may request the commission to issue notice and convene a hearing to determine whether a water right should be canceled, in whole or in part.

§297.74. *Revocation of Authorization To Divert from a Locally Un-sponsored or Storage-Limited Reservoir.* Authorization to divert water from a reservoir constructed by the federal government for which no local sponsor has been designated nor permit issued or a reservoir permitted for storage solely for the purpose of optimum development of the project may be revoked when compliance with the conditions contained in the letter authorizing the diversion of water is not occurring or, in the case of authorized diversions for domestic use, water becomes reasonably available through a water supply system. Revocation shall be made by a letter setting forth the basis of the revocation signed by a commissioner. Upon receipt of the letter, the user shall cease diverting water and remove diversion facilities.

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(512) 463-8070.



Subchapter H. Conveyances of Land and Water Rights

★31 TAC §§297.81-297.83

The new sections are adopted on an emergency basis under the Texas Water Code, §5.103, which provides the Texas Water Commission with the authority to adopt rules necessary to carry out its powers and duties under the code and the laws of the state.

§297.81. *General Rules of Conveyance.*

(a) Except as provided in subsection (b) of this section, the right to use water for the purpose of irrigation is appurtenant to the land authorized to be irrigated, and a conveyance of land with an appurtenant water right also conveys the water right unless expressly reserved or excepted; provided, however, that if the water right has been granted for the irrigation of land not owned by the applicant, such a water right is personal to the permittee and does not pass with a conveyance of the land.

(b) A water right does not attach to the irrigated land when held by a water corporation, water district, river authority, or governmental entity authorized to supply water to others. Only by express written conveyance can such a water right be transferred. The foregoing is subject to all laws relating to lawful rights of owners along ditches and canals.

(c) If a landowner reserves a water right in a conveyance of land authorized to be irrigated and desires to change the place of use, the point of diversion, or the purpose of use, an application to amend the water right must be filed with the executive director as provided by §295.71 of this title (relating to Requirements for Applications to Amend a Permit).

(d) A water right may be conveyed separately from the land; provided, however, the water right must be utilized in accordance with its terms and conditions until amended by the commission.

§297.82. *Duty To Inform Executive Director.*

An owner of a water right or his or her agent shall promptly inform the executive director of any transfer of water right or change of the owner's address.

§297.83. *Recording Conveyances of Water Rights.* The written instrument evidencing a water right ownership transfer shall be recorded in the office of the county clerk. Certified copies or photocopies of the recorded instruments establishing the complete chain of title between owners of record and the new owner shall be filed with the executive director.

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Subchapter I. Conveying Stored Water

★31 TAC §§297.91-297.94

These new sections are adopted on an emergency basis under the Texas Water Code, §5.103, which provides the Texas Water Commission with the authority to adopt rules necessary to carry out its powers and duties under the code and the laws of the state

§297.91. *Use of Bed and Banks.* Any one proposing to use the bed and banks of any flowing natural stream within this state for the purpose of conveying stored water from a place of permitted storage to a place of permitted use must first comply with the Texas Water Code, §11.042, and the rules of the commission. An exception to the requirements of this section may be granted by the commission if an emergency condition exists and time does not permit following the procedures herein outlined. Further, the requirements of this section are not applicable if water is being released from upstream storage under order of the commission. See §295.111 of this title (relating to Application).

§297.92. *Authorization.* The commission may require the alteration or amendment of any contract for the transportation of water if it finds the change is necessary to protect vested rights or prevent the undue loss of water. After the commission is satisfied that all provisions of law and these rules have been complied with and that transportation of the stored water should be authorized, an order will be entered authorizing the use of the watercourse for that purpose, and notice shall be made by the commission in accordance with §295.160 of this title (relating to Notice of Applications to Convey Stored Water). The rate of flow shall be determined by the executive director, and all interested parties will be notified of the rate. Water, when released for downstream use, shall be of a quality that will not affect adversely or harmfully the quality of water in the stream or in storage below.

§297.94. *Duties of Others Along the Stream.* If stored waters are released from a reservoir and are designated for use or storage downstream by a specified user legally entitled to receive the water, it shall be unlawful for any other person to divert, store, appropriate, use, or otherwise interfere with the passage of the waters that are designated for downstream use or storage. Each owner or operator of a reservoir and dam on the stream between the point of release and the point of designation shall permit the free passage through the reservoir and dam of all such released waters in transit.

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Subchapter J. Water Supply Contracts and Amendments

★ 31 TAC §§297.101-297.108

These new sections are adopted on an emergency basis under the Texas Water Code, §5.103, which provides the Texas Water Commission with the authority to adopt rules necessary to carry out its powers and duties under the Texas Water Code and other laws of this state.

§297.101. *General; Exceptions.*

(a) General. In order for the commission to exercise effective supervision over all uses of state water, each supplier of treated or untreated state water possessing a valid water right shall make application for an amendment based upon the supplier's contractual arrangements with a purchaser and/or shall submit a copy of the contract in accordance with §295.101 of this title (relating to Documents To Be Filed). The contract must be submitted and/or the application approved by the commission before deliveries or diversions under the contract may be made lawfully. If a contract meets the requirements of these sections and is consistent with the authorizations of the base water right, the executive director will place a copy of the contract on file with the commission records and shall so notify the supplier.

(b) Exceptions. The sections of this subchapter shall not apply to the following:

- (1) sales of untreated water conveyed by the supplier through a canal, pipeline, or aquaduct for the purpose and for use in the area authorized in the water right;
- (2) sales of treated water supplied through a public or private municipal distribution system or through a rural water supply system for the purpose and for use in the area authorized in the water right;
- (3) deliveries of treated sewage effluent for the purpose and use authorized and in the area authorized in the water right;
- (4) short term (three years or less) sales of untreated water from the perimeter of a reservoir for any purpose authorized in the water right in amounts not exceeding 10 acre-feet per annum; or
- (5) sales of untreated water from the Lower and Middle Rio Grande.

§297.102. *When Application Required.*

(a) If the exercise of rights under the contract between the supplier and the purchaser would require amendment of the appropriative right on which the sale is based,

the supplier shall submit an application for an amendment in accordance with §295.101 of this title (relating to Documents To Be Filed).

(b) If the exercise of rights under the contract between the supplier and the purchaser would not require amendment of the appropriative right on which the sale is based or would require amendment of the appropriative right only by adding a diversion point or by changing the place of use of a water right which authorizes storage, the supplier shall submit a copy of the executed contract to the executive director and shall not have to submit an application for an amendment.

(c) If the supplier is not the holder of the appropriative right on which the sale is based and if the exercise of rights under the contract between the supplier and the purchaser would require an amendment to alter the appropriative right:

(1) the holder of the appropriative right on which the sale is based shall apply to amend the right in accordance with §295.71 of this title (relating to Applications To Amend a Permit), and the supplier shall submit a copy of the contract and/or an application for a permit in accordance with §295.101 of this title (relating to Documents To Be Filed); or

(2) the holder of the appropriative right on which the sale is based shall join with the supplier in the application for amendment.

(d) See §295.158 of this title (relating to Notice of Amendments to Water Rights) for notice requirements and Chapter 295, Subchapter B, of this title (relating to Water Use, Procedural) for required fees.

§297.103. *Special Requirements for Downstream Sales of Water from a Storage Reservoir.*

(a) If a contract which obligates a supplier to supply water from storage to a purchaser does not provide for or contemplate diversions of water by the purchaser from streamflows other than those resulting from releases of water from storage under the contract, the supplier shall make releases of water to the extent of the purchaser's downstream diversions within the limits of the supplier's water right or the contract, except as follows.

(1) Nothing in these sections shall require a seller to release water to satisfy contractual obligations when such release would aggravate existing flooding conditions, and the purchaser may divert water during such conditions pursuant to the contract.

(2) The executive director may recommend a condition to be included in the contractual amendment which establishes stream flood stages for purposes of this section. The commission may include such a condition in each amendment which authorizes such a downstream sale of water from storage.

(b) If a contract which obligates a supplier to supply water from storage to a pur-

chaser provides for or contemplates diversions of water by the purchaser from streamflows other than those resulting from releases of water from storage for the purchaser's use under the contract, and if neither the purchaser nor the supplier possesses a valid appropriative right authorizing such diversions:

(1) the purchaser shall obtain a regular, term, or temporary permit to appropriate water to the extent of his maximum annual diversions of water not released from storage before the supplier's amendment, if any, may be approved; or

(2) the supplier shall apply for a regular, term, or temporary permit or an amendment to the supplier's water right to appropriate water to the extent of the purchaser's maximum annual diversions of water not released from storage; provided that the contract specifies that the supplier shall have or shall apply for such permit or amendment and that the purchaser shall divert water not released from storage only pursuant to such permit or amendment.

(c) If any contract required to be filed under this subchapter does not specify which party will bear transportation and evapotranspiration losses from a reservoir to a downstream point of diversion, the supplier shall bear such losses.

§297.104. *Special Requirements for Upstream Sales of Water from Storage.* If a contract provides that a purchaser may divert water upstream of a supplier's storage reservoir in a manner which impairs the supplier's water right:

(1) the purchaser shall obtain a term or temporary permit to the extent of his or her maximum annual diversions of water for the term of the contract; or

(2) the supplier shall obtain a term or temporary permit or an amendment to the extent of the purchaser's maximum annual diversions of water for the term of the contract; provided that the contract specifies that the supplier shall apply for such permit or amendment and that the purchaser shall divert water only pursuant to such permit or amendment.

§297.105. *Effective Date of Water Supply Contract Rules.* The requirements of §295.101 of this title (relating to Documents To Be Filed), §297.103 of this title (relating to Special Requirements for Downstream Sales of Water from a Storage Reservoir), and §297.104 of this title (relating to Special Requirements for Upstream Sales of Water from Storage) apply to all contracts for sales of treated or untreated state water entered into after January 2, 1964.

§297.106. *Perfection and Priority of Water Rights.*

(a) Unless exempted by these sections, no treated or untreated state water hereafter supplied under a contract shall be deemed to be in perfection of the supplier's appropriative right under which the water is supplied, unless and until the contractual amend-

ment is granted by the commission or the contract is submitted to the executive director in accordance with §295.101 of this title (relating to Documents To Be Filed).

(b) If the supplier or the purchaser is required by §297.103 of this title (relating to Special Requirements for Downstream Sales of Water from a Storage Reservoir) to obtain a regular, term, or temporary permit or an amendment to the extent of the purchaser's maximum annual diversions of water not released from storage, the regular term, or temporary permit or amendment shall be perfected by the purchaser's diversions of water not released from storage.

(c) If a supplier enters into a contract which authorizes a purchaser to divert water upstream of the supplier's storage reservoir in a manner which impairs the supplier's water right, all diversions made by the purchaser shall be deemed for perfection purposes to be diversions from the perimeter of the reservoir.

(d) Nothing contained in this subchapter shall be construed as affecting in any way the perfection of rights exercised prior to January 2, 1964, in a manner not in compliance with §295.101 of this title (relating to Documents To Be Filed), §297.103 of this title (relating to Special Requirements for Downstream Sales of Water from a Storage Reservoir), and §297.104 of this title (relating to Special Requirements for Upstream Sales of Water from Storage).

(e) The commission shall include the priority date in each contractual amendment.

§297.107. Reports. Both the purchaser and seller of water under a water supply contract shall submit annual reports to the commission in accordance with §295.202 of this title (relating to Reports).

§297.108. Effect on Existing Contractual Permits. Nothing contained in these sections shall be construed to invalidate contractual permits or other authorizations which have been obtained prior to the effective date of these sections.

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Chapter 299. Dams and Reservoirs

Subchapter A. General Provisions

★ 31 TAC §§299.1-299.5

The Texas Water Commission adopts on an emergency basis new §§299.1-299.5,

299.11-299.18, 299.21-299.31, 299.51, and 299.61, concerning dams and reservoirs.

Chapter 299 contains provisions relating to general requirements, design standards for dams, construction requirements, the removal of dams, and emergency actions.

The commission found that an urgent need existed to adopt these new sections on an emergency basis because the previous emergency sections for dams and reservoirs expired at 12 a.m., March 3, 1986, and a lapse in the sections would constitute an imminent peril to the public health, safety, and welfare.

The commission proposed identical sections for permanent adoption in the January 14, 1986, issue of the *Texas Register*. The commission decided to delay adoption of all of its currently proposed sections to facilitate public comments.

The new sections are adopted on an emergency basis under the Texas Water Code, §5.103, which provides the Texas Water Commission with the authority to adopt rules necessary to carry out its powers and duties under the code and the laws of the state.

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

Dam—Any barrier, including one for flood detention, designed to impound liquid volumes and which has a height of dam greater than six feet. This does not include highway, railroad, or other roadway embankments, including low water crossings that may temporarily detain floodwater, levees designed to prevent inundation by floodwater, closed dikes designed to temporarily impound liquids in the event of emergencies, or off-channel impoundments authorized by the commission in accordance with the Texas Water Code, Chapter 26, or the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7.

Effective crest of the dam—The elevation of the lowest point on the crest of the dam excluding spillways.

Existing dam—

(A) any dam constructed in accordance with necessary authorizations of the commission;

(B) any existing dam exempt under Texas Water Code §11.142.

Height of dam—The vertical distance from the effective crest of the dam to the lowest elevation on the centerline or downstream toe of the dam, including the natural stream channel.

Maximum storage capacity—The volume of the impoundment created by the dam at the effective crest of the dam, usually expressed in acre-feet.

Normal storage capacity—The volume of the impoundment created by the dam, at the lowest uncontrolled spillway crest, usually expressed in acre-feet.

Probable maximum flood (PMF)—The flood magnitude that may be expected from the most critical combination of meteorologic and hydrologic conditions that are reasonably possible for a given watershed.

Probable maximum precipitation (PMP)—Theoretically, the greatest depth of precipitation for a given duration that is physically possible over a given size storm area at a particular geographical location at a certain time of the year.

Proposed dam—Any dam, constructed or to be constructed, which is not included in the definition of existing dam.

Spillway design flood (SDF)—The flood criteria that needs to be considered in the design of a proposed project.

Spillway evaluation flood (SEF)—The flood criteria that needs to be considered in the hydrologic evaluation of an existing structure

§299.2. General.

(a) When the executive director finds that a dam or reservoir poses a level of danger to the public which is unacceptable when evaluated in accordance with commission rules, he may either refer the matter directly to the attorney general for injunctive relief or he may seek an order from the commission to direct the owner to take appropriate action to remove the danger to life and property. An owner who willfully fails or refuses to take appropriate action is liable for a penalty of not more than \$1,000 a day for each day the violation continues.

(b) In determining whether an existing or proposed dam and reservoir constitutes an unacceptable danger to life or property, the commission shall evaluate both the hydrologic and, if possible, the structural adequacy of the dam. The commission may take into consideration conditions, including, but not limited to, the possibility that the dam might be endangered by overtopping, seepage, piping, settlement, erosion, cracking, earth movement, uplift, overturning, or failure of bulkheads, flashboards, gates, spillways, and conduits.

(c) Dams and associated facilities must be adequately maintained throughout their lives, including as necessary, the operation and maintenance of surveillance and monitoring devices to detect changes in the dam and/or its foundation and appurtenant facilities. If abandoned at any time, a dam must be removed or breached in a manner to eliminate any hazard to life and property downstream.

(d) Dam and spillway adequacy shall be evaluated utilizing standard engineering procedures and techniques including, but not limited to, those employed and recommended by the Corps of Engineers, Soil Conservation Service, Bureau of Reclamation, and the American Society of Civil Engineers.

§299.3. Duties, Obligations, and Liabilities of Dam Owners. Nothing in these sections or orders made by the commission shall be construed to relieve an owner or operator of

a dam or reservoir of the legal duties, obligations, or liabilities incident to ownership or operation.

§299.4. Registered Engineer. Preparation of all plans and specifications, and the construction, enlargement, alteration, repair, or removal of dams subject to commission review shall be under the supervision of an engineer registered in this state, unless a waiver of this requirement is authorized pursuant to §299.5 of this title (relating to Exception).

§299.5. Exception. Written approval of the executive director is required for exception from any or all of the requirements of §299.4 of this title (relating to Registered Engineer), §299.22 of this title (relating to Approval of Plans and Specifications), §299.23 of this title (relating to Content of Construction Plans and Specifications), §299.24 of this title (relating to Maintenance of Records), §299.25 of this title (relating to Construction Progress Report), §299.26 of this title (relating to Construction Inspection), §299.27 of this title (relating to Plan and/or Specification Changes and Amendments), §299.28 of this title (relating to Noncompliance with Approved Plans and Specifications), §299.29 of this title (relating to Deliberate Impoundment), and §299.31 of this

title (relating to Record Drawings and Permanent Reference Mark). The executive director may grant exception if he determines that the physical conditions involved, when evaluated using standard engineering procedures and techniques, render the requirements unnecessary. Written approval will specify the extent of the exception granted and the executive director's reasons for granting it. This rule does not limit the executive director's authority under §299.27 of this title (relating to Plan and/or Specification Changes and Amendments) to require amendments, modifications, or changes to ensure the safety of a structure.

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Subchapter B. Design and Evaluation of Dams

★ 31 TAC §§299.11-299.18

These new sections are adopted on an emergency basis under the Texas Water

Code, §5.103, which provides the Texas Water Commission with the authority to adopt rules necessary to carry out its powers and duties under the code and the laws of the state.

§299.11. Classification of Dams. All dams will be classified or reclassified as necessary to assure appropriate safety considerations. The three size classifications (small, intermediate, and large), based on height of dam or impoundment capacity, and the three hazard classifications (low, significant, and high), are combined to indicate a dam's downstream hazard potential. Thus, the classification assignment reflects the hazard potential associated with assumed failure of the dam. For example, dams located such that resulting failure could be catastrophic are classified so as to require a higher degree of design consideration than would be required for similar dams located in remote areas. Classification does not indicate the physical condition of a dam.

§299.12. Size Classification Criteria. The classification for size based on the height of the dam or maximum reservoir storage capacity shall be in accordance with Table 1 of this section. The appropriate size is the largest category determined for either storage or height.

TABLE 1

SIZE CLASSIFICATION

<u>Category</u>	<u>Storage (Ac-Ft)</u>	<u>Height (Ft.)</u>
Small	Less than 1000	Less than 40
Intermediate	Equal to or Greater than 1000 & less than 50,000	Equal to or Greater than 40 & less than 100
Large	Equal to or Greater than 50,000	Equal to or Greater than 100

§299.13. Hazard Classification Criteria. The hazard potential classification shall be in accordance with Table 2 of this section. Hazard classification pertains to potential loss of human life and/or property damage within either existing or potential developments in the area downstream of the dam in event of failure or malfunction of the dam or appurtenant facilities. Hazard classification does not indicate any condition of the

dam itself. Dams in the low hazard potential category are normally those in rural areas where failure may damage farm buildings, limited agricultural improvements, and county roads. Significant hazard potential category dams are usually those in predominantly rural areas where failure would not be expected to cause loss of human life, but may cause damage to isolated homes, secondary highways, minor railroads, or cause interrup-

tion of service or use (including the design purpose of the facility) of relatively important public utilities. Dams in the high hazard potential category are usually those in or near urban areas where failure would be expected to cause loss of human life, extensive damage to agricultural, industrial, or commercial facilities, important public utilities (including the design purpose of the facility), main highways, or railroads.

TABLE 2

HAZARD POTENTIAL CLASSIFICATION

<u>Category</u>	<u>Loss of Human Life</u>	<u>Economic Loss</u>
Low	None expected (No permanent structures for human habitation)	Minimal (Undeveloped to occasional structures or agricultural improvements)
Significant	Possible, but not expected (A small number of inhabitable structures)	Appreciable (Notable agricultural, industrial or commercial development)
High	Expected (Urban development or large number of inhabitable structures)	Excessive (Extensive public, industrial, commercial or agricultural development)

§299.14 Hydrologic Criteria for Dams.

(a) minimum acceptable spillway design flood. The hydrologic criteria contained in Table 3 are the minimum acceptable spillway design flood (SDF) for proposed dams as defined in §299.1 of this title (relating to Definitions), including those to be constructed in accordance with the Texas Water Code, §11.142.

(b) Exemptions to minimum hydrologic criteria. Proposed low hazard dams exempt under the Texas Water Code, §11.142, are exempt from the minimum criteria. Any other proposed structure may be exempt from the minimum criteria if properly prepared dam breach analyses show that existing downstream improvements or known or planned future improvements will not be

adversely affected. A properly prepared breach analysis should include at least three events, the normal storage capacity nonflood event, the barely overtopping event, and the PMF event. Data on additional flood magnitudes may be provided as necessary to document other conditions or conclusions. Downstream flooding differentials of one-foot or less between breach and nonbreach simulations are not considered to be adverse.

TABLE 3

HYDROLOGIC CRITERIA FOR DAMS

<u>Classification</u>	<u>Hazard</u>	<u>Size</u>	<u>Minimum Flood Hydrograph</u>
Low (No. 3)		Small	$\frac{1}{4}$ PMF
		Intermediate	$\frac{1}{4}$ PMF to $\frac{1}{2}$ PMF
		Large	PMF
Significant (No. 2)		Small	$\frac{1}{4}$ PMF to $\frac{1}{2}$ PMF
		Intermediate	$\frac{1}{2}$ PMF to PMF
		Large	PMF
High (No. 1)		Small	PMF
		Intermediate	PMF
		Large	PMF

NOTE: The flood hydrograph in this table is the minimum required flood for a given project, i.e., the project will be required to safely pass this hydrograph. Where a range is given, the minimum flood hydrograph will be determined by straight line interpolation within the given range. Interpolation shall be based on either hydraulic height or impoundment size (§299.12, Table 1 of this title (relating to Size Classification Criteria)), whichever is greater. The minimum flood hydrograph is computed as a percentage of the PMF hydrograph.

§299.15. Evaluation of Existing Dams.

(a) Periodic re-evaluation of existing dams. Existing dams, as defined in §299.1 of this title (relating to Definitions), are subject from time to time to re-evaluation in consideration of continuing downstream development. Hydrologic criteria contained in §299.14, Table 3 of this title (relating to Hydrologic Criteria for Dams) are the minimum acceptable spillway evaluation flood (SEF) for re-evaluating dam and spillway capacity for existing dams to determine whether upgrading is required. Dams not meeting minimum criteria are considered to be below acceptable limits and are subject to action as necessary under §299.2 of this title (relating to General).

(b) Exemptions from minimum hydrologic criteria. Existing low hazard dams are exempt from the minimum hydrologic criteria as given in Table 3 and any other existing structure may be exempt from the minimum hydrologic criteria if properly prepared dam breach analyses show that existing downstream improvements or known or planned future improvements will not be adversely affected. A properly prepared breach analysis should include at least three events, the normal storage capacity nonflood event, the barely overtopping event, and the

PMF event. Data on additional flood magnitudes may be provided as necessary to document other conditions or conclusions. Downstream flooding differentials of one-foot or less between breach and nonbreach simulations are not considered to be adverse.

(c) Structural evaluation. Evaluating the structural condition of an existing dam includes, but is not limited to, visual inspections and evaluations of potential problems such as seepage, cracks, slides, conduit and control malfunctions, and other structural and maintenance deficiencies which could lead to failure of a structure. An active and progressive deteriorating condition is sufficient for a finding that an existing dam is structurally inadequate.

§299.16. Interim Alternatives. At the time the commission considers the permanent upgrading or removal of an inadequate dam, the dam owner may request the commission to consider interim alternatives including, but not limited to temporary repairs, reservoir dewatering, insurance coverage, and/or downstream warning and evacuation plans. Consideration shall be given to the time required to overcome economic, physical, and legal restraints to upgrading, the prospect of permanent repair, current use of the facility, degree of risk, and public welfare.

§299.17. Emergency Management. As required for emergency management planning, the executive director may request and/or the commission may order, a dam owner to provide sufficient data to plan for potential effects of failure or malfunction of a dam and/or associated appurtenant facilities.

§299.18. Variance. The owner of an existing dam that does not meet the hydrologic criteria of §299.14, Table 3 of this title (relating to Hydrologic Criteria for Dams) may request the commission to consider a variance from this criteria, based upon, but not limited to, the owner's evaluation of the consequences of potential dam failure, proposals to reduce potential hazard, and/or the economic and physical limitations to upgrading.

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Subchapter C. Construction Requirements

★ 31 TAC §§299.21-299.31

The new sections are adopted on an emergency basis under the Texas Water Code, §12.052, which provides that the Texas Water Commission shall adopt any rules necessary to provide for the safe construction, maintenance, repair, and removal of dams located in this state.

§299.21 Applicability. This subchapter applies only to engineering plans and specifications for the construction, enlargement, repair, or alteration of dams requiring commission authorization, except as follows:

(1) exceptions approved in accordance with §299.5 of this title (relating to Exception);

(2) dams designed by and constructed under the supervision of federal agencies such as the Corps of Engineers, Bureau of Reclamation, and the Soil Conservation Service.

§299.22. Approval of Plans and Specifications. Construction of a dam or the enlargement, repair, or alteration of an existing dam requiring commission authorization shall not be commenced prior to the executive director's written approval of final construction plans and specifications. Construction plans and specifications shall be submitted to the executive director and shall be as completely detailed as necessary for submission to the contractors bidding on the proposal. Contractors shall not commence construction until provided with a copy of the plans and specifications evidencing the approval.

This does not apply to ordinary maintenance or emergency repair. The executive director may require the filing of additional information and data which, in his opinion, may be necessary for determining the adequacy of operational functions and safety of the structures and works related thereto. The official name of the dam and reservoir by resolution of the governing body or by certificate if individually owned shall be submitted to the department as early as possible, preferably with the construction plans.

§299.23. Content of Construction Plans and Specifications.

(a) Construction plans requiring approval by the executive director may include the following, as determined by the executive director:

(1) a topographic map of the dam site with contour intervals of not to exceed five feet. A plan of the dam shall be superimposed on this map showing the location of spillways, outlet conduit, cutoff walls, and other structures;

(2) a profile of the dam site taken on the long axis of the dam and a profile of each spillway along its long axis. The profile shall also show the location of the outlet conduit and spillway. A log showing the classification of material encountered below the surface as shown by test pits or borings should be included;

(3) a cross section of the dam at maximum section showing complete details and dimensions;

(4) detailed plans showing sections of outlet conduits, control works, and spillways. These sections should be of sufficient number and detail to delineate clearly all features of the structure; and

(5) the indicated location of all permanent instrumentation. All pressure cells, settlement plates, piezometers, slope indicator casing, or other devices shall also be noted.

(b) Construction plans shall be accompanied by specifications which may include, but are not limited to, the following:

(1) the requirements for the various types of materials to be used in the construction of all pertinent works;

(2) a specified time of completion, i.e., a requirement that the contractor's bid contain a time of completion;

(3) a provision to the effect that plans and specifications shall not be substantially or materially altered without prior written approval of the executive director.

(c) Other engineering reports and additional information are sometimes prepared and may be required by the executive director for review. These reports, applicable to the type of structure (earthfill, rockfill, or concrete) in question, may include details such as geology of the project site and vicinity, location and logs of test borings, pits and shafts, results of field and laboratory tests on structural and foundation materials; seepage studies, and stability analyses of embankments, spillways, retaining walls, etc. Additional information required may include recommendations concerning embankment slopes, crest width, berms, core trench depths, moisture-density and strength requirements, minimum compressive strength for concrete, construction sequence procedures, and/or techniques for excavations and embankments, and types of compaction equipment, borrow excavation techniques, and sequence of fill placement.

§299.24. Maintenance of Records.

(a) The owner shall continuously maintain records to insure compliance with the approved plans and specifications during construction. Copies of these records shall be furnished to the executive director at monthly intervals during the construction

period, and may include, but not necessarily be limited to, such items as soil moisture-density test results, and concrete trial batch designs test and compression test results.

(b) Other observations which may be recorded include final bottom width and elevations of core and cutoff trenches, structural excavations, permanent sheet piles or bearing piles, and documentation of foundation groutings, dewatering problems, or observations during the construction period of any instruments installed to measure movements, stresses, and pore pressure.

§299.25. Construction Progress Report.

Within 10 days after beginning actual construction of a project, the executive director shall be notified in writing of the date work began. Thereafter, monthly reports of progress shall be forwarded to the executive director by the 10th of each month during construction. The report shall show the work accomplished during the month, the percent of time used, and the percentage of completion of the project as of the close-out date of the report. In addition, the report shall show the inclusive dates of the reporting period.

§299.26. Construction Inspection.

Inspection of construction work shall be conducted by a registered professional engineer experienced in the construction of dams and responsible directly to the owner. Continuous daily inspections shall be made and may be delegated to a qualified technician (inspector) provided he is under the supervision of the owner's engineer. The executive director may make periodic inspections for the purpose of ascertaining compliance with approved plans and specifications. The executive director shall require the owner, at his expense, to perform the work or tests necessary and to disclose information sufficient to enable the executive director to determine that conformity with approved plans and specifications is accomplished.

§299.27. Plan and/or Specification Changes and Amendments.

If, after inspection, investigation, or examination, or at any time as the work progresses, the executive director finds that changes or amendments are necessary to insure safety, he may request the owner to revise his plans and/or specifications. Alterations of the plans and specifications must be approved by the executive director before work commences under the changes, except in emergencies requiring immediate action of which the executive director shall be immediately notified. If the proposed alterations would result in deviation from the permitted right, amendment of the permit must be obtained from the commission.

§299.28. Noncompliance with Approved Plans and Specifications.

If, at any time during construction, enlargement, repair, or alteration of any dam or reservoir, the executive director finds that the work is not being done in accordance with approved plans

and specifications or in accordance with approved plans and specifications or in accordance with approved revised plans and specifications, he shall give written notice thereof and direct compliance by certified mail to the owner. If the owner fails to comply with the directive, the executive director may take appropriate action to assure compliance. Failure to comply with approved plans and specifications will be grounds for revocation of the permit and/or civil penalty as provided by law. The commission may order the structure removed to eliminate any safety hazard to life and property.

§299.29. Deliberate Impoundment.

Written approval of the executive director must be obtained prior to deliberate impoundment of water in a partly or newly completed reservoir designed to impound more than 1,000 acre-feet at normal storage capacity. Deliberate impoundment shall mean any act which results in the intentional impoundment of water in the reservoir and includes, but is not limited to, closure of the lowest planned outlet or spillway serving the reservoir, blocking the diversion works used during the construction, and beginning backfill within the closure section of a dam. Temporary closing of a valve or spillway gate for operational testing shall not be construed as an act of deliberate impoundment.

§299.30. Certificate of Completion.

Immediately upon completion of a new dam and reservoir, or enlargement, repair, or alteration of an existing dam and reservoir, the owner shall file a certificate with the executive director, signed by the responsible engineer supervising the work for the owner, certifying that, to the best of the engineers knowledge, the construction, alterations, or repairs were completed in accordance with the approved plans and specifications. In the case of projects excepted under §299.5 of this title (relating to Exception), the owner shall notify the executive director in writing that construction, alterations, or repairs were completed.

§299.31. Record Drawings and Permanent Reference Mark.

As soon as possible after completion of construction, the owner or his engineer shall submit to the executive director a complete set of record drawings of the project for filing with the permanent records of the department. One or more permanent reference mark(s) shall be established for future use near but separate from the project. Accurate location(s) and elevation(s) above mean sea level shall be shown on the record drawings.

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(512) 463-8070.

Subchapter D. Removal of Dams

★31 TAC §299.51

The new section is adopted on an emergency basis under the Texas Water Code, §12.052, which provides that the Texas Water Commission shall adopt any rules, necessary to provide for the safe construction, maintenance, repair, and removal of dams located in this state.

§299.51. *Removal of Dams and Reservoirs.* Removal or modification of a dam shall be done at the owner's expense, and except for emergency action required to protect lives and property, only after executive director approval. The executive director may require the owner to provide plans and specifications. The executive director may seek an order from the commission or an injunction through the attorney general requiring the removal or modification of dams and reservoirs which are not authorized by law or which have been determined to pose an unacceptable hazard to downstream lives or property.

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(512) 463-8070.

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Subchapter E. Emergency Action

★31 TAC §299.61

The new section is adopted on an emergency basis under the Texas Water Code, §12.052, which provides that the Texas Water Commission shall adopt rules necessary to provide for the safe construction, maintenance, repair, and removal of dams located in this state.

§299.61. *Emergency Action.* Pursuant to the provisions of the Texas Water Code, §12.052, emergency orders may be issued, without notice to the owner, directing the owner of a dam to take immediate and appropriate action to remedy situations posing serious threat to human life health and/or property.

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Chapter 301. Levee

Improvement Districts, District Plans of Reclamation, and Levees and Other Improvements

Subchapter A. General Provisions

★31 TAC §§301.1-301.7

The Texas Water Commission adopts on an emergency basis new §§301.1-301.7, 301.21-301.23, 301.31-301.46, 301.51-301.56, 301.61-301.63, 301.71-301.74, and 301.81, concerning levee improvement districts, district plans reclamation, and levees and other improvements.

Senate Bill 249, 69th Texas Legislature, 1985, effective September 1, 1985, amended the Texas Water Code, Chapters 16 and 57, to transfer certain responsibilities for review and approval of levee improvement district plans of reclamation and levees and other improvements from the Texas Department of Water Resources to the Texas Water Commission. The purpose of these emergency new sections is to adopt immediately the proposed permanent rules for this subject matter.

Significant changes have been made in the following regards: fees are addressed, compaction effort and optimum moisture content requirements on final plans submitted to the executive director are specified, submittal of final plans and proof of ownership or right to construct prior to commencement of construction are required, monthly construction progress reports and as-built plans are required, and a maintenance agreement/program with budget is required.

Subchapter A contains sections concerning interpretation of legislative authority, definitions, authority to go on land, commission approvals required, and injunction against violations or threatened violations.

Subchapter B contains procedures concerning formation of a levee improvement district, the filing of a report with the county commissioner's court by a representative of the executive director, procedures subsequent to formation of a district, including the application of the proposed district plan of reclamation with the Texas Water Commission, and the commission decision, appeal procedure, and data required to be submitted with the application.

Subchapter C concerns application for approval of preliminary engineering plans for levees and other improvements by levee improvement districts and other persons, purpose of preliminary plans, general data to be submitted, flood data required, illustration of pertinent features required, criteria for approval, additional information which may be required by the executive director, requirement that plans bear the seal of a registered engineer, referral of

application to commission, and procedures subsequent to approval of preliminary plans, including final approval by the executive director of final engineering plans and criteria for approval of final plans. The subchapter also includes provisions concerning time during which construction must begin and must be completed, construction progress reports, maintenance of records, inspection and report, plan and specification changes and amendments, noncompliance with approved plans and specifications, and as-built plans.

Subchapter D addresses contents of notice of application and commission approval, procedures for notice of application by mail and by publication, action on the application without public hearing, request for public hearing, procedures for publication of notice of public hearing, and notice of remanded hearing.

Subchapter E contains provisions concerning construction of levees and other improvements without authorization, removal of levees and other improvements, and emergency action.

Subchapter F addresses fees required and payable to the executive director and examples of applications subject to fees.

Subchapter G addresses filing requirements prior to approval of bonds.

The Texas Water Commission found that an urgent need existed to adopt these new sections on an emergency basis because the emergency sections for Chapter 315, concerning levee improvement districts and approval of plans for reclamation projects, currently in force expired on March 3, 1986. The Texas Water Commission is proposing permanent rules for the same subject matter due to be published soon in the *Texas Register*. The Texas Water Commission has decided to delay adoption of all of its proposed rules in order to facilitate public comment, and a lapse in the rules would constitute an imminent peril to the public health, safety, and welfare.

These new sections are adopted on an emergency basis under the Texas Water Code, §5.103, which provides the Texas Water Commission with the authority to adopt rules necessary to carry out its powers and duties under the Texas Water Code and the laws of the state.

§301.1. *Interpretation of Legislative Authority.* The legislature of the State of Texas has manifested an intention to protect the public interest by establishing a centralized and coordinated method for planning and review of drainage and reclamation activity. The legislature has demonstrated such an intent by causing levees or other improvements and levee improvement district plans of reclamation and associated projects to be subject always to the supervision of a central statewide authority. It is the purpose of the Texas Water Commission, pursuant

to the Texas Water Code, Chapters 5, 16, and 57, to implement this policy by the promulgation of these sections.

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

As-built plans—The engineering plans and specifications for levees or other improvements which reflect the structures as actually built, for which preliminary plans and final plans were approved, and which are submitted to the executive director of the Texas Water Commission for his issuance of notice of final approval.

Final plans—The final engineering plans and specifications for levees or other improvements submitted to the executive director of the Texas Water Commission for his approval subsequent to commission approval of preliminary plans.

Levee improvement district or district—Any levee improvement district organized under the provisions of the Texas Water Code, Chapter 57.

Levee(s) or other improvement(s)—Any levee or other improvement, including channel improvements, drainage works, or other projects on, along, or near any stream in this state that is subject to floods, freshets, or overflows and is constructed to control, regulate, or otherwise change the floodwater of the stream. However, the term does not include:

(A) levees or other improvements for which approval by the Texas Water Commission is not required pursuant to the Texas Water Code, §16.236;

(B) bridges, culverts, and roads that are not designed or constructed with the primary purpose to and that do not significantly control, regulate, or otherwise change the floodwaters of a stream;

(C) drainage works which do not directly connect to a stream;

(D) projects which, when completed, will receive runoff from an area of less than five square miles measured to the lowest point of construction;

(E) fences;

(F) cutting, clearing, or removing vegetation; and

(G) levees and landfills located within the 100-year flood-fringe area, as defined in clauses (i)-(iv) of this subparagraph, as determined by a registered professional engineer using the United States Army Corps of Engineers Hydrologic Engineering Center I and II procedures or other standard procedure acceptable to the executive director of the Texas Water Commission.

(i) 100-year flood—the peak flood discharge of a stream, based upon statistical data, which would have a 1.0% chance of occurring in any given year.

(ii) 100-year flood fringe—that area of the 100-year floodplain outside the 100-year floodway.

(iii) 100-year floodplain—that area along a stream during the time the stream is subject to the statistical 100-year flood, as determined by a registered professional engineer using the United States Army Corps of Engineers Hydrologic Engineering Center I and II procedures or other standard procedure acceptable to the executive director of the Texas Water Commission.

(iv) 100-year floodway—the channel of a stream and adjacent land areas that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation more than one foot.

Plan of reclamation—The proposed plan of reclamation after approval by the Texas Water Commission.

Preliminary plans—The preliminary engineering plans and specifications for levees or other improvements submitted for approval by the Texas Water Commission pursuant to Texas Water Code, Chapter 16.

Proposed plan of reclamation—The application filed by a levee improvement district for approval by the Texas Water Commission, which is composed of the district engineer's reclamation report (termed "engineer's report" in the Texas Water Code, §57.154) which shall include conceptual and economic data, maps, and profiles of results of land surveys, and which may include preliminary plans and specifications for levees or other improvements.

§301.3. Authority To Go On Land. Representatives of the executive director of the Texas Water Commission may enter any land or go on any water with appropriate equipment for the purpose of surveillance and inspection with reference to the proposed location of levees or other improvements.

§301.4. Approvals Required. In accordance with the Texas Water Code, Chapters 16 and 57, the approvals set forth in paragraphs (1) and (2) of this section required:

(1) the approval of the Texas Water Commission for the following:

(A) levee improvement district proposed plans of reclamation. The procedure for submission and approval of district proposed plans of reclamation is set forth in §301.5 of this title (relating to Proposed Plan of Reclamation) and §301.6 of this title (relating to Preliminary Plans Not in Proposed Plan of Reclamation), and in §§301.21-301.23 of this title (relating to Levee Improvement Districts and Approval of District Plans of Reclamation);

(B) preliminary plans for construction of levees or other improvements. The procedure for submission and approval of preliminary plans is set forth in §301.6 of this title (relating to Preliminary Plans Not in Proposed Plan of Reclamation) and in §§301.31-301.46 of this title (relating to Approval of Levees and Other Improvements);

(2) the approval of the executive director for final plans for levees and other improvements. The procedure for submission

and approval is set forth in §301.38 of this title (relating to Procedures Subsequent to Approval of Preliminary Plans).

§301.5. Proposed Plan of Reclamation. A levee improvement district's proposed plan of reclamation should include preliminary plans for levees or other improvements. The commission may consider approval of a proposed plan of reclamation and related preliminary plans for levees and other improvements in one proceeding. Preliminary plans so included must comply with §§301.31-301.46 of this title (relating to Approval of Levees and Other Improvements). If so submitted and approved by the Texas Water Commission as the district's plan of reclamation, the district may proceed to submission of final plans to the executive director pursuant to §301.38 of this title (relating to Procedures Subsequent to Approval of Preliminary Plans).

§301.6. Preliminary Plans Not in Proposed Plan of Reclamation. If preliminary plans for levees or other improvements were not included in the approved plan of reclamation, prior to commencement of construction of any such works, the district must comply with §§301.31-301.46 of this title (relating to Approval of Levees and Other Improvements) and §§301.51-301.56 of this title (relating to Notice and Hearing). The district may omit preliminary plans for particular structures from the proposed plan of reclamation if, in the opinion of the executive director of the Texas Water Commission, omission of the preliminary plans from the proposed plan of reclamation, due to size of the district or otherwise, would result in more efficient handling of the application.

§301.7. Injunction and Monetary Penalties. Pursuant to the Texas Water Code, §16.236(b) and (c), the executive director of the Texas Water Commission may request the attorney general to file suit in a district court of Travis County to enjoin any such violation or threatened violation of the Texas Water Code, §16.236, to seek monetary penalties, or both.

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(512) 463-8070.

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Subchapter B. Levee Improvement Districts and Approval of District Plans of Reclamation

★31 TAC §§301.21-301.23

These new sections are adopted on an emergency basis under the Texas Water

Code, §5.103, which provides the Texas Water Commission with the authority to adopt rules necessary to carry out its powers and duties under the Texas Water Code and the laws of the state.

§301.21. Procedures Concerning Formation of District.

(a) Levee improvement districts to which this subchapter applies are formed in accordance with the procedures set forth in the Texas Water Code, Chapter 57.

(b) Upon petitioning the county commissioner's court for the creation of the district pursuant to the Texas Water Code, Chapter 57, and giving the notice required by the Texas Water Code, §57.015, the person or persons petitioning the county commissioner's court shall file with the executive director of the Texas Water Commission notice of the hearing before the county commissioner's court on the creation of the district. The notice shall state that the petition has been filed with the appropriate county commissioner's court and shall include a statement of the petition's general purpose and the time and place of the hearing.

(c) In accordance with the Texas Water Code, §57.016, a representative of the executive director of the Texas Water Commission shall attend the hearing before the county commissioner's court on the petition to create the district and shall file a written report with the county commissioner's court concerning the necessity, feasibility, probable costs of reclaiming the land of the district from overflow and of draining it properly, and costs of organizing the district and maintaining it for two years. The executive director shall furnish the county commissioner's court with any additional information that is required.

§301.22. Procedures Subsequent to Formation of District; Applications for Approval of District Plans of Reclamation.

(a) The proposed plan of reclamation of a levee improvement district, which must be approved by the Texas Water Commission, is considered an application for which fees are payable pursuant to §§301.71-301.74 of this title (relating to Fees). The district shall file the application for approval with the executive director. The proposed plan of reclamation shall contain a report prepared by the district's engineer, which shall include maps and profiles of results of a survey of the land inside the boundaries of the district and land surrounding the district, conceptual and economic data, and the engineer's recommendations of levees or other improvements to reclaim the land.

(b) The procedures set forth in §301.37 (a) of this title (relating to Referral of Application to Commission) shall apply to proposed plans of reclamation.

(c) Mail notice of application, publication of notice of application, publication of notice of hearing, and notice of remanded hearing for proposed plans of reclamation shall be made in accordance with the pro-

cedures set forth in §§301.51-301.56 of this title (relating to Notice and Hearing).

(d) The executive director of the Texas Water Commission shall examine the proposed plan of reclamation and shall recommend approval, disapproval, or modification to the commission. The commission shall consider the executive director's recommendation at a commission meeting and shall issue an order approving, approving with modifications, or disapproving the proposed plan of reclamation. If approved, the plan shall then be termed "the plan of reclamation."

(e) The appeal procedure on the commission decision to approve or disapprove the proposed plan of reclamation set forth in the Texas Water Code, §57.094, shall be followed with regard to the appeal of a decision by the Texas Water Commission approving or disapproving a proposed plan of reclamation.

§301.23. Data Required for Applications for Proposed Plans of Reclamation and Criteria Applicable to Proposed Plans of Reclamation. The data set forth in §301.33(a) and (b)(1) of this title (relating to Data To Be Submitted), §301.34(a)(1)-(5) of this title (relating to Criteria For Approval of Preliminary Plans), and §301.35 of this title (relating to Additional Information) must be submitted with applications for approval of proposed plans of reclamation. To the extent applicable pursuant to §301.5 and §301.6 of this title (relating to Proposed Plan of Reclamation; and Preliminary Plans Not in Proposed Plan of Reclamation), the criteria set forth in §301.33(b)(2) and (c) of this title (relating to Data To Be Submitted), §301.34(6) of this title (relating to Criteria For Approval of Preliminary Plans), and §301.36 of this title (relating to Plans To Bear Seal of Engineer), shall apply to proposed plans of reclamation.

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Subchapter C. Approval of Levees and Other Improvements

★ 31 TAC §§301.31-301.46

These new sections are adopted on an emergency basis under the Texas Water Code, §5.103, which provides the Texas Water Commission with the authority to adopt rules necessary to carry out its powers and duties under the Texas Water Code and the laws of the state.

§301.31. Application for Approval of Preliminary Plans for Levees and Other Improvements. Any person who seeks approval of the Texas Water Commission required by the Texas Water Code, §16.236, for construction of any levee or other improvement shall file an application with the executive director of the commission, together with a set of preliminary plans for the levee or other improvement, in duplicate. The preliminary data so submitted must be in sufficient detail to permit the executive director to evaluate the project. Ordinarily, existing maps and information are adequate for the development of acceptable preliminary plans without the necessity of extensive site clearing or detailed surveys. The application and preliminary plans must comply with §§301.51-301.56 of this title (relating to Notice and Hearing). When a levee improvement district has submitted preliminary plans as a part of the district's proposed plan of reclamation, and such plans and the proposed plan of reclamation have been approved by the commission in one step as provided in §301.5 of this title (relating to Proposed Plan of Reclamation), the district shall proceed to the steps set forth in §301.38 of this title (relating to Procedures Subsequent to Approval of Preliminary Plans).

§301.32. Purpose of Preliminary Plans. The purpose of the preliminary plans is primarily to allow the executive director to determine whether the project appears safe and is compatible with existing hydraulic conditions in the area. Preliminary plans should clearly reflect the design concept and indicate how the design was developed. Details of project construction are not required to be shown in the preliminary plans. It is the policy of the commission to evaluate the project from preliminary plans in order that the applicant may determine whether the project concept is to be approved prior to the incurring of large expenditures for a complete development of the final plans and specifications.

§301.33. Data To Be Submitted.

(a) The applicant shall submit maps, plats, drawings, computations, and narratives together with the preliminary plans which shall illustrate and describe the following:

(1) the location and extent of the proposed works, including the county or counties affected by the project. When possible, the applicant should satisfy this requirement by submitting a detailed map which can be superimposed by the executive director upon a United States geological survey 7½ minute quadrangle map, or if such is unavailable, on a suitable contour map;

(2) the name and course of the river, stream, or other watercourse, with the direction of flow indicated;

(3) the location and ownership of all existing levees, channels, canals, reservoirs, dams, or other works of similar character indicated by appropriate symbol to dif-

ferentiate such works from the proposed works;

(4) the location and ownership, including current mailing address of owners, and location, shown by map, of all properties:

(A) lying within any proposed protected area; or

(B) adjacent to the proposed works or which may be affected by the project's alteration of the flood flows of the stream. The purpose of this second requirement is so that all interested property owners may be notified of the application. The applicant, the executive director, and the commission shall liberally construe what areas are potentially affected by the proposed project to ensure that all landowners within the vicinity whose land could be potentially impacted by the proposed project receive notice. Failure of the applicant to adequately provide the information will delay the processing of the application. The executive director may submit an application to the commission for summary dismissal if the applicant refuses to supply this information.

(b) The following flood data is required.

(1) The project design shall be based on a statistical 100-year flood as a minimum where substantial property loss and/or risk of life may be possible. The executive director will review the plans in accordance with the degree of hazard inherent in the proposed project and he may recommend that the project design be based on other than the 100-year flood should only agricultural land (no structures) be involved and no interests other than those of the applicant be affected by the project. Flood level data available from state or federal agencies or other sources supportive of the project design on a statistical basis shall be provided by the applicant to substantiate the selection of design flood frequency and elevation.

(2) The preliminary plans shall demonstrate the effects the proposed project will impose on existing flood conditions. This shall be clearly illustrated by providing separate design floodwater surface-elevation profiles and design-flood delineations of the floodplain with and without the project in place.

(3) Additional flood water surface-elevation profiles and design-flood delineations of the floodplain should be provided for levee or landfill projects with the project in place and with a comparable levee or landfill on the opposite site of the watercourse.

(c) Preliminary plans of the proposed works must adequately illustrate pertinent features of the project such as planned elevations, profiles, dimensional typical cross-sections, and other features such as outlet works, drains, overflow relief structures, landfills, and roads so that an understandable project concept can be discerned.

§301.34. Criteria for Approval of Preliminary Plans. The commission shall use the

following criteria and those listed in §301.33 (b) of this title (relating to Data To Be Submitted) in the review and consideration of applications for approval of plans for levees and other improvements.

(1) Structural integrity. Construction must be based upon sound engineering principles. Structural integrity must withstand any waters which the levee or other improvement is intended to restrain or carry, considering all topographic features, including existing levees.

(2) Compatibility with existing hydraulic conditions. Plans must be compatible with the existing hydraulic conditions. Consideration must be given to any possible deleterious effects, such as overtopping or undermining, on any existing system of levees, channel improvements, landfills, structures, or similar improvements, or on adjacent properties. With regard to applications for approval of levees or landfills, plans will be evaluated with a consideration of comparable levee or landfill development on the opposite side of a stream if such do not exist but are plausible.

(3) Safety. Any proposed levee or other improvement must be designed so that it will not increase flooding or divert waters in such a way that any person's life or property will be endangered or subjected to significantly increased flooding. The commission shall not approve plans for levees or other improvements which will significantly increase flood rises on any person's land without that person's consent or which will endanger life or property or create a public hazard.

(4) Rights of third parties to be protected. The rights of third parties affected by a proposed levee or other improvement must be considered. Before approval, the commission shall accordingly give full consideration to the rights of all such parties not otherwise considered under paragraphs (1)-(3) of this subsection.

(5) The commission and the executive director shall assure that, as far as possible, levees or other improvements shall be designed with primary consideration to the topographic and hydrographic conditions, and in such a manner that each division of a project shall be a complete, united project forming a coordinate part of an ultimately finished series of projects, so constituted that the successful operation of each united project shall coordinate with the successful operation of other projects within the same hydraulic influence.

(6) In addition, a minimum freeboard of three feet above the 100-year design flood hydraulic gradient should be provided where levees furnish protection for urbanized or developing areas. A minimum freeboard of two feet above the 100-year design flood hydraulic gradient, or more frequent flood as may be determined under §301.33 of this title (relating to Data To Be Submitted), should be provided where levees furnish protection for agricultural areas. Reaches of the

levee which may be affected by wave buildup from structural features of the project shall require supplemental study to determine if greater freeboard should be provided.

§301.35. Additional Information. The executive director may request any additional pertinent information from the applicant which he deems necessary to evaluate the effects of a proposed project before submitting the application to the commission for setting of a hearing.

§301.36. Plans To Bear Seal of Engineer. All preliminary plans and other plans which are submitted with an application for approval of a levee or other improvement shall be prepared and signed by a registered professional engineer whose seal shall appear upon or be affixed thereto.

§301.37. Referral of Application to Commission.

(a) The processing of the application shall be in accordance with Chapter 281 of this title (relating to Applications Processing). When the executive director has determined that the application is administratively complete under Chapter 281 of this title (relating to Applications Processing) and that the applicant has paid the required fees, he shall refer the application to the chief clerk of the commission for issuance of mail notice of application and commission action in accordance with §301.52 of this title (relating to Notice of the Application by Mail). For the sole purpose of issuing adequate notice, the executive director will include a recommendation to the commission of the area wherein the proposed project(s) which comprise the application would have potential impact based upon the information provided by the applicant, pursuant to §301.33 of this title (relating to Data To Be Submitted), and the executive director's review of that information. The executive director shall also notify the applicant that he has determined that the project is within the commission's jurisdiction.

(b) If the executive director determines that the project is not one which is within the jurisdiction of the commission pursuant to the Texas Water Code, §16.236, he shall so notify the applicant, who shall withdraw the application. If the application is not withdrawn by the applicant within 90 days of the date of mailing of notification of nonjurisdiction, the executive director may forward the application to the commission and recommend that the commission enter an order dismissing the application. The chief clerk shall notify the applicant of the date set for consideration of the recommendation for dismissal.

§301.38. Procedures Subsequent to Approval of Preliminary Plans.

(a) Final approval of engineering plans and specifications.

(1) Following approval by the commission of a proposed levee or other improvement pursuant to these sections, the appli-

cant shall submit final engineering plans and specifications to the executive director for his approval prior to beginning construction.

(2) In addition to the submission of final plans, the applicant shall also provide the executive director with proof of ownership or right to construct on the project site prior to beginning construction. Upon his review and approval of the final plans of the applicant, the executive director shall notify the applicant in writing that construction may proceed.

(b) Criteria for approval of final plans. The requirements listed here are to be considered guidelines and may be varied according to the requirements of any particular project at the discretion of the executive director. Final plans for such features as excavated channels or constructed embankments will be reviewed as to their structural integrity in accordance with the degree of hazard inherent with the project.

(1) Normal requirements for final channel excavation plans are as follows.

(A) Information is to be provided to indicate the type and/or classification of the soil to be excavated in the channel according to the unified soil classification system. Depth of exploratory borings shall be to at least five feet below planned channel bottom grade.

(B) Plans shall provide elevations and dimensions for the channel and all structures and appurtenances integral to the project such as protective linings, wingwalls, outlet works, drop inlets, aprons, and riprap.

(C) Unlined channels must be constructed to a non-erosive grade. All channels should be accessible for maintenance or repair.

(D) All concrete placement shall be reviewed for intended use.

(E) Use or disposal of excavated material shall be clearly shown on final plans.

(F) All specifications to be followed by the contractor shall be included with plans submitted.

(G) The applicant must have an acceptable operation and maintenance program and budget.

(2) Normal requirements for final levee or dike construction plans are as follows.

(A) For purposes of review, final plans of dikes and levees will be classified into one or a combination of the following:

(i) the dike that holds back water at all times:

- (I) with landfill;
- (II) without landfill:
 - (-a-) high risk protection (dwelling or high value land);
 - (-b-) low risk protection (agricultural);

(ii) the levee that holds back water only during floods:

- (I) with landfill;
- (II) without landfill:
 - (-a-) high risk protection (dwelling or high value land);

(-b-) low risk protection (agricultural).

(B) Normal requirements are to be as follows.

(i) Foundation and borrow source information obtained from exploration will indicate the type and/or classification of the soil according to the unified soil classification system. The borings should be at least to a depth equal to the height of the embankment. In some cases, additional depth of borings may be required. The natural groundwater table elevation shall be given if water is encountered in the borings. The soils to be used shall be relatively impervious and consist of clay and clayey material. At least 15% of the material must pass the #200 sieve and the plasticity index of the material must be above 15. Fill material shall have no stones over six inches in diameter and no organic material (roots, etc.).

(ii) Elevations and dimensions of all proposed structures (levees, dikes, conduits, etc.) including those to be used for drainage shall be noted.

(iii) Lengths and distances between the various components of the system, i.e., lengths of conduits and pipes; distances between dike or levee and natural stream, and borrow area or ditches, shall be noted.

(iv) Compactive effort proposed to be used in project specifications shall be noted. The compactive effort required may vary with the type of dike or levee. The compaction of the material may be obtained by any means that is suitable. The soil shall be compacted to a minimum density of 95% using the standard proctor compaction test at approximately $\pm 3\%$ optimum moisture content. Fill shall be placed in lifts of not more than 12 inches thick and properly processed, if needed, prior to compaction. Methods to be employed to obtain compaction shall be contained in specifications for the project.

(v) Sides of levees that are to remain exposed shall be adequately protected. Plans shall provide for establishing a protective grass cover or for an alternate treatment where climate will not support a vegetative cover.

(vi) All pipes and conduits passing through the dike shall have anti-seep collars to increase the percolation path by a minimum of 15%. The immediate area below drainage outfalls shall be protected by riprap or concrete.

(vii) All concrete placements shall be reviewed for intended use.

(viii) The foundation area shall be stripped. Stripping shall include removal of all grass, trees, and surface root systems for the full width of the levee.

(ix) Provision shall be made for an embankment key. Methods employed to control subsurface seepage shall be reviewed in accordance with soil conditions present and with the degree of hazard inherent in the project.

(x) Materials removed by stripping or from the key way shall be used only

on the dry side of the finished levee.

(xd) All specifications to be followed by the contractor shall be included with plans submitted.

(xii) The applicant shall formulate and carry out an acceptable operation and maintenance program and budget.

§301.39. Time Limits for Construction.

(a) The time during which construction must begin and must be completed. The applicant must commence and complete construction of the project approved by the commission within a reasonable time which shall be established by the commission as a condition stated in the commission's approval order. The commission will evaluate the scope of the project in determining the commencement and completion requirements.

(b) Failure to begin or to complete construction. Failure to begin construction or to complete construction within the period specified in the approval order shall be considered violations of the order and shall be grounds for withdrawal of approval.

(c) Resubmission of plans. If construction is not begun within the period specified in the approval order or is not completed within the period specified in the order, the applicant must resubmit his plans to the executive director for review and consideration whether the lapse of time has resulted in changed circumstances which require significant additional requirements or modifications to the order, giving due consideration to the rights of third parties. Such a resubmission is considered an application for extension of time for which fees are payable pursuant to §§301.71-301.74 of this title (relating to Fees). Specifically, the executive director shall consider whether physical changes have occurred or are imminent or planned in the area of potential impact which may have an adverse effect on landowners which is different from that present in the initial approval process and/or which may require significant alterations of the approved plans or significant additional requirements or modifications to the order.

(d) Referral when changed circumstances exist. If the executive director determines that such changed circumstances exist, he shall refer the application to the commission for action in accordance with §301.37 of this title (relating to Referral of Application to Commission).

(e) Recommendation for extension of time. If the executive director determines that such changed circumstances do not exist, he may recommend to the commission an extension of time to begin or to complete construction. Notice shall not again be required in this case. The commission may, for good cause, extend the period to commence or to complete construction.

§301.40. Notification of Date Work Began; Monthly Reports. Within 10 days after beginning actual construction of a project, the executive director shall be notified in writing of the date work began. Thereafter, monthly

reports of progress shall be forwarded to the executive director by the 10th day of each month during construction. The report shall show the work accomplished during the month, the percentage of time used, and the percentage of completion of the project as of the close-out date of the report. In addition, the report shall show the inclusive dates of the reporting period.

§301.41. Maintenance of Records. The owner shall continuously maintain records to ensure compliance with the approved plans and specifications during construction. Copies of these records shall be furnished to the executive director at monthly intervals during the construction period, and must include, but not necessarily be limited to, such items as soil moisture-density test results, and concrete trial batch designs test and compression test results.

§301.42. Inspection. Inspection of construction work shall be conducted by a registered professional engineer experienced in the construction of levees and channel modifications and responsible directly to the owner. Continuous daily inspections shall be made and may be delegated to a qualified technician (inspector) provided he or she is under the supervision of the owner's engineer. The executive director may make periodic inspections for the purpose of ascertaining compliance with approved plans and specifications. Such inspections shall be at the expense of the commission. The executive director shall require the owner, at his or her expense, to perform necessary work or tests and to disclose information sufficient to enable the executive director to determine that conformity with approved plans and specifications is accomplished.

§301.43. Certification by Executive Director. After approval for the construction of a project has been obtained by the district from the commission, the executive director shall inspect the construction of the project at least once every 60 days after the construction work has commenced, and if he finds that the work has been done in compliance with the construction contract, he shall certify this fact. The certificate shall give a full description of the work done up to the date of inspection. If the executive director finds that the work has not been done in compliance with the construction contract, he shall officially certify this fact to the district and to the commission. The certificate shall specify how the contractor has failed to comply with the approved plan of reclamation.

§301.44. Alterations of Final Plans and Specifications. If after inspection, investigation, or examination, or at any time as the work progresses, the executive director finds that changes or amendments are necessary to ensure safety, he may request the owner to revise his or her plans and/or specifications. Alterations of the plans and specifications must be approved by the executive director before work commences under the

changes, except in emergencies requiring immediate action, in which instance the executive director shall be immediately notified. If the proposed alterations would result in deviation from the approved plans, amendment of the approved plans must be obtained from the commission. An application must be submitted for approval of the amendment. If, in the opinion of the executive director, the amendment would have a potential adverse affect on property owners' rights which is materially different from that in the initial approval process, he shall inform the applicant, and notice must again issue in compliance with §§301.51-301.56 of this title (relating to Notice and Hearing).

§301.45. Failure to Comply with Approved Plans and Specifications. If at any time during construction, enlargement, repair, or alteration of any levee or channel modification, the executive director finds that the work is not being done in accordance with approved plans and specifications or in accordance with the approved plan of reclamation, he shall give written notice thereof and direct compliance by certified mail to the owner. If the owner fails to comply with the directive, the executive director may take appropriate action to assure compliance. Failure to comply with approved plans and specifications is ground for revocation of the order approving the plan and/or civil penalty as provided by law. The commission may order the structure removed to eliminate any safety hazard to life and property.

§301.46. As-Built Plans. Upon submission of as-built construction plans, the applicant shall be provided a notice of final approval in writing if, in the executive director's opinion, no significant variance from the approved plans occurs during the course of construction. Thereafter, any enlargement or other modification of the project, including any subsequent rehabilitation or reconstruction of the project in a manner differing in any way from the approved project plans must be submitted to the commission for approval as a new levee or other improvement pursuant to this chapter.

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Texas Water Commission

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(512) 463-8070.

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Subchapter D. Notice and Hearing

★ 31 TAC §§301.51-301.56

These new sections are adopted on an emergency basis under the Texas Water Code, §5.103, which provides the Texas Water Commission with the authority to

adopt rules necessary to carry out its powers and duties under the Texas Water Code and the laws of the state.

§301.51. Contents of Notice of Application and Commission Action. The notice of application shall fairly set forth the substance of the application and proposed action. The notice shall include the following:

(1) the exact location of the proposed project under the district's proposed plan of reclamation and/or levees and other improvements as nearly as the same can be described;

(2) the date on which the application was filed with the executive director;

(3) a statement that the executive director has determined that the application is administratively complete;

(4) the applicant's anticipated construction and completion schedule;

(5) the applicant's name and mailing address;

(6) a description of the project which reasonably describes the specific nature and scope of the project, including type of approval applicant is seeking from the commission;

(7) an explanation of the method for submitting a response to the application and/or a written request for a public hearing; and

(8) any additional information the commission deems necessary.

§301.52. Notice of the Application by Mail.

(a) The chief clerk of the commission shall send notice by first class mail to persons listed in subsection (b) of this section and to persons who in the judgment of the commission may be affected. The chief clerk shall mail required notice not less than 30 days before the date set for commission consideration of the application.

(b) The notice shall be mailed to the following:

(1) current landowners named in the application and/or map which accompanies the application as described in §301.33 of this title (relating to Data To Be Submitted);

(2) the county judge(s) and health authorities of the county or counties affected;

(3) the following entities:

(A) the Texas Department of Health;

(B) the Texas Parks and Wildlife Department;

(C) the Texas Railroad Commission;

(D) the Texas State Soil and Water Conservation Board;

(E) the Texas General Land Office;

(F) the Texas Historical Commission;

(G) local river authorities;

(H) the Federal Emergency Management Agency; and

(I) the U.S. Corps of Engineers;

(4) the applicant;

(5) persons who request to be put on the mailing list and participants in past commission proceedings for the district and/or levee(s) or other improvements; and

(6) any other person the commission may include, or the executive director may identify after review of the data submitted as required by §301.33 of this title (relating to Data To Be Submitted).

(c) Failure to mail notice to the entities listed in subsection (b)(3) of this section shall not render notice invalid pursuant to this section.

§301.53. Notice of the Application by Publication.

(a) Upon being notified by the chief clerk of the commission to publish a notice of application and commission action, the applicant shall cause the notice to be published in a newspaper of general circulation in each county wherein the project would have potential impact as set forth in §301.33 of this title (relating to Data To Be Submitted) and §301.52 of this title (relating to Notice of the Application by Mail). Publication in one newspaper is sufficient if the newspaper is of general circulation in each county or counties throughout the area of potential impact.

(b) The date of publication of notice of the application and commission action shall be on or before the date of publication directed by the chief clerk of the commission. In any event, the date of publication shall be not less than 30 days before the date set for commission consideration of the application. The applicant shall pay the costs of publication.

§301.54. Action on the Application.

(a) Action without public hearing. The commission may take action on an application at a regular meeting without holding a public hearing provided:

(1) at least 30 days prior to the regular meeting at which action is taken, notice of the application and commission action has been given by mail and by publication; and

(2) within the 30-day period after the publication of the notice, no request for a public hearing has been submitted by a commissioner, the executive director, or an affected person who objects to the application.

(b) Request for public hearing.

(1) A request for public hearing under this chapter made by an affected person who objects to the application must be in writing and must be submitted to the commission within 30 days after the publication of the notice of application. The commission may extend the time allowed for submitting a request for public hearing.

(2) The written request shall contain the following information:

(A) the name, mailing address, and phone number of the person making the request;

(B) the application number or other recognizable reference to the application;

(C) a brief description of the interest of the requester, or of persons represented by the requester; and

(D) a brief description of how the application, if granted, would adversely affect such interest.

(3) If the commission determines that the request for public hearing is in substantial compliance with this section, or that a public hearing would serve the public interest, the commission shall conduct a public hearing.

§301.55. Publication of Notice of Public Hearing.

(a) If a public hearing shall be held pursuant to §301.54 of this title (relating to Action On the Application), the applicant shall cause the notice to be published in a newspaper of general circulation in each county wherein the project would have potential impact. Publication in one newspaper is sufficient if the newspaper is of general circulation in each county or counties throughout the area of potential impact.

(b) A notice of hearing shall identify the application, the date, time, place, and nature of the hearing, the legal authority and jurisdiction under which the hearing is to be held, the proposed action, the requirements for submitting written protests, the method for obtaining additional information, and such other information the commission deems necessary.

(c) The date of publication of notice of public hearing shall be on or before the date of publication directed by the commission. In any event, the date of publication of notice of public hearing shall be not less than 30 days before the date set for the public hearing. The applicant shall pay the costs of publication.

§301.56. Notice of Remanded Hearing.

A hearing on an application which has been remanded by the commission to the office of hearings examiners may be held without the necessity of issuing further notice other than advising the applicant, executive director, public interest advocate, other parties, and all persons who have in writing notified the commission of their interest in the application of the time and place where the hearing is to convene. The chief clerk of the commission shall mail such notice to these persons not less than 10 days before the date of the hearing.

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(512) 463-8070.

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**Subchapter E. Unauthorized
Levees and Other Improvements**

★31 TAC §§301.61-301.63

These new sections are adopted on an emergency basis under the Texas Water Code, §5.103, which provides the Texas Water Commission with the authority to adopt rules necessary to carry out its powers and duties under the Texas Water Code and the laws of the state.

§301.61. Construction without Authorization. If any person, corporation, political subdivision, or other entity has constructed or begun work upon a levee or other improvement for which commission approval is required by the Texas Water Code and this chapter, and if commission approval has not been obtained for such project, the executive director shall immediately notify the person, corporation, political subdivision, or other entity that it is in violation of the Texas Water Code and this chapter, and that unless the project is brought into compliance with the criteria and requirements of the Texas Water Code and this chapter within a period of time determined appropriate by the executive director and stated in such notice, the executive director may request the attorney general or the appropriate court for appropriate remedies under the Texas Water Code. At the expiration of the time period stated in such notice, the executive director may request its legal representative to institute such action in the courts.

§301.62. Removal or Modification of Levees and Other Improvements. Removal or modification of a levee and/or other improvement shall be done at the owner's expense, and except for emergency action required to protect lives and property, only after executive director approval. The executive director may require the owner to provide plans and specifications. The executive director may seek an order from the commission or an injunction through the attorney general and the courts requiring the removal or modification of levees or other improvements which are not authorized by law or which have been determined to pose an unacceptable hazard to lives or property.

§301.63. Emergency Action. Emergency orders may be issued, without notice to the owner, directing the owner of a levee or other improvement to take immediate and appropriate action to remedy situations posing serious threat to human life, health, and/or property.

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Subchapter F. Fees

★31 TAC §§301.71-301.74

These new sections are adopted on an emergency basis under the Texas Water Code, §5.103, which provides the Texas Water Commission with the authority to adopt rules necessary to carry out its powers and duties under the Texas Water Code and the laws of the state.

§301.71. *Executive Director To Charge and Collect Fees.* In accordance with the Texas Water Code, §5.235, the executive director shall charge and collect for the benefit of the state the fees hereinafter provided.

§301.72. *Fees Required.* Statutory fees must accompany an application in order for it to be considered. Employees of the commission are expressly prohibited from processing any application unless the proper fees are tendered.

§301.73. *Fees To Be Paid.* The following fees shall be submitted with any application required to be filed under this chapter:

- (1) filing fee—\$100;
- (2) recording fee—\$1.25 per page;
- (3) fees for mail notice—the cost of mailing notice of the application to persons in the affected or protected area shall be paid by the applicant. The executive director shall advise the applicant of the number of persons and the mailing cost;
- (4) fees for publication of notice of application—the cost of publication of the notice of application in a newspaper of paid circulation, with which the applicant shall arrange publication, which is regularly published and generally circulated in the county or counties within the proposed affected or protected area, shall be paid by the applicant;
- (5) fees for publication of notice of hearing—fees for publication of notice of hearing in a newspaper, with which the applicant shall arrange publication, which is regularly published and generally circulated in the county or counties within the affected or protected area, shall be paid by the applicant.

§301.74. *Examples of Applications Subject to Filing, Recording, and Notice Fees.* The following are examples of applications subject to filing, recording, and notice fees:

- (1) application for approval of district plans of reclamation;
- (2) application for approval of engineering plans and specifications (preliminary and final plans);
- (3) application to amend a plan approval order;
- (4) application to alter, enlarge, extend, or otherwise change any levee or other improvement;
- (5) application for extension of time.

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Subchapter G. Districts To File Information with Executive Director

★31 TAC §301.81

The new section is adopted on an emergency basis under the Texas Water Code, §5.103, which provides the Texas Water Commission with the authority to adopt rules necessary to carry out its powers and duties under the Texas Water Code and the laws of the state.

§301.81. *Districts To File Information With Executive Director.* Immediately before having bonds approved by the attorney general, each drainage district and levee improvement district shall file with the executive director a complete record showing each step in the organization of the district, the amount of bonds to be issued, and a description of the area and boundaries of the district, accompanied by plans, maps, profiles of improvements, and the estimates and reports relating thereto prepared by the district's engineer.

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Chapter 305. Consolidated Permits

Subchapter A. General Provisions

★31 TAC §§305.1, §305.2

The Texas Water Commission adopts on an emergency basis new §§305.1, 305.2, 305.21-304.30, 305.41-305.53, 305.61-305.68, 305.91-305.105, 305.121-305.128, 305.141-305.146, 305.151-305.159, 305.171-305.174, 305.181-305.184, 305.191-305.194, 305.401, and 305.501-305.506, concerning consolidated permits. The sections currently in effect concerning consolidated permits were adopted on an emergency basis on September 3, 1985, and renewed until March 3, 1986. The commission proposed new sections for permanent adoption on the same subject in the January 10, 1986, issue of the *Texas Register*, and has the authority under law to adopt the proposed permanent sections at the present time.

The commission has decided to delay adoption of all of its currently proposed

permanent sections in order to facilitate public comment. An urgent need exists to adopt these emergency sections to maintain uninterrupted regulation and otherwise alleviate an immediate peril to the public health, safety, and welfare that would result from a lapse in the regulations.

The new sections are adopted on an emergency basis under the Texas Water Code, §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any regulations necessary to carry out its powers and duties under the Texas Water Code and other laws of this state and to establish and approve all general policy to the commission.

§305.1. *Scope and Applicability.* The provisions of this chapter set the standards and requirements for applications, permits, and actions by the commission to carry out the responsibilities for management of water disposal activities under the Texas Water Code, Chapters 26-28, and the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7.

§305.2. *Definitions.* The definitions contained in the Texas Water Code, §§26.001, 27.002, and 28.001, and Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §2, shall apply to this chapter. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Application—A formal written request for commission action relative to a permit, either on commission forms or other approved writing, together with all materials and documents submitted to complete the application.

Disposal—The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid, liquid, or hazardous waste into or on any land, or into or adjacent to any water in the state so that such waste or any constituent thereof may enter the environment or be emitted into the air or discharged into or adjacent to any waters, including groundwaters.

Facility—All contiguous land and fixtures, structures, or appurtenances used for storing, processing, treating, or disposing of waste, or for injection activities. A facility may consist of several storage, processing, treatment, disposal, or injection operational units.

Injection well permit—A permit issued pursuant to the Texas Water Code, Chapter 27.

Operator—The person responsible for the overall operation of a facility.

Outfall—The point or location where waterborne waste discharges from a sewer system, treatment facility, or disposal system into or adjacent to the water in this state.

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

Permit—A written document issued by the commission which by its conditions, may authorize the permittee to construct, in-

stall, modify, or operate, in accordance with stated limitations, a specified facility for waste discharge, for solid waste storage, processing, or disposal, or for underground injection, and includes a waste discharge permit, a solid waste permit, and an injection well permit.

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

Processing—The extraction of materials, transfer or volume reduction, conversion to energy, or other separation and preparation of waste for reuse or disposal, and includes the treatment or neutralization of hazardous waste so as to render such waste nonhazardous, safer for transport, or amenable to recovery, storage, or volume reduction. The meaning of transfer as used here does not include the conveyance or transport off-site of solid waste by truck, ship, pipeline, or other means.

Radioactive material—A material which is identified as a radioactive material under Texas Civil Statutes, Article 4590f, as amended, and the rules adopted by the Texas Board of Health pursuant thereto.

Site—The land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

Solid waste permit—A permit issued pursuant to Texas Civil Statutes, Article 4477-7, as amended.

Storage—The holding of waste for a temporary period, at the end of which the waste is processed, recycled, disposed of, or stored elsewhere.

Waste discharge permit—A permit issued pursuant to the Texas Water Code, Chapter 26.

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Subchapter B. Emergency Orders Temporary Orders and Executive Director Authorizations

★ 31 TAC §§305.21-305.30

The new sections are adopted on an emergency basis under the Texas Water Code, §§5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the state.

§305.21. Emergency Orders and Temporary Orders Authorized. The commission may issue emergency orders or temporary orders relating to the discharge of waste or pollutants into or adjacent to any water in the state, whether or not the discharge is covered by a waste discharge permit, when necessary to enable action to be taken more expeditiously than is otherwise provided by the Texas Water Code, Chapter 26, to effectuate the policy and purposes of that chapter.

§305.22. Application for Orders or Authorizations to Discharge.

(a) A person desiring to obtain a temporary or emergency order to discharge waste or pollutants, including untreated or partially treated wastewater, into or adjacent to water in the state shall submit a sworn application to the commission containing the following information and any other information the commission requires:

(1) a statement that the discharge is unavoidable to prevent loss of life, serious injury, severe property damage, or severe economic loss, or to make necessary and unforeseen repairs to a facility, that there are no feasible alternatives to the proposed discharge, and that the discharge will not cause significant hazard to human life and health, unreasonable damage to property of persons other than the applicant, or unreasonable economic loss to persons other than the applicant;

(2) a statement that the proposed discharge will not present a significant hazard to the uses that may be made of the receiving water after the discharge;

(3) an estimate of the dates on which the proposed discharge will begin and end;

(4) a statement of the volume and quality of the proposed discharge;

(5) an explanation of measures proposed to minimize the volume and duration of the discharge; and

(6) an explanation of measures proposed to maximize the waste treatment efficiency of units not taken out of service or facilities provided for interim use.

(b) If the applicant is other than an individual, the application must be sworn to by someone authorized to do so for the applicant, as provided for in §305.44 of this title (relating to Signatories To Applications).

(c) If the executive director issues an authorization to discharge as provided in §305.25 of this title (relating to Executive Director Authorizations To Discharge), the applicant must submit the sworn application as required in subsection (a) of this section before the date of the commission's public hearing to consider the authorization.

§305.23. Emergency Orders.

(a) The commission may issue emergency orders relating to the discharge of waste or pollutants into or adjacent to any water in the state, whether or not the discharge is covered by a waste discharge per-

mit, without notice and hearing, or with such notice and hearing as the commission considers practicable under the circumstances, only if the commission finds the following to be true:

(1) that the discharge is unavoidable to prevent loss of life, serious bodily injury, severe property damage, or severe economic loss, or to make necessary and unforeseen repairs to a facility, that there are no feasible alternatives to the proposed discharge, and that the discharge will not cause significant hazard to human life and health, unreasonable damage to property of persons other than the applicant, or unreasonable economic loss to persons other than the applicant;

(2) that the proposed discharge will not present a significant hazard to the uses that may be made of the receiving water after the discharge;

(3) that the estimate of the dates on which the proposed discharge will begin and end and the estimate of the volume and quality of the proposed discharge submitted by the applicant are reasonable and are attainable; and

(4) that the measures proposed by the applicant to minimize the volume and duration of the discharge, and to maximize the waste treatment efficiency of treatment units not taken out of service or treatment facilities to be provided for interim use are reasonable.

(b) If the commission issues an emergency order under the authority of subsection (a) of this section without a hearing, the order shall fix a time and place for a hearing to be held before the commission which shall be held as soon after the emergency order is issued as is practicable and after such notice as is required under §305.24(a) of this title (relating to Notice).

§305.24. Notice.

(a) Emergency orders relating to the discharge of waste or pollutants may be issued by the commission without prior notice and hearing, or with such notice and hearing under the conditions stated in §305.23 of this title (relating to Emergency Orders), as the commission deems practicable.

(b) Temporary orders, other than emergency orders, require a hearing before issuance of the order. The commission shall give notice of not less than 20 days before the date set for the hearing on the temporary order to all affected persons, and to all persons as may be required by law.

(c) The requirements of the Texas Water Code, §26.022, relating to the time for notice, newspaper notice, and method of giving a person notice do not apply to a hearing held for an emergency order, but such general notice of the hearing shall be given as the commission considers practicable under the circumstances.

§305.25. Executive Director Authorizations to Discharge. If emergency conditions ex-

ist which make it necessary to take action more expeditiously than is otherwise provided by this section, the executive director may authorize the discharge of untreated or partially treated wastewater from a permitted facility into or adjacent to water in the state if he determines that the discharge is unavoidable to prevent loss of life, serious injury, severe property damage, or severe economic loss, or to make necessary and unforeseen repairs to the facility, that there are no feasible alternatives to the discharge, and that the discharge will not cause significant hazard to human life and health, unreasonable damage to property of persons other than the applicant, or unreasonable economic loss to persons other than the applicant. If the executive director issues an authorization to discharge under this authority, the commission shall hold a hearing as provided for in §305.23(b) of this title (relating to Emergency Orders) as soon as practicable, but in no event later than 10 days after issuance of the authorization, to affirm, modify, or set aside the authorization.

§305.26. Hearings for Temporary Orders, Executive Director Authorizations, and Emergency Orders.

(a) At the hearing for an executive director authorization or commission emergency order, the commission shall affirm, modify, or set aside the authorization or emergency order. For any hearing on a temporary order, executive director authorization, or emergency order, the following procedures will apply.

(1) Parties will be designated by the commission. To be designated as a party, the person seeking party status must show a justiciable interest. For each hearing under this section, the applicant, the public interest advocate of the commission, and the executive director of the commission are designated as parties by rule.

(2) The testimony of all witnesses will be under oath, with an opportunity for questioning by the commission and cross-examination by the other parties.

(3) Other parties to the hearing will be given an opportunity to present rebuttal evidence and testimony.

(4) The applicant will have the burden of proving its need for an authorization or emergency order, and will have the right to open and close the evidentiary parts of the hearing; the fact that the executive director has authorized such discharge under §305.25 of this title (relating to Executive Director Authorizations to Discharge), standing alone, will not constitute evidence of the need for such authorization.

(5) The commission will have the right to limit the number of witnesses; to limit the time for direct questioning or cross-examination of a witness; to refuse illustrative and documentary evidence; and to limit argument.

(b) On or before the date set for hearing by the commission to affirm, modify, or

set aside an executive director authorization, the applicant shall submit a sworn application supporting such authorization, as specified under §305.22(a) of this title (relating to Application for Orders on Authorizations to Discharge).

§305.27. Application Fees.

(a) The application fee for an emergency order to discharge under §305.23 of this title (relating to Emergency Orders) or for a solid waste activity under §305.29 of this title (relating to Emergency Orders for Solid Waste Activities) or §305.30 of this title (relating to Emergency Actions Concerning Hazardous Waste), or a temporary order under §305.22 of this title (relating to Application for Orders or Authorizations to Discharge) is \$100 plus the cost of required notice. The fee is payable at the time the application is filed.

(b) The application fee for an executive director authorization is \$100 plus the cost of required notice. The fee is payable, along with the sworn application required by §305.22 of this title (relating to Application for Orders or Authorizations to Discharge), before the date of the commission's public hearing to consider the authorization.

§305.28. Renewals of Emergency Orders and Temporary Orders. The duration of any discharge emergency order or temporary order issued pursuant to this chapter shall not exceed 180 days, but the orders may be renewed one time upon proper application. Applications for renewal may be filed with the commission, along with payment of the temporary order application fee. Renewal applications will be treated as new applications and the temporary order application procedures of this chapter will be followed.

§305.29. Emergency Orders for Solid Waste Activities.

(a) The commission may issue an emergency order, either mandatory or prohibitory in nature, regarding any activity of solid waste management within its jurisdiction, whether such activity is covered by a permit or not, if the commission determines that an emergency exists requiring immediate action to protect the public health and safety or the environment. The order may be issued without notice and hearing, or with such notice and hearing as the commission deems practicable under the circumstances.

(b) If an emergency order is issued without a hearing, the commission shall fix a time and place for a hearing to be held by the commission in accordance with commission rules, so as to affirm, modify, or set aside the emergency order.

(c) The requirements of the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, 4(e)(4), relating to public notice, do not apply to a hearing to affirm, modify, or set aside an emergency order issued under this section, but such general notice of the hearing shall be given in accordance with commission rules.

(d) Any emergency order issued under this section shall not exceed 90 days in duration, but may be renewed.

§305.30. Emergency Actions Concerning Hazardous Waste.

(a) Whenever there is good reason to believe that the storage, processing, or disposal of hazardous waste should be authorized in order to alleviate an imminent and substantial endangerment to human health or safety or the environment and if there are no alternative, permitted facilities that are reasonably available for the proper management of the waste, the commission, on its own motion or the request of the executive director or any other party, may issue an emergency order authorizing the processing, storage, or disposal of the hazardous waste at a nonpermitted facility or at a permitted facility with no authorization under its permit to receive the hazardous waste in need of immediate management. The order may be issued without notice and hearing, or with such notice and hearing as the commission deems practicable under the circumstances.

(b) A party, other than the executive director, requesting an emergency order approving the storage, processing, or disposal of hazardous waste, shall file a written request with the executive director setting forth the reason for the request, including a description of the imminent and substantial endangerment to human health or safety or the environment, and alternatives investigated.

(c) The executive director shall review the request and may require the applicant for an emergency order to supply additional information as may be reasonably required to assist the commission in making the necessary findings set out in subsection (a) of this section.

(d) The executive director shall forward the request for an emergency order with the executive director's recommendation, including any proposed emergency order and findings.

(e) Any emergency order issued by commission under this section:

(1) shall not exceed 90 days in duration;

(2) shall clearly specify the hazardous wastes to be received, and the manner and location of their processing, storage, or disposal;

(3) may be terminated by the commission at any time without notice and hearing if it determines that termination is appropriate to protect human health or the environment; and

(4) shall incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of this chapter and Chapter 336 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste).

(f) Notice and hearing shall be provided in accordance with §305.24 of this title (relating to Notice). The notice of hearing shall include:

- (1) the name and address of the applicant;
- (2) the name and location of the hazardous waste management facility;
- (3) a brief description of the wastes involved;
- (4) a brief description of the action authorized or to be authorized, and the reasons for authorization; and
- (5) the duration of the emergency order.

Issued in Austin, Texas, on February 25, 1986.

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For further information, please call
(512) 463-8070.

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Subchapter C. Application for Permit

★ 31 TAC §§305.41-305.53

The new sections are adopted on an emergency basis under the Texas Water Code, §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the state.

§305.41. Applicability. The sections of this subchapter apply to permit applications required to be filed with the commission for authorization under the Texas Water Code, Chapters 26, 27, and 28, the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7.

§305.42. Application Required. Any person who is required to obtain a permit, or who requests an amendment or renewal of a permit, shall complete, sign, and submit an application to the executive director, according to the provisions of this chapter.

§305.43. Who Applies. It is the duty of the owner of a facility to submit an application for a permit, unless a facility is owned by one person and operated by another, in which case it is the duty of the operator to submit an application for a permit.

§305.44. Signatories to Applications.

(a) All applications shall be signed as follows:

(1) for a corporation: by a principal executive officer of at least the level of vice-president or a duly authorized representative if such representative is responsible for the overall operation of the facility. A representative shall submit in writing proof of the authorization;

(2) for a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(3) for a municipality, state, federal, or other public agency: by either a principal executive officer or a ranking elected official.

(b) A person signing an application shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of civil penalty and criminal fine."

(c) For hazardous solid waste permit applications, the owner and operator of a facility must sign the application.

§305.45. Contents of Application for Permit.

(a) Forms for permit applications will be made available by the executive director. Each application for permit shall include the following:

(1) the name, mailing address, and location of the facility for which the application is submitted;

(2) the ownership status as federal, state, private, public, or other entity;

(3) the operator's name, mailing address, and telephone number;

(4) a brief description of the nature of the business;

(5) the activities conducted by the applicant which require a permit;

(6) up to four standard industrial classification codes which best reflect the principal products or services provided by the facility;

(7) a topographic map, ownership map, county highway map, or a map prepared by a registered professional engineer or a registered surveyor which shows the facility and each of its intake and discharge structures and any other structure or location regarding the regulated facility and associated activities. Maps must be of material suitable for a permanent record, and shall be on sheets 8½ inches by 14 inches or folded to that size, and shall be on a scale of not less than one inch equals one mile. The map shall depict the approximate boundaries of the tract of land owned or to be used by the applicant and shall extend at least one mile beyond the tract boundaries sufficient to show the following:

(A) each well, spring, and surface water body or other water in the state within the map area;

(B) the general character of the areas adjacent to the facility, including public roads, towns, and the nature of development of adjacent lands such as residential, commercial, agricultural, recreational, undeveloped, and so forth;

(C) the location of any waste disposal activities conducted on the tract not included in the application;

(D) the ownership of tracts of land adjacent to the facility and within a reasonable distance from the proposed point or points of discharge, deposit, injection, or other place of disposal or activity;

(E) such other information that reasonably may be requested by the executive director;

(8) a listing of all permits or construction approvals received or applied for under any of the following programs:

(A) Hazardous Waste Management Program under the Texas Solid Waste Disposal Act;

(B) Underground Injection Control (UIC) Program under the Texas Injection Well Act;

(C) National Pollutant Discharge Elimination System (NPDES) Program under the Federal Clean Water Act (CWA) and Waste Discharge Program under the Texas Water Code, Chapter 26;

(D) Prevention of Significant Deterioration (PSD) program under the Federal Clean Air Act;

(E) Nonattainment Program under the Federal Clean Air Act;

(F) national emission standards for hazardous pollutants (NESHAPS) pre-construction approval under the Clear Air Act;

(G) ocean dumping permits under the Marine Protection Research and Sanctuaries Act;

(H) dredge or fill permits under the Federal Clean Water Act;

(I) other environmental permits;

(9) whether the facility is located on Indian lands;

(10) supplementary technical report. A supplementary technical report shall be submitted in connection with an application. The report shall be prepared either by a Texas registered professional engineer, or by a qualified person who is competent and experienced in the field to which the application relates who is thoroughly familiar with the operation or project for which the application is made. The report shall include the following:

(A) a general description of the facilities and systems used for or in connection with the collection, transportation, treatment, and disposal of waste, or used in connection with an injection activity;

(B) for each outfall, injection well, place of deposit, or place of disposal:

(i) the volume and rate of disposal of the defined waste or of fluid injection, including appropriate averages, the maximum rates of disposal or injection over representative periods of time, and detailed information regarding patterns of disposal or injection; and

(ii) the physical and chemical properties of the defined waste or the injection fluids; the characteristics of the waste or the injection fluid; the chemical, physical, thermal, organic, bacteriological, or radioactive properties or characteristics, as appli-

cable, described in enough detail to allow evaluation of the water and environmental quality considerations involved;

(C) such other information as reasonably may be required by the executive director for an adequate understanding of the project or operation, and which is necessary to provide the commission an adequate opportunity to make the considerations required by §331.121 of this title (relating to Class I Wells), §331.122 of this title (relating to Class III Wells), §305.50 of this title (relating to Additional Requirements for an Application for a Solid Waste Permit), and §305.48 of this title (relating to Additional Contents of Applications for Waste Discharge Permits).

(b) Only one application needs to be filed for each geographical location in which waste is or will be disposed of or discharged from, even though there may be more than one outfall, place of deposit, or other place of disposal covered in the application.

§305.46. Designation of Material as Confidential.

(a) Certain material submitted to the commission may be determined to be confidential and withheld from public review. The applicant shall identify any material for which confidentiality is requested.

(b) Each claim of confidentiality must be made upon submission of the material with the application, or the material will be considered available for public review.

(c) Reasons of confidentiality include the protection of trade secrets and similar interests which give a person the right to preserve confidentiality of commercial information in order to obtain or retain advantages from any proprietary right in the information. This includes authorizations under 5 United States Code §552(b)(4), 18 United States Code §1905, and special rules cited in 40 Code of Federal Regulations §§2.301-2.309.

(d) The executive director will review each claim of confidentiality. If a claim is not approved, the applicant will be notified and informed whether the material is essential to the application. The applicant may elect to withdraw any material submitted with an application.

(e) The name and address of an applicant or permittee will not be considered confidential.

(f) For injection well applications, information which deals with the existence, absence, or levels of contaminants in drinking water will not be considered confidential.

(g) This section shall not be construed so as to make confidential any effluent data, including effluent data in permits, draft permits, and permit applications; nor shall this section be construed so as to preclude necessary discovery of relevant information by any party to a contested hearing before the commission.

§305.47. Retention of Application Data. A permittee shall keep records, throughout

the term of the permit of all data used to complete applications and any supplemental information.

§305.48. Additional Contents of Applications for Waste Discharge Permits. The following shall be included in an application for a waste discharge permit.

(1) If the application is for the disposal of any waste into or adjacent to a watercourse, the application shall show the ownership of the tracts of land adjacent to the treatment facility and for a reasonable distance along the watercourse from the proposed point of discharge. The applicant shall list on a map, or in a separate sheet attached to a map, the names and addresses of the owners of such tracts of land as can be determined from the current county tax rolls or other reliable sources. As part of an application, the applicant shall also submit an affidavit which lists the names and addresses of the owners of tracts of land depicted on the map required by §305.45 of this title (relating to Contents of Application for Permit) and shall include the source of the list.

(2) The applicant shall submit any other information reasonably required by the executive director to ascertain whether the facility will be constructed and operated in compliance with all pertinent state and federal statutes.

§305.49. Additional Contents of Application for an Injection Well Permit.

(a) The following shall be included in an application for an injection well permit:

(1) for Class I wells, as defined in Chapter 331 of this title (relating to Underground Injection Control), the information listed in §331.121 of this title (relating to Class I Wells);

(2) for Class III wells, as defined in Chapter 331 of this title (relating to Underground Injection Control), the information listed in §331.122 of this title (relating to Class III wells);

(3) the manner in which compliance with the financial responsibility requirement of §305.153 of this title (relating to Financial Responsibility) will be attained;

(4) a plugging and abandonment plan;

(5) a letter from the Railroad Commission of Texas stating that the drilling of a disposal well and the injection of the waste into the subsurface stratum selected for disposal will not endanger or injure any oil or gas formation;

(6) for Class III wells, a description of all liquid and solid nonradioactive wastes resulting from mining activities;

(7) a complete delineation of any aquifer or portion of an aquifer for which exempt status is sought; and

(8) any other information reasonably required by the executive director to evaluate the proposed injection well or project.

(b) An application for production area authorization shall be submitted with

and contain the following for each production area:

- (1) mine plan;
- (2) a restoration table;
- (3) a baseline water quality table;
- (4) control parameter upper limits;
- (5) monitor well locations; and
- (6) other information reasonably

required by the executive director to evaluate the application.

§305.50. Additional Requirements for an Application for a Solid Waste Permit. Unless otherwise stated, an application for a permit to store, process, or dispose of solid waste, shall meet the following requirements.

(1) Six copies of the permit application shall be submitted on forms provided by or approved by the executive director and shall be accompanied by a like number of copies of all required exhibits.

(2) Plans and specifications for the construction and operation of the facility and the staffing pattern for the facility shall be submitted, including the qualifications of all key operating personnel. Also to be submitted is the closing plans for the solid waste storage, processing, or disposal facility. The information provided shall be sufficiently detailed and complete to allow the executive director to ascertain whether the facility will be constructed and operated in compliance with all pertinent state and local air, water, public health, and solid waste statutes.

(3) Any other information as the executive director may deem necessary to determine whether the facility and the operation thereof will comply with the requirements of the Texas Solid Waste Disposal Act and Chapter 336 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), shall be included.

(4) In the case of an application for a permit to store, process, or dispose of hazardous waste, the application shall also contain any additional information required by 40 Code of Federal Regulations §§270.13-270.21. At any time after the effective date of the requirements contained in Chapter 336, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing or Disposal Facilities), the executive director may require the owner or operator of an existing hazardous waste management facility to submit that portion of his application containing the information specified in 40 Code of Federal Regulations §§270.14-270.21. Any owner or operator shall be allowed a reasonable period of time from the date of the request to submit the information. An application for a new hazardous waste management facility must be submitted at least 180 days before physical construction of the facility is expected to commence.

(5) An application for a new hazardous waste landfill which is filed after January 1, 1986, must include an engineering report which evaluates the benefits, if any, associated

with the construction of the landfill above existing grade at the proposed site, the costs associated with the above-grade construction, and the potential adverse effects, if any, which would be associated with the above-grade construction.

(6) An application for a new hazardous waste landfill, land treatment facility, or surface impoundment, which is filed after January 1, 1986 which is to be located in the apparent recharge zone of a regional aquifer must include a hydro-geologic report documenting the potential effects, if any, on the regional aquifer in the event of a release from the waste containment system.

(7) Engineering plans and specifications submitted as part of the permit application shall be prepared and sealed by a registered professional engineer who is currently registered as required by the Texas Engineering Practice Act.

(8) After August 8, 1985, any Part B permit application submitted by an owner or operator of a facility that stores, processes, or disposes of hazardous waste in a surface impoundment or a landfill must be accompanied by information, reasonably ascertainable by the owner or operator, on the potential for the public to be exposed to hazardous wastes or hazardous constituents through releases related to the unit. By August 8, 1985, owners and operators of a landfill or a surface impoundment who have already submitted a Part B application must submit the exposure information required by this paragraph. At a minimum, such information must address:

(A) reasonably foreseeable potential releases from both normal operations and accidents at the unit, including releases associated with transportation to or from the unit;

(B) the potential pathways of human exposure to hazardous wastes or constituents resulting from documented releases; and

(C) the potential magnitude and nature of the human exposure resulting from such releases.

§305.51. Revision of Applications for Hazardous Waste Permits.

(a) Owners or operators of hazardous waste management facilities, who filed a Part A permit application pursuant to 40 Code of Federal Regulations, §270.10, and have not yet filed a Part B application, shall file a revised Part A application with the executive director if:

(1) new hazardous wastes not identified in the original application are stored, processed, or disposed of at the facility;

(2) increases in the design capacity of processes used at the facility occur;

(3) changes in the processes for management of the waste occur or additional processes are added; or

(4) changes in the ownership or operational control of a facility are made.

(b) The purpose of this section is to delineate requirements for filing a revised application, not to authorize any changes in facility operation. Changes in facility operations will be reviewed and approved by the executive director. In deciding whether to approve the proposed change, the executive director may consider the requirements set forth in 40 Code of Federal Regulations §270.72. A permit will be required for the operation of an above-grade landfill not described in a Part A application filed pursuant to §335.43 of this title (relating to Permit Required) prior to the effective date of this section.

§305.52. Waste Containing Radioactive Materials. An application which involves the disposal of a waste containing radioactive materials shall be accompanied by a letter or other instrument in writing from the Texas Department of Health, stating either that the applicant, or the person delivering the waste containing radioactive materials for disposal by the applicant, has a license from the Texas Department of Health governing the disposal of radioactive materials; or that the applicant or the person served by the applicant does not need such a license.

§305.53. Application Fees.

(a) Except as specifically provided hereunder, an applicant shall include with each application a fee of \$100.

(1) The permit application fee for each disposal well which will not be authorized to receive hazardous waste is \$25. The fee for each disposal well which will be authorized to receive hazardous waste is \$2,000.

(2) The permit application fee for each solid waste management facility to be used for the storage, processing, or disposal of hazardous waste, the Part B application for which was filed after September 1, 1985, shall be not less than \$2,000 and not more than \$50,000 as calculated in accordance with the following:

(A) site evaluation—\$100 per acre of solid waste facility up to 300 acres; no additional fee thereafter;

(B) process analysis—\$1,000;

(C) facility unit(s) analysis—\$500 per unit;

(D) management/facility analysis—\$500.

(3) For purposes of paragraph (2)(C) of this subsection, each landfill, surface impoundment, incinerator, waste pile, tank, and container storage area shall be considered a facility unit subject to the \$500 per unit fee; except that multiple storage tanks or container storage areas identical in type and use will be subject to a single \$500 unit fee.

(4) The fees established by this section are due at the time that the application is filed in accordance with §281.3 of this title (relating to Initial Review), except that for hazardous waste permit applications filed on or after September 1, 1985, but prior to the effective date of paragraph (2) of this subsection,

fees under paragraph (2) of this subsection are due at the time that the application is forwarded to the chief clerk of the Texas Water Commission for purposes of issuance of the notice of application. Unless the recommendation of the executive director is that the application be denied, the commission will not consider an application for final decision until such time as the fees pursuant to paragraph (2) of this subsection are paid.

(b) An applicant shall also include with each application a fee of \$5.00 to be applied toward the cost of providing required notice. The balance of the notice fee is due when the executive director has calculated the notice cost.

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TRD-8601994

James K. Rourke, Jr.
General Counsel
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Expiration date: July 1, 1986

For further information, please call
(512) 463-8070.

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

★ 31 TAC §305.61-305.68

The new sections are adopted on an emergency basis under the Texas Water Code, §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the state.

§305.61. Applicability. The provisions of this subchapter set forth the standards and requirements for applications and actions concerning amendments, renewals, transfers, corrections, revocations, and suspensions of permits.

§305.62. Amendment.

(a) Causes for amendment. Except as provided in §305.65 of this title (relating to Corrections of Permits), a change in a term, condition, or provision of a permit requires an amendment. The permittee or an affected person may request an amendment to a permit. If the executive director determines such a request is not justified, the executive director will respond, stating the reasons for that determination. The person requesting such amendment may petition the commission for a review of the request and the executive director's recommendation.

(b) Application for amendment. An application for an amendment to a permit shall include all requested changes to the permit. Information sufficient to review the application shall be submitted in the form and manner and under the procedures specified

in §§305.41-305.53 of this title (relating to Application for Permit). The application shall include a statement describing the reason for the requested changes.

(c) Types of amendments.

(1) A major amendment is an amendment that changes a substantive term, provision, requirement, or a limiting parameter of a permit.

(2) A minor amendment is an amendment to improve or maintain the permitted quality or method of disposal of waste or injection of fluid if there is neither a significant increase of the quantity of waste or fluid to be discharged or injected nor a material change in the pattern or place of discharge or injection. A minor amendment includes any other change to a permit issued under this chapter that will not cause a potential deterioration of quality of water in the state nor relax a standard or criterion which may result in a potential deterioration of quality of water in the state. A minor amendment also includes, but is not limited to, the following:

(A) changing an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date;

(B) requiring more frequent monitoring or reporting by the permittee;

(C) for solid waste permits, the following changes:

(i) change in the lists of facility emergency coordinators of equipment in the permit's contingency plan;

(ii) change in the estimates of maximum inventory under 40 Code of Federal Regulations §264.112(a)(2);

(iii) change in the estimates of expected year of closure or schedules for final closure under 40 Code of Federal Regulations §264.112(a)(4);

(iv) extensions of periods longer than 90 days or 180 days under 40 Code of Federal Regulations §264.113(a) and (b);

(v) change in the ranges of the operating requirements set in the permit to reflect the results of a trial burn, provided that the change is minor;

(vi) a minor change to the operating requirements set in the permit for conducting a trial burn;

(vii) an extension of the time period for determining operational readiness following completion of construction, for up to 720 hours operating time for treatment of hazardous waste;

(viii) change in the treatment requirements for land treatment units under 40 Code of Federal Regulations §264.271 to improve treatment of hazardous constituents, provided that the change is minor;

(ix) a minor change to any conditions specified in the permit for land treatment units to reflect the results of field

tests or laboratory analyses used in making a treatment demonstration in accordance with §§305.181-305.184 of this title (relating to Permits for Land Treatment Demonstrations Using Field Tests or Laboratory Analysis); or

(x) authorization for a second treatment demonstration for land treatment to be conducted when the results of the first demonstration have not shown the conditions under which the waste or wastes can be treated completely as required by 40 Code of Federal Regulations §264.272(a) provided the conditions for the second demonstration are substantially the same as the conditions for the first demonstration.

(d) Good cause for amendments. The executive director may initiate and the commission may order an amendment to a permit if good cause exists. Good cause includes, but is not limited to, the following:

(1) there are material and substantial changes to the permitted facility or activity which justify permit conditions that are different or absent in the existing permit;

(2) information not available at the time of permit issuance is received by the executive director, and such information justifies amendment of existing permit conditions;

(3) the standards or regulations on which the permit or a permit condition was based have been changed by new standards or regulations or by judicial decision;

(4) an act of God, strike, flood, material shortage, or other event over which the permittee has no control and for which there is no reasonably available alternative may be determined to constitute good cause for amendment of a compliance schedule;

(5) for permits to store, process, or dispose of hazardous waste:

(A) when modification of a closure plan is required under 40 Code of Federal Regulations §§264.112(b) or 264.118 (b);

(B) after the executive director receives the modification of expected closure under 40 Code of Federal Regulations §264.113, when the executive director determines that extension of the 90- or 180-day periods under 40 Code of Federal Regulations §264.113, modification of the 30-year post-closure period under 40 Code of Federal Regulations §264.117(a), continuation of security requirements, or permission to disturb the integrity of the containment system under 40 Code of Federal Regulations §264.117(c) are warranted;

(C) when the permittee has filed a request under 40 Code of Federal Regulations §264.147(d) for a variance to the level of financial responsibility or when the executive director demonstrates under 40 Code of Federal Regulations §264.147(e) that an upward adjustment of the level of financial responsibility is required;

(D) to include a detection monitoring program meeting the requirements of §336.164 of this title (relating to Detection

Monitoring Program), when the owner or operator has been conducting a compliance monitoring program under §336.165 of this title (relating to Compliance Monitoring Program) or a corrective action program under §336.166 of this title (relating to Corrective Action Program) and the compliance periods ends before the end of the postclosure care period for the unit;

(E) to include conditions applicable to units at a facility that were not previously included in the facility's permit; or

(F) when a land treatment unit is not achieving complete treatment of hazardous constituents under its current permit conditions.

(e) Amendment of land disposal facility permit. When a permit for a land disposal facility used to manage hazardous waste is reviewed by the commission under §305.127(1)(B)(iii) of this title (relating to Conditions to be Determined for Individual Permits), the commission shall modify the permit as necessary to assure that the facility continues to comply with currently applicable requirements of this chapter and Chapter 336 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste).

(f) Amendment initiated by the executive director. If the executive director determines to file a petition to amend a permit, notice of the determination stating the grounds therefor and a copy of a proposed amendment draft shall be personally served on or mailed to the permittee at the last address of record with the commission. This notice should be given at least 15 days before a petition is filed with the commission. However, such notice period shall not be jurisdictional.

(g) Amendment initiated permit expiration. The existing permit will remain effective and will not expire until commission action on the application for amendment is final. The commission may extend the term of a permit when taking action on an application for amendment.

§305.63. *Renewal.* The permittee or the executive director may file an application for renewal of a permit. The application shall be filed with the executive director before the permit expiration date.

(1) An application for renewal may be in the same form as that required for the original permit application.

(2) An application for renewal shall request continuation of the same requirements and conditions of the expiring permit.

(3) If an application for renewal in fact requests a modification of requirements and conditions of the existing permit, an application for amendment shall also be filed before further action is taken.

(4) If renewal procedures have been initiated before the permit expiration date, the existing permit will remain in full force and effect and will not expire until commis-

sion action on the application for renewal is final.

(5) The commission may deny an application for renewal for the grounds set forth in §305.66 of this title (relating to Revocation and Suspension).

(6) During the renewal process, the executive director may make any changes or additions to permits authorized by §305.65 of this title (relating to Corrections of Permits), or §305.62(d) of this title (relating to Amendment) provided the requirements of §305.62(e) of this title (relating to Amendment) and §305.96 of this title (relating to Action on Application for Amendment) are satisfied.

§305.64. *Transfer of Permits.*

(a) A permit is issued in person and may be transferred only upon approval of the commission. An attempted transfer is not effective for any purpose until actually approved by the commission.

(b) The permittee shall submit to the executive director an application for transfer at least 30 days before the proposed transfer date. The application shall contain the following:

(1) name and address of the transferee;

(2) date of proposed transfer;

(3) if the permit requires financial responsibility, the method by which the proposed transferee intends to assume or provide financial responsibility, including proof of such financial responsibility to become effective when the transfer becomes effective; and

(4) any other information the executive director may require.

(c) If no agreement regarding transfer of permit responsibility and liability is provided, responsibility for compliance with the terms and conditions of the permit and liability for any violation associated therewith is assumed by the transferee on the date the transfer is approved. This section is not intended to relieve a transferor of any liability.

(d) The executive director must be satisfied that proof of any required financial responsibility is sufficient before transmitting an application for transfer to the commission for further proceedings.

(e) If a person attempting to acquire a permit causes or allows operation of the facility before approval is given, such person shall be considered to be operating without a permit or other authorization.

(f) The commission may refuse to approve a transfer where conditions of a judicial decree, compliance agreement, or other enforcement order have not been entirely met. The commission shall also consider the prior compliance record of the transferee, if any.

§305.65. *Corrections of Permits.* The commission may make corrections to permits, either by reissuing the permit or by issuing an endorsement to the permits, without

the necessity of observing the formal amendment procedures prescribed in this chapter:

(1) to correct a clerical or typographical error;

(2) to describe more accurately the location of the authorized point or place of discharge, injection, deposit, or disposal of any waste, or the route which any waste follows along the watercourses in the state after being discharged;

(3) to describe more accurately the character, quality, or quantity of any waste authorized to be disposed of;

(4) to describe more accurately the pattern of discharge or disposal of any waste authorized to be disposed of; or

(5) to state more accurately any provisions in a permit but without changing the substance of any such provision.

§305.66. *Revocation and Suspension.*

(a) A permit or other order of the commission does not become a vested right and may be revoked or suspended for good cause at any time by order of the commission after opportunity for a public hearing is given. Good cause includes, but is not limited to, the following:

(1) the permittee has failed or is failing to comply with the conditions of the permit or a commission order, including failure to construct, during the life of the permit, facilities necessary to conform with the terms and conditions of the permit;

(2) the permit or the operations thereunder have been abandoned;

(3) the permit or other order is no longer needed by the permittee;

(4) the permittee's failure in the application or hearing process to disclose fully all relevant facts, or the permittee's misrepresentation of relevant facts at any time;

(5) a determination that the permitted activity endangers human health or safety or the environment to such an extent that permit termination is necessary to prevent further harm;

(6) the facility is being operated by a transferee before commission approval of the transfer;

(7) for Class III injection wells, failure to achieve satisfactory restoration progress; or

(8) such other cause sufficient to warrant termination or suspension of the authorization.

(b) The authority to discharge waste into or adjacent to the water in the state under a waste discharge permit is subject to cancellation or suspension under the Texas Water Code, §26.084;

(c) The commission may amend, revoke, or suspend, after notice and hearing according to §305.68 of this title (relating to Action and Notice on Petition for Revocation and Suspension), any permit for a solid waste storage, processing, or disposal facility, for good cause, for reasons pertaining to public health, air or water pollution, land use, or for violations of the Texas Solid

Waste Disposal Act, or any other applicable laws or rules controlling the management of solid waste.

(d) When the executive director determines revocation or suspension proceedings are warranted, a petition requesting appropriate action may be filed by the executive director with the commission. A person affected by the issuance of a permit or other order of the commission may initiate proceedings for revocation or suspension by forwarding a petition to the executive director to be filed with the commission.

(e) If the executive director or an affected person intends to file a petition to revoke or suspend a permit, notice of the intention and a copy of the petition to be filed shall be personally served on or sent by registered or certified mail to the permittee at the last address of record with the commission. This notice shall be given at least 15 days before a petition for revocation or suspension is submitted to the executive director or filed with the commission for further proceedings. Failure to provide such notice shall not be jurisdictional.

§305.67. *Revocation and Suspension upon Request or Consent.*

(a) If a permittee no longer desires to continue a waste disposal activity or to dispose of waste under a permit, or is agreeable to a suspension of authorization to do so for a specified period of time, the permittee should file with the executive director a written request or a written consent and waiver not later than 10 days following receipt of notice of the intention to file a petition under §305.66 of this title (relating to Revocation and Suspension).

(b) If a permittee requests or consents to the revocation or suspension of the permit, the executive director may revoke or suspend the permit without the necessity of a public hearing or commission action. The executive director shall notify the commission of each such revocation or suspension.

§305.68. *Action and Notice on Petition for Revocation or Suspension.*

(a) In the absence of a request filed by the permittee or of sufficient consent and waiver, the commission shall conduct a public hearing on a petition to revoke or suspend a permit or other order of the commission, notice of which shall be given to the permittee not less than 10 days prior to the hearing by certified mail, return receipt requested, of the time and place of the hearing.

(b) If the permittee requests or consents to the revocation or suspension of the permit and the executive director has not revoked or suspended the permit, the commission may take action at a regular meeting of the commission without holding a public hearing, provided notice of the hearing is given by first-class mail at least 10 days prior to the meeting.

Issued in Austin, Texas, on February 25, 1986.

TRD-8601995

James K. Rourke, Jr.
General Counsel
Texas Water Commission

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For further information, please call
(512) 483-8070.

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Subchapter E. Actions, Notice, and Hearing

★ 31 TAC §§305.91-305.105

The new sections are adopted on an emergency basis under the Texas Water Code, §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the state.

§305.91. Applicability. This subchapter sets forth the manner in which action will be taken on applications filed with the commission.

§305.92. Action on Applications. The commission may conduct a public hearing on any application. The commission shall conduct a public hearing on an application for permit, major amendment, or renewal covered by this chapter, if a request for hearing is made by a commissioner, the executive director, or an affected person who objects to the application and files a request in accordance with commission rules. If a hearing is held, notice of hearing shall be given by publication and by mail, as required by law.

§305.93. Action on Application for Permit.

(a) Except as provided in subsection (b) of this section, the commission may take action on an application at a regular meeting without holding a public hearing, provided:

(1) at least 30 days prior to the regular meeting at which action is to be taken, notice of the application has been given by publication and by mail as required by law; and

(2) within the 30-day period after the first publication of the notice, no request for a public hearing has been made by a commissioner, the executive director, or an affected person.

(b) The time limits of subsection (a) of this section shall be 45 days for applications involving hazardous waste under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7.

(c) For any application involving an average daily discharge of five million gallons or more, notice shall be given not less than 20 days prior to commission action on the application to each county judge of the county or counties located within 100 statute miles of the point of discharge who has requested in writing that such notice be given;

and through which water, into or adjacent to which waste or pollutants are to be discharged under the permit, flows after the discharge.

§305.94. Action on Application for Production Area Authorization. The commission may take action on an application for production area authorization at a regular meeting without a public hearing, provided notice of the application has been given by first-class mail at least 10 days prior to the meeting.

§305.95. Action on Application for Renewal.

(a) Except as provided in subsections (b) and (c) of this section, the commission may take action on an application for renewal in the manner prescribed by §305.92 of this title (relating to Action on Applications).

(b) The commission shall conduct a public hearing on an application for renewal if the executive director has recommended denial, unless the permittee files sufficient consent and waiver of hearing, in which case the provisions of subsection (a) of this section apply.

(c) The commission may take action on an application to renew a permit for a confined animal feeding operation within the definition of the Texas Water Code, §26.028 (c), at a regular meeting without the necessity of holding a public hearing, provided notice of the application is given to persons as required by law by first-class mail at least 10 days prior to the meeting.

§305.96. Action on Application for Amendment.

(a) Except as provided in subsection (c) of this section, the commission may take action on an application for a major amendment in the manner prescribed by §305.93 of this title (relating to Action on Application for Permit).

(b) The commission may take action on an application for minor amendment at a regular meeting of the commission without holding a public hearing, provided notice of the application is given to persons as required by law by first-class mail at least 10 days prior to the meeting.

(c) The commission shall conduct a public hearing on a petition for a major amendment, unless the permittee files sufficient consent and waiver of hearing, in which case the provisions of subsection (a) of this section apply.

§305.97. Action on Application for Transfer.

The commission may approve a transfer by order at a regular meeting of the commission.

§305.98. Scope of Proceedings. The commission may limit consideration in permit renewal or amendment proceedings to only those portions or provisions of a permit for which the application or petition requests action. All terms, conditions, and provisions

of an existing permit remain in full force and effect during such proceedings, and the permittee shall comply with an existing permit until a new or amended permit is issued.

§305.99. Commission Action.

(a) The commission may grant or deny an application or petition in whole or in part, suspend the authority to conduct an activity or disposal of waste for a specified period of time, dismiss the proceedings, amend a permit or other order, or take any other action as may be appropriate. For applications involving hazardous waste under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, the commission may issue or deny a permit for one or more units at the facility. The interim status of any facility unit compliant with the provisions of Texas Solid Waste Disposal Act, 4(f)(2) and §336.2(c) of this title (relating to Permit Required) for which a permit has not been issued or denied is not affected by the issuance or denial of a permit to any other unit at the facility.

(b) If the commission directs a person to perform or refrain from performing a certain act or activity, there shall be set forth in the order the findings on which the directive is based. The commission may set a compliance deadline in its order to represent a reasonable period of time in which:

(1) to terminate the operation or activity;

(2) to cease disposal, handling, or storage of any waste;

(3) to conform to the permit requirements, including any new or additional conditions imposed by the commission; or

(4) to otherwise comply with the commission's order.

(c) The commission may grant an extension of time to a compliance deadline upon application by the permittee for good cause.

§305.100. Notice of Application. A notice of application shall fairly set forth the substance of the application and proposed action, including, but not limited to, the location and nature of any proposed or existing facility, the location of any point of injection, discharge or place of disposal, the rate of discharge or injection, the method for obtaining additional information about the application, the method for submitting a response or protest to the application and request for a hearing, and such other information necessary to give a fair appraisal of the application. The notice shall state whether a draft permit or a draft solid waste compliance plan has been prepared by the executive director.

§305.101. Notice of Hearing. A notice of hearing shall identify the application, the date, time, place, and nature of the hearing, the legal authority and jurisdiction under which the hearing is to be held, the proposed action, the requirements for submitting written protests, the method for obtaining ad-

ditional information, and such other information the commission deems necessary. The notice shall state whether a draft permit has been prepared by the executive director.

§305.102. Notice by Publication.

(a) If notice by publication is required, the applicant shall cause the notice approved by the commission to be published in a newspaper regularly published, and generally circulated within the county wherein the proposed facility or discharge is to be located, and within each county wherein persons reside who would be affected by the facility or proposed discharge. For applications for solid waste permits, notice shall be published in each county which is adjacent or contiguous to each county wherein the proposed facility or discharge is to be located.

(b) The date of publication for a notice of application shall be as set forth in this subchapter for each type of action.

(c) The date of publication for a notice of hearing for any application covered by this chapter shall be not less than 30 days before the date set for hearing.

(d) The applicant is responsible for the cost of publication.

§305.103. Notice by Mail.

(a) If notice by mail is required, the commission will transmit the notice by first-class mail to persons listed in subsection (b) of this section and to other persons, who in the judgment of the commission, may be affected. Personal service may be substituted for mailing.

(b) The notice shall be mailed to the following:

(1) the affected landowners named on the application map or supplemental map, or the sheet attached to the application map or supplemental map;

(2) the mayor and health authorities of the city or town in which the facility is or will be located or in which waste is or will be disposed of;

(3) the county judge and health authorities of the county in which the facility is located or in which waste is or will be disposed of;

(4) the Texas Department of Health;

(5) the Texas Parks and Wildlife Department;

(6) the Texas Railroad Commission;

(7) for an injection well permit application, the Texas Water Well Drillers Board;

(8) the applicant;

(9) persons who request to be put on the mailing list and participants in past commission permit proceedings for the facility or activity;

(10) state and federal agencies for which notice is required in 40 Code of Federal Regulations §124.10(c);

(11) any other person the commission may elect to include; and

(12) county judges as required by §305.93(c) of this title (relating to Action on

Application for Permit).

(c) The date of mailing for a notice of application shall be as set forth in this subchapter for each type of action.

(d) The date of mailing for a notice of hearing shall be at least 30 days before the date set for hearing.

(e) The applicant is responsible for the cost of required notice.

§305.104. Radio Broadcasts. For an application to store, process, or dispose of hazardous waste under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, the commission shall mail a summary of the public notice prepared by the commission to one or more local radio stations, listed in the latest edition of the Texas Broadcasters Directory, which are located in the affected area to be available to such stations for broadcast as a public service. For purposes of this section, the affected area is an area to be determined by the commission on each application which includes the county in which the site is to be located and may include contiguous counties at the discretion of the commission. Local radio stations are encouraged to broadcast the summary of the notice to assist the commission in informing the affected community of the pending hazardous waste application. The failure to mail the summary of the notice, the failure to show evidence of radio broadcasts, or the failure of a radio station to broadcast the summary of the notice will not affect the commission's jurisdiction to consider the application.

§305.105. Request for Public Hearing.

(a) A request for public hearing under this chapter must be made in writing and submitted by an affected person to the commission within 30 days after the first publication of the notice of application, except that a request must be submitted within 45 days after the first publication of the notice of an application involving hazardous waste under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7. The commission may extend the time allowed for submitting a request for public hearing.

(b) The written request shall contain the following information:

(1) the name, mailing address, and phone number of the person making the request;

(2) a brief description of the interest of the person making the request, or of persons represented by the person making the request; and

(3) a brief description of how the application, if granted, would adversely affect such interest.

(c) An affected person is one who is determined by the commission to have an interest different from that of the general public that may be adversely affected by action taken on the application.

(d) If the commission determines the request for public hearing is in compliance with this section, or that a public hearing

would serve the public interest, the commission shall conduct a public hearing.

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James K. Rourke, Jr.
General Counsel
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For further information, please call
(512) 463-8070.

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**Subchapter F. Permit
Characteristics and Conditions**

★ 31 TAC §§305.121-305.128

The new sections are adopted on an emergency basis under the Texas Water Code, §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the state.

§305.121. Applicability. The provisions of this subchapter establish the characteristics and standards for permits issued for injection wells, waste discharges, and solid waste management.

§305.122. Characteristics of Permits.

(a) A permit issued within the scope of this subchapter does not convey any property rights of any sort, nor any exclusive privilege, and does not become a vested right of the permittee.

(b) The issuance of a permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of state or local law or regulations.

§305.123. Reservation in Granting Permit.

Every permit is subject to further orders and rules of the commission. In accordance with the procedures for amendments and orders, the commission may incorporate into permits already granted any condition, restriction, limitation, or provision reasonably necessary for the administration and enforcement of the Texas Water Code, Chapters 26, 27, and 28, and the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7.

§305.124. Acceptance of Permit, Effect.

Acceptance of the permit by the person to whom it is issued constitutes an acknowledgement and agreement that such person will comply with all the terms and conditions embodied in the permit, and the rules and other orders of the commission.

§305.125. Standard Permit Conditions.

The following conditions are applicable to all permits issued within the scope of this chapter, and shall be incorporated into each permit expressly or by reference to this chapter.

(1) The permittee has a duty to comply with all conditions of the permit. Failure to comply with any permit condition constitutes a violation of the permit and the Texas Water Code or the Texas Solid Waste Disposal Act, and is grounds for enforcement action, for permit amendment, revocation, or suspension, or for denial of a permit renewal application or of an application for a permit for another facility.

(2) In order to continue a permitted activity after the expiration date of the permit, the permittee must apply for a new permit or renewal prior to expiration of the existing permit. Authorization to continue such activity will terminate upon the effective denial of said application.

(3) It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

(4) The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with the permit.

(5) The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit.

(6) The permittee shall furnish to the executive director, upon request and within a reasonable time, any information to determine whether cause exists for amending, revoking, suspending, or terminating the permit. The permittee shall also furnish to the executive director, upon request, copies of records required to be kept by the permit.

(7) The permittee shall give notice to the executive director prior to physical alterations or additions to the permitted facility if such alterations or additions would require a permit amendment or result in a violation of permit requirements.

(8) Authorization from the commission is required before beginning any change in the permitted facility or activity that would result in noncompliance with other permit requirements.

(9) Unless specified otherwise, the permittee shall report any noncompliance to the executive director which may endanger human health or safety or the environment. Report of such information shall be provided orally within 24 hours from the time the permittee becomes aware of the noncompliance. A written submission of such information shall also be provided within five working days of the time the permittee becomes aware of the noncompliance. The written submission shall contain a description of the noncompliance and its cause; the potential danger to human health or safety or the environment; the period of noncompliance, including exact dates and times; if the noncompliance has not been corrected, the anticipated time it is expected to continue; and

steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.

(10) Inspection and entry shall be allowed as prescribed in the Texas Water Code, Chapters 26, 27, and 28, and the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, 7.

(11) Monitoring and reporting requirements are as follows.

(A) Monitoring samples and measurements shall be taken at times and in a manner so as to be representative of the monitored activity.

(B) Monitoring and reporting records, including strip charts and records of calibration and maintenance, copies of all records required by the permit, and the certification required by 40 Code of Federal Regulations §264.73(b)(9), shall be retained at the facility site for a period of three years from the date of the record or sample, measurement, report, or certification. This period may be extended at the request of the executive director.

(C) Records of monitoring activities shall include the following:

(i) date, time, and place of sample or measurement;

(ii) identity of individual who collected the sample or made the measurement;

(iii) date of analysis;

(iv) identity of the individual who performed the analysis;

(v) the technique or method of analysis; and

(vi) the results of the analysis or measurement.

(12) Any noncompliance other than that specified in this section, or any required information not submitted or submitted incorrectly shall be reported to the executive director as promptly as possible.

(13) A permit may be transferred only according to the provisions of §305.64 of this title (relating to Transfer of Permits) and §305.97 of this title (relating to Action on Application for Transfer).

(14) All reports and other information requested by the executive director shall be signed by the person and in the manner required by §305.128 of this title (relating to Signatories to Reports).

(15) A permit may be amended, suspended and reissued, or revoked for cause. The filing of a request by the permittee for a permit amendment, suspension and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(16) A permit does not convey any property rights of any sort, or any exclusive privilege.

(17) Monitoring results shall be provided at the intervals specified in the permit.

(18) Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit shall

be submitted no later than 14 days following each schedule date.

(19) Where the permittee becomes aware that it failed to submit any relevant facts in a permit application or submitted incorrect information in an application or in any report to the executive director, it shall promptly submit such facts or information.

§305.126. Additional Standard Permit Conditions for Waste Discharge Permits.

Whenever flow measurements for any sewage treatment facility in the state reaches 75% of the permitted average daily flow for three consecutive months, the permittee must initiate engineering and financial planning for expansion and/or upgrading of the wastewater treatment and/or collection facilities. Whenever the average daily flow reaches 90% of the permitted average daily flow for three consecutive months, the permittee shall obtain necessary authorization from the Texas Water Commission to commence construction of the necessary additional treatment and/or collection facilities. In the case of a wastewater treatment facility which reaches 75% of the permitted average flow for three consecutive months, and the planned population to be served or the quantity of waste produced is not expected to exceed the design limitations of the treatment facility, the permittee will submit an engineering report supporting this claim to the executive director. If, in the judgment of the executive director, the population to be served will not cause permit noncompliance, then the requirements of this section may be waived. To be effective, any waiver must be in writing and signed by the director of the Water Quality Division of the Texas Water Commission, and such waiver of these requirements will be reviewed upon expiration of the existing permit. However, any such waiver shall not be interpreted as condoning or excusing any violation of any permit parameter.

§305.127. Conditions to be Determined for Individual Permits.

The following conditions are to be determined on a case-by-case basis according to the criteria set forth herein, and when applicable, shall be incorporated into the permit expressly or by reference.

(1) Duration.

(A) Injection well permits.

(i) Permits for Class I wells shall be effective for a fixed term not to exceed 10 years.

(ii) Permits for Class III wells or projects may be effective for the life of the well or project, and shall be reviewed at least once every five years.

(B) Solid waste permits.

(i) Hazardous waste permits shall be effective for a fixed term not to exceed 10 years.

(ii) Other solid waste permits may be effective for the life of the project.

(iii) Each permit for a land disposal facility used to manage hazardous

waste shall be reviewed by the executive director five years from the date of permit issuance or reissuance and shall be modified as necessary by the commission, as provided in §305.62(e) of this title (relating to Amendment).

(C) Waste discharge permits.

(i) Permits which authorize a direct discharge of wastewater into a surface drainageway shall be effective for a term not to exceed five years.

(ii) Confined animal feeding operation permits may be effective for the life of the project.

(iii) Other wastewater permits, including permits which regulate no-discharge systems, shall be effective for a term not to exceed 10 years.

(D) Drilled or mined shaft permits. Drilled or mined shaft permits which authorize operation of a drilled or mined shaft shall be effective for a term not to exceed 10 years.

(E) Term of permit. The term of a permit shall not be extended by amendment beyond the maximum duration specified in this section.

(F) Duration of permit. The executive director may recommend that a permit be issued and the commission may issue any permit for a duration that is less than the full allowable term under this section.

(2) Monitoring, recording, and reporting.

(A) Requirements concerning the proper use, maintenance, and installation of monitoring equipment or methods shall be specified by the commission as appropriate.

(B) The type, intervals, and frequency of monitoring shall be set to yield data representative of the monitored activity, at a minimum as specified in commission rules for monitoring and reporting.

(C) Other requirements for monitoring and reporting shall be set at a minimum as specified in commission rules for monitoring and reporting.

(3) Schedule of compliance.

(A) A schedule of compliance prescribing a time table for achieving compliance with the permit conditions, the appropriate act, and regulations may be incorporated into a permit. The schedule shall require compliance as soon as possible and may set interim dates of compliance. For injection wells, compliance shall be required not later than three years after the effective date of the permit.

(B) For schedules of compliance exceeding one year, interim dates of compliance not exceeding one year shall be set wherever practicable. If the time necessary for completion of any interim requirement is more than one year and is not readily divisible into interim stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(C) Reporting requirements for each schedule of compliance shall be specified by the commission as appropriate. Reports of progress and completion shall be submitted to the executive director no later than 14 days after each schedule date.

(4) Requirements for individual programs.

(A) Requirements to provide for and assure compliance with standards set by the rules of the commission and the laws of Texas shall be determined and included in permits on a case-by-case basis to reflect the best method for attaining such compliance. Each permit shall contain terms and conditions as the commission determines necessary to protect human health and safety and the environment. Reference is made to Chapter 331 of this title (relating to Underground Injection Control) for injection well standards, to Chapter 336 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste) for solid waste facility standards, and to Chapter 309 of this title (relating to Effluent Standards) for waste discharge standards, and to Chapter 329 of this title (relating to Drilled or Mined Shafts) for drilled or mined shaft standards.

(B) Any statutory or regulatory requirement which takes effect prior to final administrative disposition of an application for a permit or prior to the amendment or suspension and reissuance of a permit shall be included in the permit.

(C) New, amended, or renewed permits shall incorporate any applicable requirements contained in Chapter 331 of this title (relating to Underground Injection Control) for injection well standards, Chapter 336 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste) for solid waste facility standards, Chapter 309 of this title (relating to Effluent Standards) (waste discharge standards), and Chapter 329 of this title (relating to Drilled or Mined Shafts) for drilled or mined shaft standards.

(5) Wastes authorized.

(A) Injection well permits. Each category of waste to be disposed of by injection well shall be authorized in the permit.

(B) Drilled or mined shaft permits. Each category of waste to be handled, stored, processed, or disposed of in a drilled or mined shaft, or in associated surface facilities shall be authorized in the permit.

(C) Unauthorized wastes. Wastes not authorized by permit are prohibited from being transported to, stored, and processed or disposed of in a permitted facility.

(6) Permit conditions. All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable rules or requirements must be given in the permit.

§305.128. Signatories to Reports.

(a) All reports requested by permits and other information requested by the executive director shall be signed by a person

described in §305.44(a) of this title (relating to Signatories to Applications), or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) the authorization is made in writing by a person described in §305.44(a) of this title (relating to Signatories to Applications);

(2) the authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity or for environmental matters for the applicant, such as the position of plant manager, operator of a well or well field, environmental manager, or a position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and

(3) the written authorization is submitted to the executive director.

(b) If an authorization under this section is no longer accurate because of a change in individuals or position, a new authorization satisfying the requirements of this section must be submitted to the executive director prior to or together with any reports, information, or applications to be signed by an authorized representative.

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James K. Rourke, Jr.
General Counsel
Texas Water Commission

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For further information, please call
(512) 463-8070.

Subchapter G. Additional
Conditions for Solid Waste
Storage, Processing, or
Disposal Permits

★31 TAC §§305.141-305.146

The new sections are adopted on an emergency basis under the Texas Water Code, §§5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the state.

§305.141. Applicability.

(a) Unless otherwise stated, the conditions contained in this subchapter apply to all solid waste storage, processing, or disposal permits. These conditions are in addition to those set forth in §305.66 of this title (relating to Revocation and Suspension).

(b) In addition to the conditions established under §305.127(4) of this title (relating to Conditions to be Determined for Individual Permits), each permit for a facility used for the storage, processing, and disposal of hazardous waste shall include:

(1) each of the applicable requirements specified in Chapter 336, Subchapter

F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities); and

(2) a list of the wastes or classes of wastes which will be processed, stored, or disposed of at the facility, and a description of the processes to be used for the processing, storage, or disposal of such hazardous wastes at the facility, including the design capacity of each storage, processing, and disposal unit. Except in the case of containers, the description must identify the particular wastes or classes of wastes which will be processed, stored, or disposed of in particular equipment or locations (e.g., "halogenated organics may be stored in Tank A" and "metal hydroxide sludges may be disposed of in landfill cells B, C, and D").

§305.142. Duty to Comply. The permittee need not comply with the conditions of the permit to the extent and for the duration such noncompliance is authorized in an emergency order issued by the commission.

§305.143. Recordkeeping. For those permits containing a groundwater monitoring requirement, the permittee shall maintain records from all groundwater monitoring wells and associated groundwater surface elevations for the active life of the facility and for disposal facilities for the post-closure care period as well.

§305.144. Certification and Inspection. For a new facility, the permittee may not commence storage, processing, or disposal of solid waste; and for a facility being modified, the permittee may not process, store, or dispose of solid waste in the modified portion of the facility until:

(1) the permittee has submitted to the executive director by certified mail or hand delivery a letter signed by the permittee and a Texas registered professional engineer stating that the facility has been constructed or modified in compliance with the permit; and

(2) the executive director has inspected the modified or newly constructed facility and finds it is in compliance with the conditions of the permit; or if within 15 days of submission of the letter required by paragraph (1) of this section, the permittee has not received notice from the executive director of an intent to inspect, prior inspection is waived, and the permittee may commence processing, storage, or disposal of solid waste.

§305.145. Release or Discharges of Solid Waste.

(a) The following shall be included as information which must be reported orally within 24 hours pursuant to §305.125(9) of this title (relating to Standard Permit Conditions):

(1) information concerning release of any solid waste that may cause an endangerment to public drinking water supplies;

(2) any information of a release or discharge of solid waste, or of a fire or explosion from a facility, which could threaten the environment or human health or safety outside the facility. The description of the occurrence and its cause shall include:

(A) name, address, and telephone number of the owner or operator;

(B) name, address, and telephone number of the facility;

(C) date, time, and type of incident;

(D) name and quantity of material(s) involved;

(E) the extent of injuries, if any;

(F) an assessment of actual or potential hazards to the environment and human health or safety outside the facility, where this is applicable; and

(G) estimated quantity and disposition of recovered material that resulted from the incident.

(b) The executive director may waive the five-day written notice requirement under §305.125(9) of this title (relating to Standard Permit Conditions) in favor of a written report pursuant to this section within 25 days.

§305.146. Reporting. The following reports shall be submitted:

(1) manifest discrepancy report required by §336.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities); if a significant discrepancy in a manifest is discovered, the permittee must attempt to reconcile the discrepancy. If not resolved within 15 days, the permittee must submit a letter report including a copy of the manifest to the executive director. (This condition applies only to permits for off-site facilities that store, process, or dispose of municipal hazardous waste or Class I industrial hazardous or nonhazardous solid waste);

(2) waste report required by §336.15 (c) of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities); a waste report must be submitted to the executive director on a monthly basis (This condition applies only to permits for off-site facilities that store, process, or dispose of municipal hazardous waste or Class I hazardous or nonhazardous industrial solid waste);

(3) annual report required by §336.9 of this title (relating to Shipping and Reporting Procedures Applicable to Generators) and §336.71 of this title (relating to Annual Reporting); an annual report must be submitted covering facility activities during the previous calendar year;

(4) monthly summary required by §336.15(b) of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities) and §336.154 of this title (relating to Reporting Requirements for owners and operators); a

monthly summary must be submitted covering facility activities during the previous calendar year. (This condition applies only to permits for off-site facilities that store, process, or dispose of municipal hazardous waste or Class I waste hazardous or nonhazardous industrial solid waste).

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James K. Rourke, Jr.
General Counsel
Texas Water Commission

Effective date: March 3, 1986

Expiration date: July 1, 1986

For further information, please call
(512) 463-8770.

★ ★ ★

Subchapter H. Additional Conditions for Injection Well Permits

★ 31 TAC §§305.151-305.159

The new sections are adopted on an emergency basis under the Texas Water Code, §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the state.

§305.151. Applicability. Unless stated otherwise, the following conditions apply to all Class I and Class III injection well permits and shall be incorporated into the permit expressly or by reference. The commission may require such conditions for Class V injection well permits as are necessary to prevent pollution of fresh water. These conditions are in addition to those set forth in §§305.121-305.128 of this title (relating to Permit Characteristics and Conditions).

§305.152. Corrective Action.

(a) For such wells within the area of review which are inadequately constructed, completed, or abandoned, and which as a result of the injection activities may cause the pollution of fresh water, the commission shall prescribe or incorporate into the permit a condition requiring corrective action adequate to prevent such pollution.

(b) The criteria of §331.44 of this title (relating to Corrective Action Standards) will be used to determine adequacy.

(c) A permit issued for an existing injection well requiring corrective action may include a compliance schedule prescribing the time within which the corrective action must be completed.

(d) As part of the corrective action plan, the commission may impose an injection pressure limitation that does not cause the pressure in the injection zone to exceed hydrostatic pressure in those wells described in subsection (a) of this section, which condition shall expire upon adequate completion of all corrective action measures.

(e) Action prescribed by a corrective action plan for new wells or new areas must

be completed to the satisfaction of the executive director before operation of the well begins.

(f) In the event that, after an authorization for injection has been granted, additional information is submitted or discovered that a well within the applicable area of review might pose a hazard to a freshwater aquifer, the commission may prescribe a corrective action plan and compliance schedule as a condition for continued injection activities.

§305.153. Financial Responsibility.

(a) The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. The definitions are intended to represent the common meanings of the terms as they are generally used by the business community.

(1) **Assets**—All existing and all probable future economic benefits obtained or controlled by a particular entity.

(2) **Current assets**—Cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

(3) **Current closure cost estimate**—The dollar amount of financial assurance currently approved by the commission to ensure the proper closing, plugging, and abandoning of injection operations.

(4) **Current liabilities**—Obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

(5) **Independently audited**—Refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

(6) **Liabilities**—Probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

(7) **Net working capital**—Current assets minus current liabilities.

(8) **Net worth**—Total assets minus total liabilities equivalent to owner's equity.

(9) **Parent corporation**—A corporation which directly owns at least 50% of the voting stock of the corporation which is the facility permittee; the latter corporation is deemed a subsidiary of the parent corporation.

(10) **Permittee**—The owner and/or operator of injection well facilities authorized by rule or authorized by a valid commission permit.

(11) **Tangible worth**—The tangible assets that remain after deducting liabilities; such assets do not include intangibles, such as goodwill, or rights to patents or royalties.

(b) The permittee shall secure and maintain a performance bond or other equivalent form of financial assurance or guarantee approved by the commission to ensure

the closing, plugging, and abandonment of the injection operation in the manner prescribed by the commission. The assurance may cover more than one well or operation. For new facilities, financial security shall be obtained at least 60 days prior to the commencement of drilling operations for the well.

(c) An injection well permittee may satisfy the requirements of subsection (b) of this section by qualifying under the financial test as specified in subsection (d)-(n) of this section. To pass this test, the permittee must meet the criteria of either subsection (d) or (e) of this section.

(d) The permittee must have:

(1) two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5;

(2) net working capital and tangible net worth each at least six times the sum of the current closure cost estimate;

(3) tangible net worth of at least \$10 million; and

(4) assets in the United States amounting to at least 90% of total assets or at least six times the sum of the current closure cost estimate.

(e) The permittee must have:

(1) a current rating for the permittee's most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's, or Aaa, Aa, A, or Baa as issued by Moody's;

(2) tangible net worth at least six times the sum of the current closure cost estimate;

(3) tangible net worth of at least \$10 million; and

(4) assets located in the United States amounting to at least 90% of total assets or at least six times the sum of the current closure cost estimate.

(f) To demonstrate qualification under the financial test specified under either subsection (d) or (e) of this section, the permittee must submit the following items to the executive director:

(1) a letter signed by the permittee's chief financial officer and worded as specified in subsection (m) of this section;

(2) a copy of an independent certified public accountant's report on examination of the permittee's financial statements for the latest completed fiscal year; and

(3) a report from an independent certified public accountant to the permittee stating that:

(A) the independent accountant has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(B) no matters have come to the attention of the independent accountant which suggest that the specified data should be adjusted.

(g) After the initial submission of items specified in subsection (f) of this section, the permittee must send updated information to the executive director within 90 days after the close of each succeeding fiscal year. This information must consist of all items specified in subsection (f) of this section.

(h) If the permittee no longer meets the requirements of subsection (c) of this section, the permittee must send notice to the executive director of the permittee's intent to establish alternate financial assurance as specified in this section. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the permittee no longer meets the requirements. The permittee must provide the alternate financial assurance within 120 days after the end of such fiscal year.

(i) The executive director may, based on a reasonable belief that the permittee no longer meets the requirements of subsection (c) of this section, require reports of financial condition at any time from the permittee in addition to those specified in subsection (f) of this section. If the executive director finds on the basis of such reports or other information, that the permittee no longer meets the requirements of subsection (c) of this section, the permittee must provide alternate financial assurance as specified in this section within 30 days after notification of such a finding.

(j) The executive director may disallow use of the financial test specified in subsections (d)-(n) of this section on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the permittee's financial statements as required under subsection (f)(2) of this section. An adverse opinion or a disclaimer of opinion will be cause for disallowance. The executive director will evaluate other qualifications on an individual basis. The permittee must provide alternate financial assurance acceptable to the executive director, within 30 days after notification of the disallowance.

(k) A permittee will no longer be required to submit the items specified in subsection (f) of this section when:

(1) a permittee substitutes alternate financial assurance acceptable to the executive director; or

(2) the permittee properly closes, plugs, and abandons the permitted injection well in accordance with applicable permit provisions and rules of the commission.

(l) A permittee may meet the requirements of the financial test specified in subsections (d)-(n) of this section by obtaining a written guarantee, hereinafter referred to as corporate guarantee. The guarantor

must meet the requirements for permittees in subsections (d)-(j) of this section and must comply with the terms of the corporate guarantee. The wording of the corporate guarantee must be identical to the wording specified in subsection (n) of this section. The corporate guarantee must accompany the items sent to the executive director as specified in subsection (f) of this section. The terms of the corporate guarantee must provide that:

(1) if the permittee fails to properly close, plug, and abandon the permitted injection well covered by the corporate guarantee, the guarantor will do so;

(2) the corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the permittee and to the executive director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the permittee and the executive director, as evidenced by the return receipts;

(3) if the permittee fails to provide alternate financial assurance and obtain the written approval of such alternate financial assurance from the executive director within 90 days after receipt by both the permittee and the executive director of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the permittee.

(m) A letter from the chief financial officer, as specified in subsection (f) of this section, must be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

(Address to Executive Director, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711).

I am the chief financial officer of (name and address of permittee). This letter is in support of this firm's use of the financial test to demonstrate financial responsibility required by 31 TAC §305.153.

(Fill out the following two paragraphs regarding facilities and associated closure cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include the commission's permit or control file number, name and address of the facility, and current closure cost estimate.)

1. This firm is authorized by the Texas Water Commission to operate the following injection well facilities for which financial assurance is demonstrated through the TWC financial test. The current closure cost estimates covered by the test are shown for each facility:_____

2. This firm guarantees, through the attached corporate guarantee, the closure of the following injection well facilities owned or operated by subsidiaries of this firm. The current closure cost estimates so guaranteed are shown for each facility:_____

This firm (insert "is required" or "is not required") to file a form 10K with the Securities and Exchange Commission for the latest fiscal year.

The fiscal year of this firm ends on (month, day). The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended (date).

(Fill in appropriate alternatives as most applicable to your firm).

Alternative I

1. Sum of current closure cost estimates (total of all cost estimates shown in the two paragraphs above) \$_____

*2. Total liabilities (if any portion of the closure cost estimates is included in "total liabilities", you may deduct the amount of that portion from this line and add that amount to lines 3 and 4) \$_____

*3. Tangible net worth \$_____

*4. Net worth \$_____

*5. Current assets \$_____

*6. Current liabilities \$_____

7. Net working capital (Line 5 minus line 6) \$_____

*8. The sum of net income plus depreciation, depletion, and amortization \$_____

*9. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) \$_____

10. Is line 3 at least \$10 million? Yes No_____

11. Is line 3 at least 6 times line 1?_____

12. Is line 7 at least 6 times line 1?_____

*13. Are at least 90% of firm's assets located in the U.S.? If not, complete line 14._____

14. Is line 9 at least 6 times line 1?_____

15. Is line 2 divided by line 4 less than 2.0?_____

16. Is line 8 divided by line 2 greater than 0.1?_____

17. Is line 5 divided by line 6 greater than 1.5?_____

Alternative II

1. Sum of current closure cost estimates (total of all cost estimates shown in the two paragraphs above) \$_____

2. Current bond rating of most recent issuance of this firm and name of rating service _____

3. Date of issuance of bond _____

4. Date of maturity of bond _____

*5. Tangible net worth (if any portion of the closure cost estimates is included in "total liabilities" on your firm's finan-

cial statements, you may add the amount of that portion to this line) \$_____

*6. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) \$_____

7. Is line 5 at least \$10 million?_____

8. Is line 5 at least 6 times line 1?_____

*9. Are at least 90% of firm's assets located in the U.S.? (If not, complete line 10.) _____

10. Is line 6 at least 6 times line 1?_____

(Signature)

(Name)

(Title)

(Date)

(n) A corporate guarantee, as specified in subsection (1) of this section, must be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Corporate Guarantee for Injection Well Closure Guarantee made this (date) by (name of guarantor entity), a business corporation organized under the laws of the State of (insert name of state), herein referred to as guarantor, to the Texas Water Commission (hereinafter referred to as TWC), obligee, on behalf of our subsidiary (permittee) of (business address).
Recitals

(1) Guarantor meets or exceeds the TWC financial test criteria and agrees to comply with the reporting requirements for guarantors as required by TWC.

(2) (Permittee) owns or operates the following injection well facility(ies) covered by this guarantee: (List for each facility the TWC permit or control file number, name, and address).

(3) For value received from (permittee), guarantor guarantees to TWC that in the event that (permittee) fails to close, plug and abandon the above facility(ies) in accordance with applicable permit provisions and/or TWC rules whenever so required, the guarantor shall do so upon request of TWC.

(4) Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the TWC executive director and to (permittee) that guarantor intends to provide alternate financial assurance as required by 31 TAC §305.153 in the name of (permittee). Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless (permittee) has done so.

(5) The guarantor agrees to notify the TWC executive director by certified mail of any voluntary or involuntary proceeding under Title 11 United States Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees that within 30 days after being notified by the TWC executive director of a determination that guarantor no longer meets the financial test criteria or that guarantor is disallowed from continuing as a guarantor of closure or post-closure care, guarantor shall establish alternate financial assurance as required by 31 TAC §305.153 in the name of (permittee) unless (permittee) has done so.

(7) Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure plans, amendment or modification of the permit, the extension or reduction of the time of performance of closure, or any other modification or alteration of an obligation of the permittee pursuant to the rules of the commission.

(8) Guarantor agrees to remain bound under this guarantee for so long as (permittee) must comply with the applicable requirements of 31 TAC §305.153 for the above listed injection well facility(ies), except that guarantor may cancel this guarantee by sending notice by certified mail to the executive director of the commission and to (permittee), such cancellation to become effective no earlier than 120 days after receipt of such notice by both the commission and (permittee), as evidenced by the return receipts.

(9) Guarantor agrees that if (permittee) fails to provide alternate financial assurance as required by 31 TAC §305.153 and obtain written approval of such assurance from the executive director of the commission within 90 days after a notice of cancellation by the guarantor is received by the executive director of the commission from guarantor, guarantor shall provide such alternate financial assurance in the name of (permittee).

(10) Guarantor expressly waives notice of acceptance of this guarantee by the commission or by (permittee). Guarantor also expressly waives notice of amendments or modifications of the closure plans and of amendments or modifications of the injection well permits.

Effective date: _____

(Name of Guarantor)
(Authorized Signature for Guarantor)
(Name of Person Signing)
(Title of Person Signing)
(Signature of Witness or Notary)

(o) Permittees who are also filing financial test assurances for purposes of 40 Code of Federal Regulations, Part 264, Subpart H, may satisfy the requirements of this section by combining their submittals to the commission with appropriate changes or additions to required wording, subject to approval of the executive director.

§305.154. Standards. Although the commission may impose stricter standards where appropriate, at a minimum, the permittee shall comply with the standards prescribed

by Chapter 331 of this title (relating to Underground Injection Control), and the rules referenced herein.

(1) Construction requirements. Section 331.62 and 331.82 of this title (relating to Construction Standards; Construction Requirements).

(2) Compliance schedule. The commission may establish a compliance schedule for existing wells to achieve compliance with the requirements of this section.

(3) Construction plans. Changes in construction plans shall be approved by certification under §331.45 of this title (relating to Certification of Construction and Completion), or, if required, by permit amendment before such changes may be physically incorporated into construction of the well.

(4) Commencing operations. Commencement of injection operations prior to certification by the executive director that construction and completion are compliant shall constitute a violation of the permit and may be considered grounds for revocation or suspension of the permit, as well as for enforcement action.

(5) Operating requirements. Section 331.63 of this title (relating to Operating Requirements) and §331.83 of this title (relating to Operating Requirements).

(6) Monitoring and reporting. Section 331.64 and §331.65 of this title (relating to Monitoring Requirements, Reporting Requirements); §331.84 and §331.85 of this title (relating to Monitoring Requirements; Reporting Requirements); or §§331.101-331.107 of this title (relating to Standards for Class III Well Production Area Development).

(7) Plugging. The permittee shall notify the executive director and obtain approval before plugging an injection well.

§305.155. Production Area Authorization. A production area authorization shall include for each production area:

- (1) a mine plan;
- (2) a restoration table;
- (3) a baseline water quality table;
- (4) control parameters upper limits;
- (5) monitor well locations; and
- (6) any special provisions determined appropriate by the commission.

§305.156. Hazardous Waste. For a hazardous waste disposal well, the surface facilities shall comply with Chapter 336 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste). The surface facilities for an injection well which disposes of hazardous waste are hazardous waste management facilities.

§305.157. Record Retention. The permittee shall retain all records concerning the nature and composition of injected fluids until five years after completion of plugging and abandonment procedures for the well. The executive director may require permittee to submit copies of the records at any time prior to conclusion of the retention period.

§305.158. Additional Conditions. The commission shall impose any other condition necessary to prevent the pollution of fresh water.

§305.159. Additional Class I Conditions. A permit for a Class I well shall include expressly or by reference the following conditions.

(1) A sign shall be posted at the well site which shall show the name of the company, company well number, and commission permit number. The sign and identification shall be in the English language, clearly legible and shall be in numbers and letters at least one-inch high.

(2) An all-weather road shall be installed and maintained to allow access to the injection well and related facilities.

(3) The wellhead and associated facilities shall be painted, if appropriate, and maintained in good working order without significant leaks.

Issued in Austin, Texas, on February 25, 1986.

TRD-8601999

James K. Rourke, Jr.
General Counsel
Texas Water Commission

Effective date: March 3, 1986

Expiration date: July 1, 1986

For further information, please call
(512) 463-8070.

★ ★ ★

Subchapter I. Hazardous Waste Incinerator Permits

★ 31 TAC §§305.171-305.174

The new sections are adopted on an emergency basis under the Texas Water Code, §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the state.

§305.171. Determining Operational Readiness. For the purposes of determining operational readiness following completion of physical construction of a hazardous waste incinerator, the commission shall establish permit conditions including, but not limited to, specification of allowable waste feeds and operating conditions, in a permit for a new hazardous waste incinerator. These permit conditions will be effective for a minimum required time not to exceed 720 hours operating time for treatment of hazardous waste, to bring the incinerator to a point of operational readiness sufficient to conduct a trial burn. The commission may extend the duration of this operational period once for up to 720 additional hours at the request of the applicant, when good cause is shown. The permit may be amended to reflect the extension pursuant to §305.62(c)(2)(C)(vii) of this title (relating to Amendment).

(1) Applicant must submit a statement, with Part B of the permit application, which suggests the conditions necessary to

operate in compliance with the performance standards of 40 Code of Federal Regulations §284.343 during this period. This statement should include, at a minimum, restrictions on waste constituents, waste feed rates, and the operating parameters identified in 40 Code of Federal Regulations §264.345.

(2) The executive director shall review this statement and any other relevant information submitted with Part B of the permit application and shall specify requirements for this period sufficient to meet the performance standards of 40 Code of Federal Regulations §264.343, based on the executive director's engineering judgment.

§305.172. Determining Feasibility of Compliance and Adequate Operating Conditions. For the purposes of determining feasibility of compliance with the performance standards of 40 Code of Federal Regulations §264.343 and of determining adequate operating conditions under 40 Code of Federal Regulations §264.345, the commission shall establish conditions in the permit for a new hazardous waste incinerator, to be effective during the trial burn.

(1) Applicant shall propose a trial burn plan, prepared under paragraph (2) of this section, with Part B of the permit application.

(2) The trial burn plan shall include the following information:

(A) an analysis of each waste, or mixture of wastes to be burned which includes:

(i) heat value of the waste in the form and composition in which it will be burned;

(ii) viscosity (if applicable), or description of physical form of the waste;

(iii) an identification of any hazardous organic constituents listed in 40 Code of Federal Regulations Part 261, Appendix VIII, which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in Part 261, Appendix VIII, which reasonably would not be expected to be found in the waste. The constituents excluded from analysis must be identified, and the basis for their exclusion established. The waste analysis must rely on analytical techniques specified in Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods or their equivalent; and

(iv) an approximate quantification of the hazardous constituents identified in the waste, within the precision produced by the analytical methods specified in Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods, or their equivalent;

(B) a detailed engineering description of the incinerator for which the permit is sought, including:

(i) manufacturer's name and model number of incinerator (if available);

(ii) type of incinerator;

(iii) linear dimensions of the incinerator unit, including the cross sectional area of combustion chamber;

(iv) description of the auxiliary fuel system (type/feed);

(v) capacity of prime mover;

(vi) description of automatic waste feed cut-off system(s);

(vii) stack gas monitoring and pollution control equipment;

(viii) nozzle and burner design;

(ix) construction materials;

and
(x) location and description of temperature, pressure, and flow indicating and control devices;

(C) a detailed description of sampling and monitoring procedures, including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis;

(D) a detailed test schedule for each waste for which the trial burn is planned including date(s), duration, quantity of waste to be burned, and other factors relevant to the decision under paragraph (5) of this section;

(E) a detailed test protocol, including, for each waste identified, the ranges of temperature, waste feed rate, combustion gas velocity, use of auxiliary fuel, and any other relevant parameters that will be varied to affect the destruction and removal efficiency of the incinerator;

(F) a description of, and planned operating conditions for, any emission control equipment which will be used;

(G) procedures for rapidly stopping the waste feed, shutting down the incinerator, and controlling emissions in the event of an equipment malfunction; and

(H) such other information as the executive director reasonably finds necessary to determine whether to approve the trial burn plan in light of the purposes of this paragraph and the criteria in paragraph (5) of this section.

(3) The executive director, in reviewing the trial burn plan, shall evaluate the sufficiency of the information provided and may require the applicant to supplement this information, if necessary, to achieve the purposes of this section.

(4) Based on the waste analysis data in the trial burn plan, the commission shall specify as trial principal organic hazardous constituents (POHCs), those constituents for which destruction and removal efficiencies must be calculated during the trial burn. These trial POHCs will be specified by the commission based on an estimate of the difficulty of incineration of the constituents identified in the waste analysis, their concentration or mass in the waste feed, and for wastes listed in 40 Code of Federal Regulations, Part 261, Subpart D, the hazardous waste organic constituent or constituents identified in Appendix VII of that Part as the basis for listing.

(5) The commission shall approve a trial burn plan if it finds that:

(A) the trial burn is likely to determine whether the incinerator performance standard required by 40 Code of Federal Regulations §264.343 can be met;

(B) the trial burn itself will not present an imminent hazard to human health or safety or the environment;

(C) the trial burn will help the commission to determine the operating requirements to be specified (in the permit) according to 40 Code of Federal Regulations §264.345 and

(D) the information sought in subparagraphs (A) and (C) of this paragraph cannot reasonably be developed through other means.

(6) During each approved trial burn (or as soon after the burn as is practicable), the applicant must make the following determinations:

(A) a quantitative analysis of the trial POHCs in the waste feed to the incinerator;

(B) a quantitative analysis of the exhaust gas for the concentration and mass emissions of the trial POHCs, oxygen (O₂), and hydrogen chloride (HCl);

(C) a quantitative analysis of the scrubber water (if any), ash residues, and other residues, for the purpose of estimating the fate of the trial POHCs;

(D) a computation of destruction and removal efficiency (DRE), in accordance with the DRE formula specified in 40 Code of Federal Regulations §264.343(a);

(E) if the HCl emission rate exceeds 1.8 kilograms of HCl per hour (four pounds per hour), a computation of HCl removal efficiency in accordance with 40 Code of Federal Regulations §264.343(b);

(F) a computation of particulate emissions, in accordance with 40 Code of Federal Regulations §264.343(c);

(G) an identification of sources of fugitive emissions and their means of control;

(H) a measurement of average, maximum, and minimum temperatures and combustion gas velocity;

(I) a continuous measurement of carbon monoxide (CO) in the exhaust gas; and

(J) such other information as the executive director may specify as necessary to ensure that the trial burn will determine compliance with the performance standards in 40 Code of Federal Regulations §264.343 and to establish the operating conditions required by 40 Code of Federal Regulations §264.345 as necessary to meet those performance standards.

(7) The applicant must submit to the executive director a certification that the trial burn has been carried out in accordance with the approved trial burn plan and shall submit the results of all the determinations required in paragraph (6) of this section. This submission shall be made within 90 days of

completion of the trial burn, or later with the prior approval of the executive director.

(8) All data collected during any trial burn shall be submitted to the executive director immediately following the completion of the trial burn.

(9) All submissions required by this section shall be certified on behalf of the applicant by the signature of a person authorized to sign a permit application or a report under §305.44 of this title (relating to Signatories to Applications) and §305.128 of this title (relating to Signatories to Reports).

(10) Based on the results of the trial burn, the commission shall set the operating requirements in the final permit according to 40 Code of Federal Regulations §264.345. The permit amendment shall proceed as a minor amendment according to §305.62(c) of this title (relating to Amendment).

§305.173. Operation Prior to Final Amendment of the Permit. For the purposes of allowing operation of a new hazardous waste incinerator following completion of the trial burn and prior to final amendment of the permit conditions to reflect the trial burn results, the commission may establish permit conditions, including, but not limited to, allowable waste feeds and operating conditions sufficient to meet the requirements of 40 Code of Federal Regulations §264.345 in the permit for a new hazardous waste incinerator. These permit conditions will be effective for the minimum time required to complete sample analysis, data computation, and submission of the trial burn results by the applicant, and amendment of the facility permit by the commission.

(1) Applicants shall submit a statement with Part B of the permit application which identifies the conditions necessary to operate in compliance with the performance standards of 40 Code of Federal Regulations §264.343 during the trial burn period. This statement shall include, at a minimum, restrictions on waste constituents, waste feed rates, and the operating parameters identified in 40 Code of Federal Regulations §264.345.

(2) The executive director shall review this statement and any other relevant information submitted with Part B of the permit application and shall specify those requirements for this period most likely to meet the performance standards of 40 Code of Federal Regulations §264.343, based on the executive director's engineering judgement.

§305.174. Existing Incinerators. For the purposes of determining feasibility of compliance with the performance standards of 40 Code of Federal Regulations §264.343 and of determining adequate operating conditions under 40 Code of Federal Regulations §264.345, the applicant for a permit for an existing hazardous waste incinerator may prepare and submit a trial burn plan and perform a trial burn in accordance with §305.172(2)-(9) of this title (relating to Determining Feasibility of Compliance and Adequate Operating Conditions).

Applicants who submit trial burn plans and receive approval before submission of a permit application shall complete the trial burn and submit the results specified in §305.172 of this title (relating to Determining Feasibility of Compliance and Adequate Operating Conditions) with Part B of the permit application. If completion of this process conflicts with the date set for submission of the Part B application, the applicant shall contact the executive director to establish a later date for submission of the Part B application or the trial burn results. If the applicant submits a trial burn plan with Part B of the permit application, the trial burn shall be conducted and the results submitted within a time period to be specified by the executive director.

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(512) 463-8070.

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Subchapter J. Permits for Land Treatment Demonstrations Using Field Tests or Laboratory Analysis

★31 TAC §§305.181-305.184

The new sections are adopted on an emergency basis under the Texas Water Code, §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the state.

§305.181. Treatment Demonstration Permit. For the purpose of allowing an owner or operator to meet the treatment demonstration requirements of 40 Code of Federal Regulations §264.272, the commission may issue a treatment demonstration permit. The permit shall contain only those requirements necessary to meet the standards in 40 Code of Federal Regulations §264.272(c). The permit may be issued either as a treatment or disposal permit covering only the field test or laboratory analyses, or as a two phase facility permit covering the field tests or laboratory analyses, and the design, construction, operation, and maintenance of the land treatment unit.

(1) The commission may issue a two-phase facility permit if it finds that, based on information submitted in Part B of the application, substantial information, although incomplete or inconclusive, already exists upon which to base the issuance of a facility permit.

(2) If the commission finds that insufficient information exists upon which to

establish permit conditions to attempt to provide for compliance with all of the requirements relating to land treatment, the commission may issue a treatment demonstration permit covering only the field test or laboratory analyses.

§305.182. Two-Phase Facility Permit. If the commission finds that a phased permit may be issued, the commission shall establish as requirements in the first phase of the facility permit, conditions for conducting the field tests or laboratory analyses. These permit conditions shall include design and operating parameters (including the duration of the tests or analyses and, in the case of field tests, the horizontal and vertical dimensions of the treatment zone), monitoring procedures, post-demonstration clean-up activities, and any other conditions which the commission finds may be necessary under 40 Code of Federal Regulations §264.272(c). The commission shall include conditions in the second phase of the facility permit to attempt to meet all requirements pertaining to unit design, construction, operation, and maintenance of land treatment facilities. The commission shall establish these conditions in the second phase of the permit based upon the substantial but incomplete or inconclusive information contained in the Part B application.

(1) The first phase of the permit shall be effective as provided in Texas Civil Statutes, Article 6252-13, and the rules of the commission.

(2) The second phase of the permit shall be effective as provided in §305.184 of this title (relating to Permit Amendment).

§305.183. Certification. When the owner or operator who has been issued a two-phase permit has completed the treatment demonstration, he shall submit to the executive director a certification, signed by a person authorized to sign a permit application or report under §305.44 of this title (relating to Signatories to Applications) and §305.128 of this title (relating to Signatories to Reports), that the field tests or laboratory analyses have been carried out in accordance with the conditions specified in phase one of the permit for conducting such tests or analyses. The owner or operator shall also submit all data collected during the field tests or laboratory analyses within 90 days of completion of those tests or analyses unless the executive director approves a later date.

§305.184. Permit Amendment. If the commission determines that the results of the field tests or laboratory analyses meet the requirements of 40 Code of Federal Regulations §264.272, it shall amend the second phase of the permit to incorporate any requirements necessary for operation of the facility in compliance with requirements applicable to land treatment, based upon the results of the field tests or laboratory analyses.

(1) This permit amendment may proceed as a minor amendment under §305.62 (c) of this title (relating to Amendment), provided any such change is minor, or otherwise will proceed as an amendment under §305.62(d) of this title (relating to Amendment).

(2) If no amendments of the second phase of the permit are necessary, or if only minor amendments are necessary and have been made, the commission shall give notice in accordance with §305.96(b) of this title (relating to Action On Application For Amendment). The second phase of the permit then will become effective as specified in Texas Civil Statutes, Article 6252-13, and the rules of the commission.

(3) If amendments under §305.62(d) of this title (relating to Amendment) are necessary, the second phase of the permit will become effective only after those amendments have been made.

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Subchapter K. Research, Development, and Demonstration Permits

★ 31 TAC §§305.191-305.194

The new sections are adopted on an emergency basis under the Texas Water Code, §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the state.

§305.191. *Applicability and Scope.* The commission may issue a research, development, and demonstration permit for any hazardous waste treatment facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under 40 Code of Federal Regulations Parts 264 or 266. Any such permit shall include such terms and conditions as will assure protection of human health or safety and the environment. Such permits:

(1) shall provide for the construction of such facilities as necessary, and for operation of the facility for not longer than one year unless renewed as provided in §305.194 of this title (relating to Renewal);

(2) shall provide for the receipt and treatment by the facility of only those types and quantities of hazardous waste which the commission deems necessary for purposes of determining the efficacy and performance

capabilities of the technology or process and the effects of such technology or process on human health and safety and the environment; and

(3) shall include such requirements as the commission deems necessary to protect human health and safety and the environment, including, but not limited to, requirements regarding monitoring, operation, financial responsibility closure, and remedial action, and such other requirements as the commission deems necessary regarding testing with respect to the operation of the facility and providing of information to the executive director.

§305.192. *Waiver of Requirements.* For the purpose of expediting review and issuance of permits under this subchapter, the commission may, consistent with the protection of human health and safety and the environment, modify or waive permit application and permit issuance requirements of this subchapter, except that there may be no modification or waiver of regulations regarding financial responsibility (including insurance) or of procedures regarding public participation.

§305.193. *Termination.* The commission may order an immediate termination of all operations at a facility subject to this subchapter at any time the commission determines that termination is necessary to protect human health and safety and the environment.

§305.194. *Renewal.* Any permit issued under this subchapter may be renewed not more than three times. Each such renewal shall be for a period of not more than one year.

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(512) 483-8070.

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Subchapter L. Groundwater Compliance Plan

★ 31 TAC §305.401

The new sections are adopted on an emergency basis under the Texas Water Code, §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the state.

§305.401. *Groundwater Compliance Plan.*

(a) In order to administer the groundwater protection requirements relating to compliance monitoring and corrective action for facilities that store, process, or dispose of hazardous waste in surface impoundments,

waste piles, land treatment units, or landfills, and the requirements of §336.167 of this title (relating to Corrective Action for Solid Waste Management Units), the commission shall establish a compliance plan.

(b) The following rules pertaining to application and notice and hearing shall be applicable in proceedings to establish the plan: Chapter 281 (relating to Applications Processing); §305.44 of this title (relating to Signatories to Applications); §305.47 of this title (relating to Retention of Application Data); §305.43 of this title (relating to Who Applies); §305.53 of this title (relating to Application Fees); §305.50 of this title (relating to Additional Requirements for an Application for a Solid Waste Permit); §305.92 of this title (relating to Action on Applications); §305.93 of this title (relating to Action on Application for Permit); §305.96 of this title (relating to Action on Application for Amendment); §§305.98-305.105 of this title (relating to Scope of Proceedings; Commission Action; Notice of Application; Notice of Hearing; Notice by Publication; Notice by Mail; Radio Broadcasts; and Request for Public Hearing); §§305.122-305.124 of this title (relating to Characteristics of Permits; Granting Permit; and Acceptance of Permit, Effect); and §305.128 of this title (relating to Signatories to Reports).

(c) Any investigation report to establish compliance monitoring or corrective action shall contain the information specified in 40 Code of Federal Regulations §270.14 (c)(7) and (8). The executive director may request information necessary to determine the appropriateness and extent of corrective action required by §336.167 of this title (relating to Corrective Action for Solid Waste Management Units).

(d) The executive director shall prepare a draft compliance plan unless the executive director recommends not to approve the plan. The draft compliance plan shall be available for public review, and notice that the executive director has prepared such a plan will be given pursuant to §305.100 of this title (relating to Notice of Application). The draft compliance plan shall be filed with the commission to be included in its consideration of the approval of a compliance plan.

(e) The executive director shall prepare a technical summary which sets forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft compliance plan. The executive director shall send this summary, together with the draft compliance plan, to the applicant and, on request, to any other person. The summary shall include the following information, where applicable:

(1) a brief description of the type of facility or activity which is the subject of the draft compliance plan;

(2) the type and quantity of wastes, fluids, or pollutants which are being managed at the facility;

(3) a brief summary of the basis for the conditions of the draft compliance plan, including references to applicable statutory or regulatory provisions;

(4) a description of the procedures for reaching a final decision on the draft compliance plan, including procedures whereby the public may participate in the final decision; and

(5) the name and telephone number of a person in the commission to contact for additional information.

(f) The plan may be amended:

(1) when the corrective action program entitled in the plan under §336.165 of this title (relating to Compliance Monitoring Program) has not brought the regulated unit into compliance with the groundwater protection standard within a reasonable time; or

(2) when the plan requires a compliance monitoring program under §336.165 of this title (relating to Compliance Monitoring Program), but monitoring data collected prior to permit issuance indicate that the facility is exceeding the groundwater protection standard. The sections of this chapter pertaining to major amendments shall be applicable to the foregoing amendments to the compliance plan.

(g) Whenever a facility is subject to permitting under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, and is further required under §§336.156-336.167 of this title (relating to Applicability of Groundwater Monitoring and Response; Required Programs; Groundwater Protection Standard; Hazardous Constituents; Concentration Limits; Point of Compliance; Compliance Period; General Groundwater Monitoring Requirements; Detection Monitoring Program; Compliance Monitoring Program; Corrective Action Program; and Corrective Action for Solid Waste Management Units) to conduct compliance monitoring or corrective action, processing of the permit application for the facility and the establishment of the groundwater compliance plan shall be consolidated in one proceeding.

(h) Nothing herein shall be construed to be inconsistent with the commission's authority under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §8 and §8b.

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(512) 463-8070.

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Subchapter M. Waste Treatment Inspection Fee Program

★ 31 TAC §§305.501-305.506

The new sections are adopted on an emergency basis under the Texas Water Code, §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the state.

§305.501. Purpose. It is the purpose of this subchapter to establish a waste treatment inspection fee program. Under this program, an annual waste treatment inspection fee is imposed on each permittee holding a permit under the Texas Water Code, Chapter 26. All fees shall be deposited in a fund for the purpose of supplementing other funds appropriated by the legislature to pay the expenses of the commission in inspecting waste treatment facilities and enforcing the provisions of the Texas Water Code, Chapter 26, the rules and orders of the commission, and the provisions of commission permits governing waste discharges and waste treatment facilities.

§305.502. Definitions. The definitions contained in the Texas Water Code, §26.001, shall apply herein. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Annual waste treatment inspection fee—A fee charged to each permittee holding a permit under the Texas Water Code, Chapter 26, and assessed once per year, ranging from \$100 to \$10,000.

Commission—The Texas Water Commission.

Daily average flow—The total by volume of all wastewater discharges authorized under a permit expressed as an average flow per day, exclusive of variable or occasional stormwater discharges. Generally, the daily average flow is based on the sum of the volumes of discharge for all outfalls of a facility, but excludes internal outfalls. However, for those facilities for which permit limitations on the volume of discharge apply only to internal outfalls, the daily average flow is based on the sum of the volumes of discharge for all internal outfalls of the facility, exclusive of variable or occasional stormwater discharges.

Final flow limit—The maximum amount of wastewater discharge authorized during any term of the permit, expressed as a daily average flow.

Fund—The waste treatment facility inspection fund.

No-discharge permit—A permit which does not authorize the discharge of wastewater into waters in the state, including, but not limited to, permits for evaporation ponds and irrigation systems.

Payment—Payment is effective upon receipt by the commission of the full

amount of the annual waste treatment inspection fee.

Permit—Any permit issued by the Texas Water Commission under authority to the Texas Water Code, Chapter 26, including those permits issued under the authority of both the Texas Water Code, Chapter 26, and other statutory provisions (such as the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7).

Report discharge permit—A permit which authorizes the variable or occasional discharge of wastewaters with a requirement that the volume of discharge be reported, but without any limitation on the volume of discharge.

Stormwater discharge permit—A permit which authorizes the variable or occasional discharge of accumulated stormwater and stormwater runoff, but without any specified limitation on the volume of discharge.

§305.503. Fee Assessment. An annual waste treatment inspection fee is hereby assessed each permit for deposit in the fund. The amount assessed is determined by the daily average flow for which the permitted facility is authorized by the daily average flow for which the permitted facility is authorized as of October 1. Where the permitted facility has not been constructed, the assessed fee will be the same as for no-discharge permits. Those permits authorizing only stormwater or report discharges as of each October 1 are assessed a general fee for such discharges, rather than for a daily average discharge. Fees are assessed according to the following schedule, based on discharges authorized under the wastewater discharge permit (flows are expressed in million gallons per day);

(1) inactive or no discharge permits —\$100;

(2) flow less than or equal to .05—\$200;

(3) flow greater than .05, but not more than 0.1—\$400;

(4) flow greater than 0.1, but not more than 0.25—\$600;

(5) flow greater than 0.25, but not more than 0.5—\$800;

(6) flow greater than 0.5, but not more than 1.0—\$1,000;

(7) flow greater than 1.0, but not more than 2.0—\$2,000;

(8) flow greater than 2.0, but not more than 3.0—\$3,000;

(9) flow greater than 3.0, but not more than 4.0—\$4,000;

(10) flow greater than 4.0, but not more than 5.0—\$5,000;

(11) flow greater than 5.0, but not more than 6.0—\$6,000;

(12) flow greater than 6.0, but not more than 7.0—\$7,000;

(13) flow greater than 7.0, but not more than 8.0—\$8,000;

(14) flow greater than 8.0, but not more than 9.0—\$9,000;

- (15) flow greater than 9.0—\$10,000;
 (16) stormwater or report—\$500.

§305.504. Fee Payment. Annual waste treatment inspection fees are payable on February 1 of each year for all permittees. Fees shall be paid by check, certified check, or money order payable to waste treatment facility inspection fund. New permits will require full payment of the appropriate fee within 30 days of the final order of the Texas Water Commission issuing the permit, and thereafter will be assessed an annual waste treatment inspection fee under the schedule set forth herein, beginning with the next regular billing date. All fee assessments are to be based on daily average flow under the applicable flow limits (interim or final) specified in the permit, without regard to whether the permitted facility actually is discharging a lower volume. Where the daily average flow authorized for a permitted facility changes to a higher interim level or to the final level authorized by the permit, the revised fee, if any, will be assessed at the next regular payment date following the change in authorized flow. If a permit is amended to authorize a lesser or greater daily average flow, the revised fee will be assessed at the next regular payment date following the final order of the Texas Water Commission effecting the amendment. If initial construction of a newly-permitted facility is not complete, the facility will be assessed the same fee as for no discharge permits. Fees are payable regardless of whether the permitted facility actually is in operation.

§305.505. Fund. All fees collected under this water treatment inspection fee program are to be deposited in the waste treatment facility inspection fund. The fund shall be managed in accordance with §305.501 of this title (relating to Purpose).

§305.506. Cancellation, Revocation, and Transfer. Cancellation or revocation of a permit, whether by voluntary action on the part of the permittee or as a result of involuntary proceedings initiated by the commission, will not constitute grounds for a refund, in whole or in part, of any annual inspection fee already paid by the permittee. Transfer of a permit will not entitle the transferor permittee to a refund, in whole or in part, of any annual inspection fee already paid by that permittee. Any permittee to whom a permit is transferred shall be liable for payment of the annual inspection fee assessed for the permitted facility on the same basis as the transferor of the permit.

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Chapter 325. Certificates of Competency

Subchapter A. Certificates of Competency

★31 TAC §§325.1-325.16

The Texas Water Commission adopts on an emergency basis new §§325.1-325.16, concerning certification of competency of wastewater treatment plant operators and wastewater treatment facilities operations.

An urgent need exists to adopt these emergency sections for the following reasons: the emergency sections for Chapter 322 (published in the *Texas Register* on January 3, 1986), relating to certificates of competency, expired at 12 a.m., March 3, 1986; the Texas Water Commission proposed permanent sections for the same subject matter for Chapter 325 (published in the *Texas Register* on December 17, 1985); and has the authority under law to adopt the proposed permanent sections at the present time; the Texas Water Commission has decided to delay adoption of all of its currently proposed sections to facilitate public comment; and a lapse in the sections would constitute an imminent peril to the public health, safety, and welfare.

Promulgation of the Texas Water Code, §26.0301, by the 69th Legislature, 1985, transferred jurisdiction for the certification of competency for wastewater treatment plant operators from the Texas Department of Health to the Texas Water Commission. In addition, nongovernmental entities (i.e. operations companies) who are in the business of operating wastewater treatment facilities for the permit holders are now subject to regulation by the commission *vis a vis* a certification of competency program.

The sections pertaining to operator certification are essentially a recodification of the regulations administered prior to September 1, 1985, by the Texas Department of Health. The sections pertaining to operations companies are new as this is the first attempt by the legislature to regulate those businesses.

These sections are adopted on an emergency basis under the Texas Water Code, §5.103 and §26.0301, which authorizes the commission to adopt rules and establish policy.

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

Certificate of Competency—The certificate issued by the Texas Water Commission to treatment plant operators and wastewater treatment facility operations companies to operate or assist in the operation of a wastewater treatment facility or collections system.

Commission—The Texas Water Commission.

Executive director—The executive director of the Texas Water Commission.

Permit—A wastewater discharge permit issued by the Texas Water Commission pursuant to the Texas Water Code, Chapter 26.

Treatment plant operator—Anyone holding a valid certificate of competency issued by the Texas Water Commission to operate or assist in the operation of a wastewater treatment facility.

Wastewater—Waterborne human waste and waste from domestic activities, such as washing, bathing, and food preparation.

Wastewater treatment facility—Any plant, disposal field, lagoon, or other facility installed for the purpose of treating, neutralizing, or stabilizing wastewater, the operation of which requires a wastewater discharge permit from the Texas Water Commission.

Wastewater treatment facility operations company—Any person, company, corporation, firm, partnership, or other nongovernmental entity that employs one or more wastewater treatment plant operators, and is in the business of providing wastewater treatment facility operations or operating any wastewater treatment facility for the permit holder of that facility.

§325.2. Certified Treatment Plant Operators Required.

(a) Anyone operating or assisting in the operation of a wastewater treatment facility must hold a valid certificate of competency issued pursuant to this chapter. Upon special request from the permit holder, exceptions may be made by the executive director whereby persons assisting in the operation of the wastewater treatment facility may serve as apprentices without certification for a period not to exceed 12 months. The apprentice period may be extended up to another 12 months by the executive director if extreme circumstances merit the extension.

(b) All holders of permits to discharge wastewater from a wastewater treatment facility or to operate a wastewater treatment facility shall employ one or more treatment plant operators holding valid certificates of competency issued under the direction of the commission.

§325.3. Application.

(a) Applications for certificates of competency for treatment plant operators and for wastewater treatment facility operations companies shall be made to the executive director who is authorized by the commission to issue the certificates of competency for the commission.

(b) No certificates of competency will be issued by the executive director until all requirements have been met and, if applicable, required written tests have been taken by the applicant, and passed.

§325.4. Classes and Qualifications of Certificates for Operators.

(a) The basic certificates of competency for treatment plant operators shall be Class A, Class B, Class C, and Class D. The

qualification requirements for each competency certificate class shall include a minimum level of formal education, a minimum level of added training, a period of experience as a treatment plant operator, and

passing a written examination for that certificate class with a grade of 70% or higher.

(b) The qualification requirements for each class of certificate of competency are as follows:

<u>CERTIFICATE</u>	<u>EDUCATION</u>	<u>YEARS</u>		<u>HOURS</u>	
		<u>EXPERIENCE*</u>		<u>TRAINING</u>	
Class A	Masters College Degree	and	4	plus	160
	or Bachelors College Degree	and	5	plus	160
	or High School Graduate or equivalent **	and	8	plus	160
Class B	Bachelors College Degree	and	1	plus	100
	or High School Graduate or equivalent	and	5	plus	100
Class C	High School Graduate or equivalent	and	2	plus	60
Class D	High School Graduate or equivalent	and	0	plus	20
	or less than High School Graduate	and	0	plus	40

* Experience must be actual wastewater treatment facility experience and not experience which is clerical in nature.

** Graduation Equivalency Diploma or GED.

(c) The only college degrees which will satisfy the college degree requirement are those with a major in chemistry, biology, microbiology, bacteriology, or equivalent or similar disciplines, or in any engineering discipline eligible for registration as a professional engineer.

(d) The hours of training which are required in subsection (b) of this section must be in 20-hour courses which should include, but are not limited to, the following:

(1) Class A - wastewater treatment, wastewater collection, laboratory and management;

(2) Class B - wastewater treatment, wastewater collection, and laboratory;

(3) Class C - basic wastewater works operation and either wastewater treatment or wastewater collection;

(4) Class D - basic wastewater works operation.

(e) For Classes A-C, one year of college (32 semester hours approved by the executive director) or an additional 40 hours of training credits approved by the executive director may be substituted for one year of the experience requirement.

(1) For Class A certificates, the actual experience shall not be less than six years for high school graduates, five years for bachelors degree graduates, nor four years for masters degree graduates.

(2) For Class B certificates, the actual experience shall not be less than three years for high school graduates nor one year for a college graduate.

(3) For Class C certificates, the actual work experience shall not be less than one year.

(f) Credit for the formal or the additional training requirements of this section

for obtaining or renewing certificates may be granted in areas of training other than those stated in this section upon prior approval of the training subject and training course by the executive director. If the specific course and subject are approved, the executive director will determine before the course is conducted, how many hours of credit will be recognized for the course.

§325.5. Terms of Certificates for Operators. Class A certificates shall be valid for a term of eight years. Class B certificates shall be valid for a term of five years. Class C certificates shall be valid for a term of three years. Class D certificates shall be valid for a term of two years, but are not renewable unless the operator is employed at a wastewater treatment system of 250 connections or less. Certificates of competency for operators which were issued by the Texas Department of Health prior to August 31, 1985, will remain valid for the terms stated thereon.

§325.6. Renewal of Operator Certificates.

(a) Unless revoked or suspended, or replaced by a higher class of certificate, certificates may be renewed by taking and passing a renewal examination or by receiving a specified number of hours of additional training. The training hours to be counted toward certificate renewals are those which were received from the date the certificate was first issued (if it is the first renewal) or from the date of the certificate's latest renewal. Training hours in lieu of renewal examination may be used only once every other certificate renewal period.

(b) To renew a certificate without taking the renewal examination, the applicant must earn the following number of training hours for his/her class of certificate: Class A-80 hours, Class B-50 hours, Class C-30 hours, and Class D-20 hours (if high school graduate or equivalent) or 40 hours (if less than a high school graduate).

(c) The certificate renewal examination must be taken and passed at least once every other renewal period.

(d) If the applicant fails to pass the renewal examination with a grade of at least 70%, the applicant must wait a minimum of three months before retaking the renewal examination. If the existing certificate expires during the three-month waiting period, the applicant must reapply for a certificate as if applying for a new certificate for the first time.

§325.7. Certification of Sewage Treatment Facility Operations Companies Required. Every wastewater treatment facility operations company must hold a valid certificate of competency issued under the direction of the commission. No wastewater treatment facility operations company may operate a wastewater treatment facility without a certificate of competency after June 1, 1986. Any employee of a wastewater treatment facility operations company who will be

operating or assisting in the operation of a wastewater treatment facility must hold a valid certificate of competency issued pursuant to this chapter. Failure to provide an adequate number of certified treatment plant operators for any wastewater treatment facility which it is operating will be grounds for revocation of the company's certification.

§325.8. Terms of Certificates for Companies. Certificates of competency for wastewater treatment facility operations companies shall be valid for a term of two years.

§325.9. Reports; Application and Annual.

(a) All wastewater treatment facility operations companies must submit a report to the executive director by February 1 of each year, listing every wastewater treatment facility operated by the company during the preceding calendar year as well as the present year. The report will include, as a minimum, the name and location of the treatment facility, the permittee's name and address, the commission permit number for the facility, and the dates that the facility was operated by the company that year (e.g. January 1-December 31). The report must also include, as a minimum, a roster of all certified employees listing the employees' names, home addresses, classes of certificates, and certificate numbers, at which treatment facilities (by commission permit number) each employee works, and which employees are head operators or supervisors and for which treatment facilities.

(b) The information required in subsection (a) of this section is also required with the application for a new certification or for a renewal of a certification.

§325.10. Certificate Renewal for Companies; Public Hearing.

(a) Requests for public hearing may be made by any person to protest the renewal of the certificate of competency of a company. Grounds for the request must be because of incompetence of the company or any of its treatment plant operator-employees, or because the company is responsible for causing, allowing, or permitting a violation of the discharge permit of a wastewater treatment facility, or because the company has falsified reports regarding the operation of a facility or falsified laboratory test results, or for similar good cause.

(b) Requests for a hearing shall be made to the executive director. If the executive director determines that there is merit to the protest, he shall present the request to the Texas Water Commission, which shall determine whether to schedule a hearing, and if so, whether, after proper notice to the certificate holder and to the complainant, the hearing will be before a hearings examiner or the commission.

§325.11. Notice of Hearings.

(a) Notice for any hearing required by this chapter or by statute shall be issued no less than 20 days prior to the hearing.

(b) Transmittal of the notice will be by certified mail, return receipt requested.

(c) Persons to be notified include but are not limited to the following: the applicant or certificate holder, the public interest advocate of the commission, the complainants (if any), the permit holders of the wastewater treatment facilities which would be affected by the cancellation of the certificate of competency, and any other persons who would be affected by the outcome of the hearing.

§325.12. Revocation or Suspension of Certificate.

(a) If the executive director believes that good cause exists to suspend or revoke the certificate of competency of an individual treatment plant operator or of a wastewater treatment facility operations company, he shall request the Texas Water Commission to schedule a hearing, after proper notice to the certificate holder, before a hearings examiner or the commission. The commission may suspend or revoke the certificate of competency if the commission finds that the holder of the certificate was responsible for causing, allowing or permitting a violation of the discharge permit of a wastewater treatment facility, or for falsifying reports or laboratory test results.

(b) The holder of a certificate of competency is not subject to the revocation or suspension of the certificate of competency under subsection (a) of this section if:

(1) the holder of a certificate is unable to properly operate the wastewater treatment facility due to the refusal of the permittee to authorize necessary expenditures to operate the wastewater treatment facility properly; or

(2) failure of the wastewater treatment facility to comply with its discharge permit results from faulty design of the wastewater treatment facility.

(c) A certificate of competency may generally be suspended for a period of up to one year. If a certificate is suspended a second time, that second suspension will result in automatic, permanent revocation of the certificate. At the request of the certificate holder, or for good cause, the certificate may be suspended indefinitely by the commission.

(d) The holder of a certificate of competency which has been revoked may reapply for a certificate of competency pursuant to this chapter as if applying for the first time after a period of at least one year from the date of revocation. If a certificate is revoked a second time, the revocation will be permanent.

§325.13. Enforcement Hearings. During any enforcement hearing conducted by the commission or a hearings examiner for any substantial violation as defined in Chapter 337 of this title (relating to Enforcement), of a wastewater discharge permit for a wastewater treatment facility, the executive director may introduce evidence addressing

whether the significant violations were caused, in whole or in part, by the incompetence or negligence of any of the facility's treatment plant operators or by a wastewater treatment facility operations company, if applicable. The commission will then determine whether to conduct a hearing for cancellation or suspension of the certificate(s) of competency involved.

§325.14. Interim Certificates for Operators.

(a) Any treatment plant operator who, as of September 1, 1985, does not hold a valid certificate of competency issued by the Texas Department of Health, may apply to the executive director for an interim certificate of competency as he concurrently applies for a certificate of competency for a specific class as provided in this chapter.

(b) Use of the interim certificate of competency by the executive director will be only until the executive director has instituted an operator certification program pursuant to this chapter. In no case will any interim certificates of competency be valid after April 30, 1986.

(c) An interim certificate of competency will be valid only until the operator has taken a written certificate of competency examination for any class and the examination has been graded, or through April 30, 1986, whichever occurs first.

§325.15. Reciprocity. The commission may issue certificates of competency without examination to applicants who hold a valid certification of competency lawfully issued by any other authorized state, country, or territory provided that the requirements for that other certification are equal to the Texas regulations, and provided that the other state, country, or territory recognizes and honors the Texas Water Commission's certifications of competency, and provided further that the applicant lives in Texas and is employed in the wastewater treatment utility industry in Texas.

§325.16. Perpetual Certificates of Competency. Perpetual certificates of competency issued by the Texas Department of Health prior to September 1, 1985, will be exempt from the certification renewal requirements of this chapter.

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TRD-8602005

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Texas Water Commission

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For further information, please call
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★ ★ ★



Chapter 329. Drilled or Mined Shafts

Subchapter A. General Provisions

★ 31 TAC §§329.1-329.19

The Texas Water Commission adopts on an emergency basis new §§329.1-329.19, concerning drilled or mined shafts. These sections provide for a system of permitting and regulation for drilled or mined shafts, pursuant to the Texas Water Code, Chapter 28. Except for stylistic changes, the emergency sections are identical to §§361.1-361.19 of former sections of the Texas Department of Water Resources which had responsibility over the subject matter of these regulations until September 1, 1985, when that responsibility was transferred to the Texas Water Commission. Proposed permanent sections for Chapter 329 were published in the *Texas Register* on January 26, 1986.

A shaft, for the purposes of these sections, is any vertically oriented excavation, whether constructed by drilling or mining techniques, where the depth of the excavation is greater than its diameter, the excavation penetrates into or through the base of the uppermost water-bearing strata, and the primary purpose of the excavation is the transport of workers and materials to and from a destination, at depth, for purposes of geological studies, access to existing and planned subsurface mine workings, safety, or for ventilation of those workings. A shaft must penetrate a major or minor aquifer and be a new shaft to be subject to these sections. The sections regulate only the permitting, construction, operation, and decommissioning of the shaft.

Appendix A of §329.19 identifies the procedures necessary for the authorization and decommissioning of a drilled or mined shaft. These procedures are based on hydrologic, hydrogeologic, and geotechnical considerations. Construction, operating, and monitoring and reporting standards are listed in §§329.11, 329.13, and 329.14, respectively. Section 329.9 and §329.17 identify requirements concerning the application fee, financial assurances, litigation status, and coordination with the Railroad Commission of Texas, Texas Department of Health, Texas Air Control Board, Texas Parks and Wildlife Department, and Commissioner's Court of the affected county.

The Texas Water Commission found that an urgent need existed to adopt these new sections on an emergency basis because the emergency rules for Chapters 340 and 330 cross-referenced in this chapter as Chapters 281 and 305, respectively, and currently in force, will expire on March 3, 1986. The Texas Water Commission proposed permanent rules for the same subject matter in the *Texas Register* on January 21, 1986, and has authority

under law to adopt the proposed permanent rules at this time. The commission has decided to delay adoption of all of its currently proposed rules in order to facilitate public comment and a lapse in the rules would constitute an imminent peril to the public health, safety, and welfare.

These new sections are adopted on an emergency basis under the authority of Texas Water Code, §§5.102, 5.105, and 28.021, *et seq.*, which provide the Texas Water Commission with the authority to promulgate sections and to regulate drilled or mined shafts.

§329.1. Purpose, Scope, and Applicability.

(a) The purpose of these sections is to implement the provisions of the Texas Water Code, Chapter 28, as it applies to drilled or mined shafts, consistent with the policies of the Texas Water Code as stated in §§1.003, 5.012, and 28.030.

(b) This chapter applies to all drilled or mined shafts and associated facilities within the commission's jurisdiction.

§329.2. Definitions. The definitions in the Texas Water Code, §28.001, shall apply to this chapter. When used in this chapter, the following words and terms shall have the following meaning, unless the context clearly indicates otherwise.

Aquifer—A geologic formation, group of formations, or part of a formation that is water-saturated, water-bearing, and yields water in sufficient quantities to provide a usable supply. Texas aquifers are classified as either major or minor ground-water aquifers and are defined in the most current edition of Texas Department of Water Resources Report No. 238.

Area of review—The surface area and the subsurface area extending horizontally not less than 2,000 feet in all directions from the maximum extension of a proposed or existing shaft.

Borehole—A drilled penetration or an artificial opening in the ground where the depth is greater than its largest surface dimension and is located within 2,000 feet of a new shaft and penetrates a major or minor aquifer.

Casing—Material used to seal off strata at and below the earth's surface, and to maintain the structural stability of shaft opening.

Contaminant—Any physical, biological, chemical, or radioactive material or matter in water.

Existing shaft—A shaft constructed before February 4, 1985 (the use of which remains unchanged thereafter), or an abandoned shaft.

Formation—A body of soil or rock characterized by a degree of lithologic homogeneity that is prevailing but is not necessarily tabular and is mappable on the earth's surface or traceable in the subsurface.

Formation fluid—Fluid present in a formation under natural conditions.

Groundwater—Water below the land surface in a zone of saturation.

New shaft—Any shaft which has not been constructed as of February 4, 1985, or any existing shaft or abandoned shaft which is modified or converted to a new purpose for which it was not being used on February 4, 1985.

Pollution—The contamination of water or the alteration of a physical, chemical, radioactive, or biological quality of water:

(A) that makes it harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to public health, safety, or welfare; or

(B) that impairs the usefulness or the public enjoyment of the water for any lawful and reasonable purpose.

Resident inspector—A person or persons who is designated by the executive director to remain on-site to oversee and inspect the ongoing construction and operation of the drilled or mined shaft.

Seismic reflection survey (geophysical survey)—Any surface based geophysical method which can accurately measure a response at depth of physical phenomena either artificial and/or natural, directly, and/or indirectly which is related to the underground geological conditions.

Shaft—Any vertically oriented excavation whether constructed by drilling or mining techniques, where the depth of the excavation is greater than its diameter, the excavation penetrates into or through the base of the uppermost water-bearing strata, and the primary purpose of the excavation is the transport of workers and materials to and from a destination, at depth, for purposes of geological studies, access to existing and planned subsurface mine workings, safety, or for ventilation of those working.

Stratum or strata—A bed or layer, regardless of thickness, that consists of generally the same kind of soil, rock, and material.

Surface facilities—The structures, equipment, appurtenances, and other fixtures associated with the drilled or mined shaft used for storage, processing, or operation, that are above the ground, but not including the shaft collar.

Test hole—A drilled and/or cored hole used to determine the type, nature, and characteristics of the subsurface materials and the extent and conditions of the various materials as they exist.

Uppermost water-bearing strata—A major or minor aquifer as recognized and described in the most current edition of **Texas Department of Water Resources Report No. 238**.

Well—An augered, bored, drilled, or driven penetration or an artificial opening in the ground made by digging, jetting, or some other method, where the depth of the well is greater than its largest surface dimen-

sion, but the term does not include any surface pit, surface excavation, drilled or mined shaft, or natural depression.

§329.3. Severability. If any provision of this chapter, or the application of such provision to any person or circumstance, is held invalid, the remainder of this chapter, or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

§329.4. Construction and Use Prohibited.

(a) Unless excluded under subsection (b) of this section, the construction, use, or operation of a new shaft is prohibited unless authorized by permit of the commission.

(b) The following penetrations are not without the scope of subsection (a) of this section:

(1) penetrations whose primary purpose is the production of ground water;

(2) penetrations or boreholes authorized by the commission under the underground injection control program;

(3) shafts incident to surface mines for oil and gas, iron ore, lignite, coal, or uranium recovery regulated by the Railroad Commission of Texas;

(4) sanitary sewer lift stations and otherwise approved water and sewer collection, storage, and distribution structures;

(5) penetrations authorized by the Texas Railroad Commission of less than 36 inch diameter whose primary purpose is the ventilation of underground workings or structures;

(6) penetrations authorized by the commission or the Railroad Commission of Texas whose purpose is the transmission of fuels, concrete slurries, muds, electrical lines, communications, wires, or structures, or other utility transmissions, or bulk materials to, or recovery from underground storage facilities or mine workings;

(7) penetrations which would otherwise be defined as shafts, but which, due to local conditions, do not penetrate into or through a major or minor aquifer; and

(8) existing shafts.

(c) The receipt, storage, and disposal on site of any wastes not expressly authorized by permit and not generated by construction, is prohibited.

§329.5. Pre-permit Determination.

(a) Prior to submission of an application for permit, persons considering the construction of a new shaft which may be defined as a shaft subject to this chapter must contact the executive director and obtain a determination whether or not the proposed activity is subject to this chapter.

(b) The following information must be submitted for this determination:

(1) the proposed or existing location of the shaft;

(2) the activity proposed, and if applicable, the existing activity; and

(3) the proposed or, if applicable, existing depth of the shaft.

(c) An applicant may provide information supporting its position that the new or existing shaft, due to local conditions, will not penetrate into or through an uppermost water-bearing strata for the purposes of this determination.

§329.6. Pre-application Activities.

(a) Persons who are determined to be proposing a new shaft subject to this chapter must obtain executive director approval of plans for the drilling of an engineering design test hole on center or offset to the shaft and a proposed seismic reflection survey (geophysical survey) for the purposes of site characterization, shaft and seal design, and shaft decommissioning prior to submitting an application for permit. Plans submitted for approval shall contain specific information which will address the following:

(1) test hole—location, drilling, completion, testing, closure, surface cleanup, and mud pits; and

(2) seismic survey—location and number of lines, velocity control, and accuracy of resolution.

(b) An applicant may provide results of previous exploratory drilling and geophysical surveys to support its position that the engineering design test hole and seismic reflection survey (geophysical survey) are not necessary.

(c) After an appropriate review of the matters submitted under subsections (a) and (b) of this section, the executive director:

(1) may allow the results of previous exploratory drilling and geophysical exploration to be substituted for the engineering design test hole and seismic reflection survey;

(2) will determine the requirements of §329.9 of this title (relating to Procedures for Application) and the area of review;

(3) will determine the fee necessary to compensate the Texas Water Commission for reviewing the application; and

(4) may require mechanical integrity investigation for existing shafts which may be modified or converted to a new purpose.

(d) Persons required to drill an engineering design test hole and/or conduct a seismic reflection survey must first obtain the written approval of the executive director.

§329.7. Test Hole and Seismic Reflection Survey.

(a) A test hole will not be required to be drilled in conjunction with modification or conversion of use of an existing or abandoned shaft.

(b) Current commission and the Railroad Commission of Texas regulations shall be used to determine requirements for the mud pit construction, surface cleanup, and test hole closure requirements.

(c) A seismic reflection survey (geophysical survey) will not be required in conjunction with modification or conversion of use of an existing or abandoned shaft.

§329.8. Application for Permit.

(a) A technical report prepared either by a registered professional engineer, or by a qualified person who is competent and experienced in the field to which the application related or who is thoroughly familiar with the operation or project for which the application is made, shall be submitted as part of the application for new permit. At a minimum, the report shall include the following:

(1) a general description and intended purpose of all facilities and systems proposed to be used for, or in connection with, construction and operation of a shaft by mining or drilling;

(2) a surveyor's plat showing the exact location from property lines and survey lines, and giving the latitude and longitude of the shaft and a map(s) showing the location of the shaft for which a permit is sought, and the applicable area of review. Within the area of review, the map(s) must show the number, name, and location of all boreholes and other pertinent surface features;

(3) a tabulation of data of all boreholes within the applicable area of review. Such data shall include a description of each penetration's type, construction, date drilled, location, depth, record of plugging and completion, and any additional information the executive director may require;

(4) maps and cross-sections, as necessary, indicating the general vertical and lateral limits of aquifers within the applicable area of review, their positions relative to the formation, or formations, or stratigraphic units the shaft is constructed to reach;

(5) the text of the report shall discuss the geology, hydrogeology, and groundwater use and development within the applicable area of review; and with respect to the shaft: design, construction, sealing, decommissioning, mechanical integrity, operating procedures, and monitoring.

(b) After an appropriate review, the executive director may modify the requirements for application of this section if he finds that additional information is required to evaluate the shaft, or that information required herein is not reasonably available and is not necessary for a full evaluation of the application.

§329.9. Procedures for Application.

(a) An application is administratively complete when received with all the information as required by Chapter 305 of this title (relating to Consolidated Permits), as appropriate, and this chapter.

(b) Application for a drilled or mined shaft permit shall be submitted with six copies of the completed application, including all reports and statements.

(c) The following shall be included in an application for a drilled or mined shaft permit:

(1) the manner in which financial assurances will be attained;

(2) an environmental assessment or environmental impact statement, if required by the Texas Water Code, §28.038;

(3) a decommissioning and closure plan;

(4) a fee, based on estimated cost of application processing and review, of not less than \$10,000 which shall include, but is not limited to, consultants' fees, lab work, personnel salaries, support services, travel expenses, computer time, and informational services;

(5) a letter from the Railroad Commission of Texas stating that drilling or mining of the proposed shaft and use of the proposed shaft will not endanger or injure any oil or gas formation or significantly limit the potential for future recovery of or exploration for oil or gas; and

(6) a statement of the current status of any litigation involving the project or proposed siting of the shaft.

(d) The executive director will submit to the Railroad Commission of Texas, Texas Department of Health, Texas Air Control Board, Texas Department of Parks and Wildlife, and to the Commissioners Court of the affected county a copy of the application including all amendments.

(e) The provision of Chapter 281 of this title (relating to Applications Processing) do not apply to the processing of new shaft applications under these sections.

§329.10. Permit Required.

(a) All shaft subject to this subchapter shall be specifically authorized by permit. Shafts serving the same underground working, or built as part of a single comprehensive ore body exploration or evaluation program, may be included in one permit. Additional shafts to be added after the permit is issued may be authorized by permit amendment after a demonstration as in §329.11(b) of this title (relating to Construction Standards for Shafts).

(b) A permit shall include terms and conditions reasonably necessary to protect the major and minor aquifers from pollution. The permit shall include requirements regarding the construction, operation, and decommissioning of a new shaft and corrective action, if necessary, to prevent pollution resulting from inadequately constructed, completed, and abandoned boreholes within the area of review. In the event that, after construction of a new shaft has commenced, evidence indicates that a well within the area of review of a shaft might pose a hazard to a major or minor aquifer, the executive director may prescribe a corrective action plan and compliance schedule to remedy such hazard as a condition for continued construction, use, or operation.

§329.11. Construction Standards for Shafts.

(a) The provisions of this subchapter apply to new shafts within the commission's jurisdiction.

(b) All shafts shall be constructed to prevent migration of fluids that may cause or allow the pollution of aquifers. Construction materials used in each shaft shall be designed for the life expectancy of the shaft.

(c) Appropriate surveys; logs, and other tests shall be conducted during the construction of shafts. All surveys, logs, and tests shall be interpreted by qualified persons.

(d) Any proposed changes or alterations to construction plans after permit issuance shall be filed with the executive director and approval obtained before incorporating such changes.

§329.12. Resident Inspection. The executive director may designate a resident inspector to oversee all phases of shaft activities. The resident inspector shall monitor compliance with the terms of the permit for all testing, construction, completion, and operation of the shaft and report to the executive director.

§329.13. Operating Standards.

(a) The construction, use, and operation of a new shaft shall be as authorized by the permit.

(b) All shafts must have mechanical integrity.

(1) A lined shaft or lined portion of a shaft has mechanical integrity if there is no significant leak or physical deterioration in the casing, liners, and seals, and if there is no detectable fluid movement through vertical fluid channels adjacent to the shaft which could cause pollution of an aquifer.

(2) An unlined shaft, or unlined portion of a shaft, has mechanical integrity if there is no detectable deterioration of the wallrock which could cause pollution of an aquifer.

(3) In the event that a lined shaft, unlined shaft, or portion of an unlined shaft may have inflows of groundwater, the executive director may require a shaft and mine water management plan be submitted as part of the shaft permit application.

(4) Mechanical integrity of the shaft (wallrock or casing, liners, and seals) must be demonstrated as required by the permit, during the life of the shaft and shall be accomplished by a method approved by the executive director.

(c) Shaft lacking mechanical integrity shall undertake corrective maintenance actions.

(1) The permittee shall notify and obtain the approval of the executive director before commencing any corrective maintenance that is necessitated by failure to achieve or maintain mechanical integrity.

(2) The notification shall be in writing and shall include plans for the proposed work. The executive director may grant an exception to the requirement for prior written notification when immediate action is required.

§329.14. Monitoring and Reporting Standards.

(a) The permittee shall submit daily construction chronology reports to the executive director and to the resident inspection, if applicable, providing data for each day during the drilling or mining, and casing or lining of the shaft. The data shall be presented in tabular form and shall report date, thickness and lithology penetrated, material settings and volumes, and problems.

(b) Within 90 days after the completion of the shaft, the permittee shall submit an engineering drawing showing the as built construction details of the shaft, liners and seals, including the depth, thickness, and lithology of the rock units penetrated in constructing the shaft.

(c) The permittee shall, prior to commencing construction, provide written notice to the executive director that a copy of the permit has been filed with the commissioners court for the county where the shaft is located.

(d) The permittee shall notify the executive director in writing of the anticipated first date when the shaft will be used or operated for its stated purpose at least 30 days prior to commencing use of the shaft. Compliance with all pre-operation terms of the permit must occur prior to beginning operations.

(e) The permittee shall notify the executive director within 24 hours of the discovery of any unplanned leakage or other failure of the shaft or associated chambers.

(f) Within 90 days after the completion of a corrective maintenance action, a report shall be filed with the executive director providing the reason for the shaft corrective maintenance action and the details of all work performed and results of remedial action.

§329.15. Surface Facilities. Surface facilities must be constructed, maintained, and operated in compliance with applicable permits and chapters governing that facility.

§329.16. Certification of Construction and Completion. Prior to commencing operations, the permittee must certify that the shaft was constructed and completed in compliance with permit requirements.

§329.17. Additional Requirements.

(a) The permittee shall keep complete and accurate records of:

- (1) all construction records;
- (2) mechanical integrity testing;
- (3) geotechnical testing;
- (4) water level and water quality testing;

(5) record of post-construction operations;

(6) corrective maintenance actions; and

(7) any additional information that the executive director determines might reasonably affect the construction and operation of the shaft.

(b) All records or copies of all records shall be filed on-site and made available for review upon request by a representative of the commission.

(c) The permittee shall retain, for the lifetime of the shaft and for at least five years after decommissioning, records of all information concerning the construction, use, and operation of the shaft.

(d) The permittee may be required, prior to commencing operations, to secure and maintain a performance bond or other equivalent form of financial assurance or guarantee, approved by the executive director, to assure:

(1) the costs to the commission of monitoring and of on-site, full-time surveillance; and

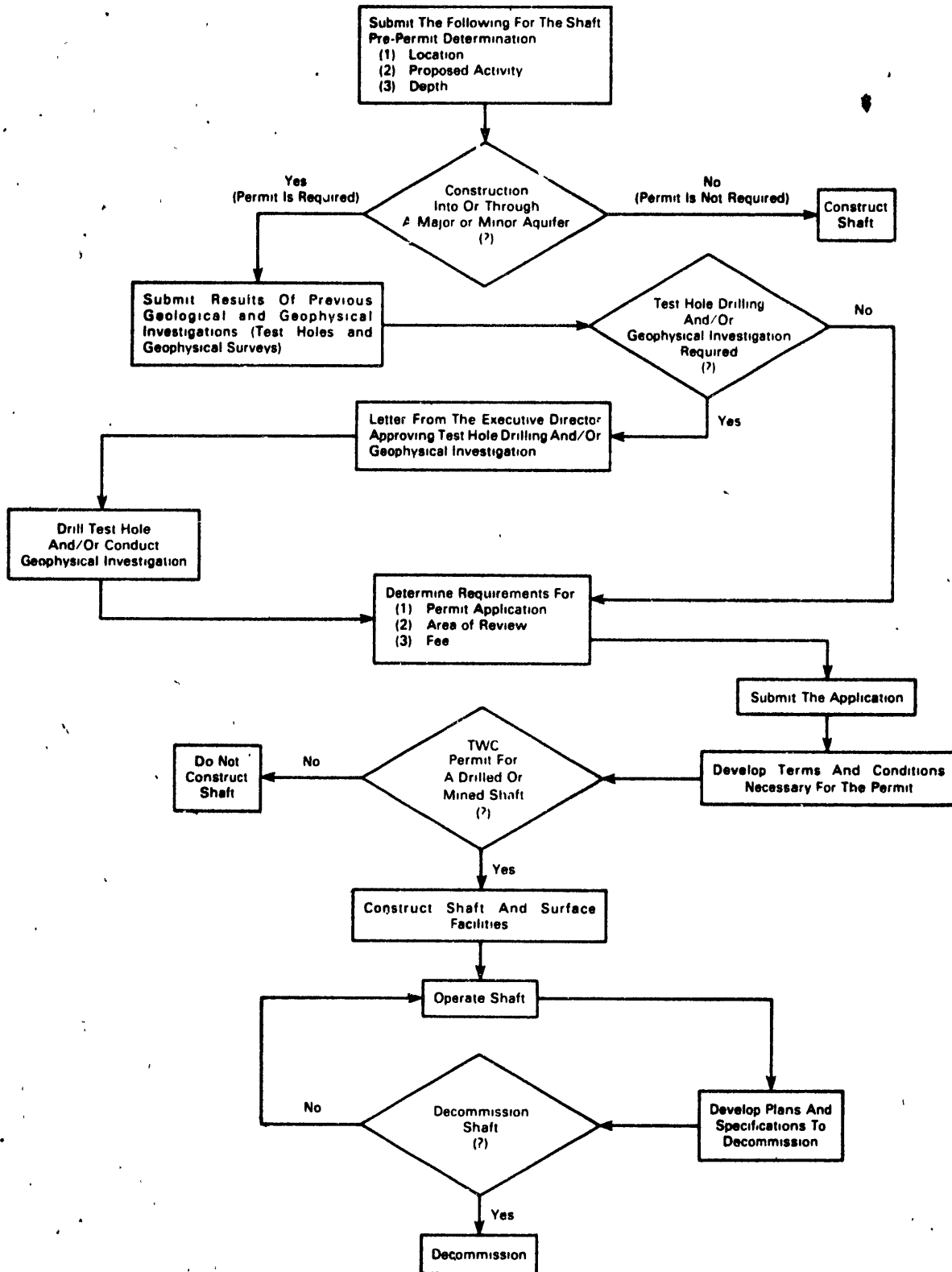
(2) the cost to ensure the safe decommissioning and closure of the shaft.

(e) A permittee may satisfy the conditions of subsection (d) of this section by demonstrating as required by §305.153 of this title (relating to Financial Responsibility).

§329.18. Decommissioning. Shaft decommissioning and closure shall be in accordance with plans and specifications approved by the executive director. Decommissioning seals shall be placed in the shaft so as to prevent the migration of fluids into a major or minor aquifer. Shaft seal mix designs shall be compatible with existing lining, if applicable, and adjacent strata.

§329.19. Appendix A. Appendix A is a flow diagram of the procedures to obtain authorization for a drilled or mined shaft.

Appendix A



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TITLE 34. PUBLIC FINANCE
Part I. Comptroller of Public Accounts
Chapter 1. Central Administration
Rules of Practice and Procedure
★34 TAC §1.3

The Comptroller of Public Accounts adopts on an emergency basis an amendment to §1.3, concerning contested cases. The amendment specifies that requests for settlement of penalty and interest assessments are not within the definition of contested cases. These requests are not within the jurisdiction of the agency's administrative law judges and will not be handled through the agency hearings process. Under the applicable provisions of the Tax Code, these settlements are discretionary with the Comptroller and are not required to be disposed of as a part of a redetermination order.

This amendment is adopted on an emergency basis to reduce the number of assessments on which a hearing is requested and to reduce the number of issues involved in those hearings. Further, the amendment speeds the processing of assessments in which requests for settlement of penalty and interest is the only point of disagreement, thereby speeding up the collection of audit revenue.

This amendment is adopted on an emergency basis under the Texas Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce sections relating to the administration and enforcement of the provisions of the Texas Tax Code, Title 2.

§1.3. Contested Cases.

(a) A contested case is a proceeding in which the legal rights, duties, or privileges of a party are to be determined by the agency after an opportunity for adjudicative hearing. It includes a request for redetermination or refund, as well as actions initiated by the agency to revoke or suspend permits or licenses administered by this agency on grounds other than failure to pay a final tax deficiency or failure to file a tax security.

(A) Contested Case

(b) A contested case [It] does not include forfeitures of rights to do business, of certificates of authority, of articles of incor-

poration, or requests for or revocation of exemptions from taxation.

(c) Requests for settlement of amounts assessed or paid as penalty or interest with respect to a tax assessment are not contested cases. However, if a contested case results in an adjustment to a tax liability, the corresponding penalty and interest adjustment will also be made.

(d) Contested cases are within the jurisdiction of the agency's administrative law judges.

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TRD-8602146

Bob Bullock
Comptroller of Public Accounts

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For further information, please call
(512) 463-4606.

★34 TAC §1.5

The Comptroller of Public Accounts adopts on an emergency basis an amendment to §1.5, concerning initiation of a hearing. The amendment deletes references to penalty and interest amounts as a basis on which a refund hearing may be requested. Under the applicable provisions of the Tax Code, settlements of penalty and interest amounts are discretionary with the Comptroller and are not required to be handled through the hearings process.

This amendment is adopted on an emergency basis to reduce the number of hearings involving this issue, thereby improving the efficiency and promptness of the hearings process and enhancing the fiscal situation of the state. Related section actions are being adopted simultaneously establishing procedure for reviewing these settlement requests.

This emergency amendment is adopted under the Texas Tax Code, §111.002, which provides the Comptroller with the authority to prescribe, adopt, and enforce sections relating to the administration and enforcement of the provisions of Title 2 of the Tax Code.

§1.5. Initiation of a Hearing.

(a) (No change.)

(b) Refund of tax paid. Within the time limits provided in Texas Tax Code §111.104(c), a taxpayer may request a refund of any tax[, penalty, or interest] paid to the Comptroller by sending the agency a written request. The request is defined to include a statement of grounds which sets out in detail the grounds on which the claim is founded. If no grounds are stated as a basis for the claim, no hearing will be commenced and the claim will be denied. If the claim is granted as to any tax amount, the corresponding penalty and interest amount previously paid will be refunded.

(c) (No change.)

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Bob Bullock
Comptroller of Public Accounts

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(512) 463-4606.

Chapter 3. Tax Administration
Subchapter A. General Rulings

★34 TAC §3.5

The Comptroller of Public Accounts adopts on an emergency basis new §3.5, concerning settlement of tax penalty or interest. The new section provides a procedure for evaluation and disposition of requests for settlement of amounts of tax penalty and/or interest. These are amounts assessed or paid with respect to any of the taxes administered by the Comptroller of Public Accounts.

This section, in conjunction with amendments to other sections, is adopted on an emergency basis to remove the settlement requests from the agency hearings process and establish other procedures for their disposition. The combined effect of these changes reduces the hearings caseload, thereby improving the efficiency of that process, enhancing the flow of audits and assessments, and speeding the collection of this revenue. At the same time, audits and assessments in which the settlement of penalty and interest is the only point of disagreement are handled more efficiently and speedily.

This new emergency section is adopted under the Texas Tax Code, §111.002, which provides the Comptroller with the authority to prescribe, adopt, and enforce sections relating to the administration and enforcement of the provisions of Title 2 of the Tax Code.

§3.5. Settlement of Tax Penalty or Interest.

(a) Procedure for requesting settlement, audits.

(1) At the conclusion of the exit conference for the audit, the taxpayer shall have five working days in which to make a written request to settle amounts of penalty or interest found to be due in connection with an audit. The request shall be directed to the audit manager, to whom the Comptroller has delegated the authority to hear all settlement offers of penalty or interest. The audit manager is authorized to settle penalty or interest if he finds the taxpayer exercised reasonable diligence on amounts of penalty or interest under \$5,000. For amounts over \$5,000, the audit manager will make a recommendation to the Chief Deputy Comptroller and the Comptroller of final decision.

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(2) The taxpayer will be given a written response either agreeing to settle penalty or interest or refusing to settle penalty or interest.

(3) Should the taxpayer's request for settlement be denied, the taxpayer shall have three working days in which to request in writing a meeting with the audit manager to set out the reasons why settlement of penalty or interest should be granted.

(4) No less than 10 days from the receipt of the request, the audit manager shall meet with the taxpayer and hear his reasons for settlement.

(5) The taxpayer will be advised of the acceptance or rejection of the settlement of penalty or interest in the audit cover letter sent with the copy of the audit schedules.

(b) Procedure for requesting settlement, nonaudit. The procedure for settlement of penalty or interest in situations other than audits shall be handled in the same manner as outlined in subsection (a) of this section except that the written request should be directed to Tax Administration Division in Austin.

(c) Availability of the hearing process. The settlement of penalty or interest is not

a contested case, is not subject to the hearings process, and may not be raised during either a redetermination or refund hearing.

Issued in Austin, Texas, on March 3, 1986.

TRD-8602148

Bob Bullock
Comptroller of Public
Accounts

Effective date: March 3, 1986

Expiration date: July 1, 1986

For further information, please call
(512) 463-4808.

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Proposed Rules

Before an agency may permanently adopt a new or amended rule, or repeal an existing rule, a proposal detailing the action must be published in the *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 rule. Also, in the case of substantive rules, 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 rule is indicated by the use of bold text. [Brackets] indicate deletion of existing material within a rule.

TITLE I. ADMINISTRATION Part V. State Purchasing and General Services Commission Chapter 113. Central Purchasing Division Purchasing

★1 TAC §113.14

The State Purchasing and General Services Commission proposes an amendment to §113.14, concerning invoicing and payment. The amendment is proposed to comply with the provisions of Texas Civil Statutes, Article 601f. The amendment outlines the times within which certain payments owed to vendors by state agencies for supplies, material, equipment, or services must be made; provides that interest accrues on payments not timely made; establishes a procedure whereby invoices, vouchers, and payments may be timely processed by the state to avoid the accrual of interest on payments not timely made; and provides exceptions as authorized by the law.

John R. Neel, general counsel, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Neel also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to establish a procedure to insure that payments owed to vendors by state agencies for supplies, material, equipment, or services are promptly paid so as to avoid interest charges which would otherwise accrue pursuant to the provisions of Texas Civil Statutes, Article 601f.

Comments on the proposal may be submitted to John R. Neel, General Counsel, State Purchasing and General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047. Written comments will be received through 5 p.m. on the 30th calendar day following publication of the proposal in the *Texas Register*. In addition,

a public hearing to receive either oral or written comments will be held on April 1, 1986, at 10 a.m. in the commission's conference room, Suite 916, L.B.J. State Office Building, 111 East 17th Street Austin, Texas.

The amendment is proposed under Texas Civil Statutes, Article 601b and 601f, which provide the State Purchasing and General Services Commission with the authority to adopt regulations necessary for the administration and enforcement of those Acts.

§113.14. Invoicing and Payment. Invoicing and payment for goods, materials, supplies, and services is covered by the authority of Texas Civil Statutes, Article 601b, §§3.14-3.16, and Article 601f [Articles 655, 657, and 658].

(1) Payment for goods and services purchased through the commission will be made based on the seller's five-part invoice rendered to the state agency receiving the material, and such invoice must include:

(A) the agency requisition number;
(B) the commission's purchase order number; [and]

(C) a valid vendor's identification (ID) number; and

(D) [(C)] other relevant information supporting and explaining the payment requested.

(2) State agencies purchasing through the commission shall **date stamp all invoices when received and shall** submit the invoice to the commission attached to a properly executed State of Texas purchase voucher, prescribed by the state comptroller's office, certifying that the materials or services were received in accord with the referenced commission purchase order, and that the invoice is correct and properly payable. For purposes of this section and approval of vouchers for payment thereunder, it shall not be necessary that shipment of all goods and services ordered be made prior to initial payment. Partial payment may be authorized in cases of partial shipment.

(3) When satisfied that the invoice is correct, as submitted in accord with paragraph (2) of this section, the commission will approve said voucher and invoice, and forward same to the state comptroller for payment.

(4) Effective July 1, 1986, a payment owed by a state agency based on a con-

tract executed on or after July 1, 1986, must be mailed to the vendor not later than the 45th calendar day after the day on which the state agency received supplies, material, or equipment; or the day on which the performance of services was completed; or the day on which the state agency received the invoice for the supplies, material, equipment, or services; whichever is later. Effective September 1, 1987, a payment owed by a state agency based on a contract executed on or after September 1, 1987, must be mailed to the vendor not later than the 30th calendar day after the day on which the state agency received supplies, material, or equipment; or the day on which the performance of services was completed; or the day on which the state agency received the invoice for the supplies, material, equipment or services; whichever is later. Payments not timely mailed will accrue interest pursuant to the provisions of paragraph (5) of this section. For purposes of this paragraph, a payment is considered mailed on the date the payment to the vendor is postmarked or electronically transmitted to the vendor's financial institution.

(5) State agency payments not timely made pursuant to the provisions of paragraph (4) of this section will accrue interest at the rate of 1.0% per month beginning on the date payment is due pursuant to the provisions of paragraph (4) of this section and ending on the date the payment is mailed to the vendor or electronically transmitted to the vendor's financial institution. If partial payment is made within the period specified by paragraph (4) of this section, the unpaid balance will accrue interest as provided by this paragraph. Interest accrued pursuant to the provisions of this paragraph shall be paid by the state agency receiving the supplies, material, equipment, or services.

(6) Any claim for interest accrued pursuant to the provisions of paragraph (5) of this section must be submitted by the vendor to the originating state agency no later than six months after receipt of the payment by the vendor. The claim must include the envelope in which the payment was received, or other proof demonstrating the date the payment was mailed to the vendor or electronically transmitted to the vendor's financial institution. Claims for interest not submitted to the originating state agency within six months will not be honored.

(7) For purposes of processing claims for interest accrued pursuant to the provisions of paragraph (5) of this section, the originating state agency shall submit the claim and a properly executed voucher directly to the state comptroller in accordance with rules and procedures adopted by the state comptroller.

(8) In recognition of the interest charges which will accrue pursuant to paragraph (5) for payments not timely made pursuant to paragraph (4), the following schedule for processing of invoices, vouchers and warrants will prevail on and after July 1, 1986;

(A) Effective July 1, 1986, for contracts executed on or after July 1, 1986, the originating state agency must have submitted the invoice and voucher to the commission no later than the 26th calendar day following the date the agency received the invoice from the vendor. The commission must approve the voucher, and submit same to the state comptroller no later than the eighth calendar day following receipt of the invoice and voucher from the originating state agency. The state comptroller must submit the warrant to the originating state agency or mail the warrant to the vendor no later than the 11th calendar day following receipt of the voucher from the commission, or must have electronically transmitted the payment to the vendor's financial institution no later than the 11th calendar day following receipt of the voucher from the commission.

(B) Effective September 1, 1987, for contracts executed on or after September 1, 1987, the originating state agency must have submitted the invoice and voucher to the commission no later than the 11th calendar day following the date the agency received the invoice from the vendor. The commission must approve the voucher and submit same to the state comptroller no later than the eighth calendar day following receipt of the invoice and voucher from the originating state agency. The state comptroller must submit the warrant to the originating state agency or mail the warrant to the vendor no later than the 11th calendar day following receipt of the voucher from the commission, or must have electronically transmitted the payment to the vendor's financial institution no later than the 11th calendar day following receipt of the voucher from the commission.

(9) Invoices will not be considered properly submitted unless they contain all of the information required by paragraph (1) of this section. When an invoice is not properly submitted or when it is believed that the invoice contains an error, the agency must notify the vendor of the alleged error no later than the 21st calendar day following receipt of the invoice from the vendor. If it is determined that the invoice was not properly submitted or did contain an error, the vendor must submit a corrected invoice and the corrected invoice shall be paid within the time provided in paragraph (4) of this

section. If it is determined that the invoice was properly submitted and did not contain an error, the original invoice must be paid within the time provided in paragraph (4) of this section.

(10) The provisions of paragraphs (4)-(9) of this section do not apply in the event:

(A) the terms of the contract establish different times and methods of payment, or methods of resolving disputes, or interest owed;

(B) the terms of a federal contract, grant, regulation, or statute prevent the state from making a timely payment with federal funds; or

(C) the invoice is not submitted to the originating agency in strict accordance with instruction, if any, on the purchase order.

(11) It shall be the responsibility of each political subdivision, vendor, or subcontractor to establish rules and/or procedures of Texas Civil Statutes, Article 601f, which have applicability to such entities or persons.

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

Issued in Austin, Texas, on March 3, 1986.

TRD-8602149

John R. Neel
General Counsel
State Purchasing and
General Services
Commission

Earliest possible date of adoption:
April 11, 1986
For further information, please call
(512) 463-3446.

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TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 11. Herbicide Regulations

★4 TAC §11.1, §11.2

The Texas Department of Agriculture proposes amendments to §11.1 and §11.2, concerning counties regulated and county special provisions. The department proposes changes to the Texas herbicide regulations as a result of a commissioners courts order, effective January 1, 1986, from each affected county, and as a result of public hearings held in affected counties in accordance with the Texas Herbicide Law, Chapter 75, the Texas Agriculture Code, §75.018.

The amendment to §11.1 adds Motley County to counties subject to all provisions of the Texas Agriculture Code (1981), Chapter 75, unless specifically exempted by §11.2.

The amendment to §11.2 adds special provisions for Motley County.

Alvin Ashorn, assistant director, Agricultural and Environmental Sciences Division has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Mr. Ashorn also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be enhanced public health, safety, and welfare. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Dolores Alvarado Hibbs, Director of Hearings, Texas Department of Agriculture, P.O. Box 128547, Austin, Texas, 78711.

The amendments are proposed under the Texas Agriculture Code, §75.018, which provides the Texas Department of Agriculture with the authority to promulgate rules after notice and hearing for administration of the Texas Herbicide Law, and §75.023 which provides the commissioners court of an affected county with the authority to act to change the exemption status of a county after notice and hearing.

§11.1. Counties Regulated. The following counties shall be subject to all of the provisions of the Texas Agriculture Code, Chapter 75 (1981), unless specifically excepted by the provisions of §11.2 of this title (relating to County Special Provisions): Aransas, Austin, Bell, Bexar, Brazoria, Brazos, Briscoe, Burleson, Calhoun, Cochran, Collin, Collingsworth, Colorado, Cottle, Culberson, Dallas, Dawson, Deaf Smith, Delta, Denton, Dickens, Dimmit, Donley, El Paso, Falls, Foard, Fort Bend, Frio, Gaines, Galveston, Hall, Hardin, Harris, Haskell, Hidalgo, Houston, Hudspeth, Jackson, Jefferson, Karnes, Kaufman, King, Knox, Lamar, Lamb, Liberty, Loving, McLennan, Martin, Matagorda, Midland, Milam, Motley, Newton, Orange, Parmer, Rains, Reeves, Refugio, Robertson, Rockwall, Runnels, San Patricio, Swisher, Travis, Tyler, Van Zandt, Waller, Ward, Washington, Wharton, Williamson, Wilson, and Wood.

§11.2. County Special Provisions.

(a)-(ff) (No change.)

(gg) **Motley.** The Texas Herbicide Law, and regulations adopted thereunder, shall apply to Motley County only for the period beginning May 15 and ending October 31 of each year.

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

Issued in Austin, Texas, on March 5, 1986.

TRD-8602195

Dolores Alvarado Hibbs
Director of Hearings
Texas Department of
Agriculture

Earliest possible date of adoption:

April 11, 1986

For further information, please call
(512) 483-7583.

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TITLE 19. EDUCATION

Part I. Coordinating Board, Texas College and University System

Chapter 21. Student Services

Subchapter B. Determining Residence Status

★ 19 TAC §§21.21, 21.22, 21.24- 21.26, 21.28, 21.29, 21.31-21.33

The Coordinating Board, Texas College and University System, proposes amendments to §§21.21, 21.22, 21.24-21.26, 21.28, 21.29, and 21.31-21.33, concerning determining residence status. House Bill 1147, 69th Legislature, 1985, changed several statutes dealing with residency. The proposed amendments bring Coordinating Board sections into agreement with current law. The current law makes it harder than it used to be for nonresidents to qualify to register by paying resident tuition rates.

Mack Adams, assistant commissioner for Student Services, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for local government or small businesses as a result of enforcing or administering the sections. There will be an estimated increase in revenue on state government of \$15.1 million in 1986; \$14.6 million in 1987, 1988, and 1989; and \$17.4 million in 1990.

Mr. Adams 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 increasing institution tuition revenues the state can decrease the amount of direct subsidies to institutions. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Kenneth H. Ashworth, Coordinating Board, Texas College and University System, P.O. Box 12788, Austin, Texas 78711.

The amendments are proposed under Texas Civil Statutes, Article 54.053, which provides the Coordinating Board with the authority to adopt rules regarding determining residence status.

§21.21. *Minors and Dependents.*

(a) **Residence of a minor or a dependent: divorce of parents.** The legal residence of a minor or dependent child is usually that of the parent with whom the individual spends the principal amount of time. Upon divorce of parents, residency of a minor is based on the residence of the parent who has legal custody or has claimed the minor for federal income tax purposes both at the time of enrollment and for the tax year preceding enrollment. For dependents over 18, residency is determined by the residence of the parent who claims the student for federal income tax purposes both at the time of enrollment and for the tax year preceding enrollment. [Death or divorce of parents. The legal residence of a minor under 18 years of age is usually that of the father. Upon the death of the father, the legal residence of the minor is that of the mother. Upon divorce or legal separation of the parents, the residence of the minor is determined by the residence of the parent with whom the minor is residing at the time of registration].

(b) **Custody by court order.** If the custody of the minor has been granted by court order (e.g., divorce decree, child custody action, guardianship, or adoption proceedings) to some person other than the parent, the residence of that person shall control; provided, however, that such grant of custody was not ordered during or within a year prior to the minor's enrollment in a public [an] institution of higher education [(defined as any public junior college, public senior college or university, medical or dental unit or other agency of higher education)] and was granted under circumstances indicating that such guardianship was not for the purpose of obtaining status as a resident student. If the minor is not residing with either parent, and there is no court-appointed guardian, the residence of the parent with whom the minor last resided shall be presumed to control. If, however, the minor has resided with, and has been dependent upon a grandparent for more than a year prior to enrollment in an institution of higher education, the residence of that natural guardian shall be regarded as the minor's residence. The residence of a person other than a parent or a natural or legal guardian, who may furnish funds for payment of tuition, fees, or living expenses shall in no way affect the residence classification of a minor.

(c) **Abandoned child.** In the case of an abandoned child, the residence of a person who has stood *in loco parentis* for a period of time may determine the residence [of such abandoned child]. The fact of abandonment must be clearly established and must not have been for the purpose of affecting the residence of the minor, and the minor must have actually resided in the home of such person for two years immediately prior to enrolling [registering] in a public [an] institution of higher education in Texas and such person must have provided substantially all the minor's support. In the event that the *in*

loco parentis relationship has not existed for the full two year period, a lesser period of time is acceptable in unusual hardship cases, such as death of both parents.

(d) **Orphans.** [Orphan]. Orphans [An orphan] who have [has] lived for longer than a year in an established orphan's home in Texas operated by a fraternal, religious, or civic organization and have [has] been graduated from the orphan's home shall be considered residents [a resident] of Texas provided they [such orphan] remain [remains] in Texas from the time of such graduation until they [he or she] enter [enters] an institution of higher education.

(e) **Emancipation** [Emancipated child]. Under certain circumstances, minors [a minor] may become emancipated or freed from parental control. If their [the minor's] parents have ceased to exercise parental control and responsibility, if they are [the minor is] responsible for all of their [his or her] own decisions and affairs, and if they are [the minor is] not dependent on their [financially independent of] parents, minors [the minor] may establish emancipation. [A minor is financially independent if he or she is not claimed as a dependent for federal income tax purposes by the individual's parent or guardian at the time of registration and for the tax year preceding the year in which the individual registers.] If emancipation is clearly proved, [proven] the residence classification of the minors [minor] is determined by their own [the] residence [of the minor] rather than the residence of the parents.[.] After [and after] 12 months in Texas under such circumstances, minors [the minor] may be classified as residents, [a resident] if they [he or she] otherwise satisfy [satisfies] the statutory requirements applicable to those over 18 (e.g., see presumption arising from residence while a student). Proof of emancipation is the responsibility of the minor.

(f) **Married minors.** Minors [A minor] who are [is] married [shall] have the power and capacity of [a] single persons [person] of full age and are [is] entitled to select their [his or her] own place of legal residence. After 12 months' residence in Texas under such circumstances, minors [the minor] may be classified as residents [a resident] if they [he or she] otherwise satisfy [satisfies] the statutory requirements applicable to those over 18 years of age. [The residence classification for tuition purposes of a nonresident who marries a Texas resident shall be governed by the provisions of the tuition statute (Texas Education Code, Article 54.056) and of this subchapter.]

(g) **Minors whose parents moved to another state or foreign country.** If the parents of minors [a minor] who are [is] enrolled as [a] resident students [student] move their legal residence to another state or foreign country, [on, or after August 15, 1971,] the minors [minor] shall be classified as nonresidents [a nonresident] at all subsequent registration periods. Under the provisions of Texas Education Code, Article

54.055, the minors [minor] will be entitled to pay the resident tuition fee as long as they [he or she] remain [remains] continuously enrolled in a regular session in a public institution of higher education. The minor students [student] must reenroll for the next available regular semester immediately following the parents' change of legal residence to another state. If the parents of minors [a minor] move to another state or foreign country, or reside outside the state or in a foreign country at the time the minors enroll [of enrolling] in an institution of higher education, but claim legal residence in Texas, conclusive evidence must be presented that the parents are [father is] still claiming legal residence in the State of Texas and that they have [he has] the present intent to return to the state. A certificate from the employer of the parents that the move outside the state was temporary (generally less than five years) and that there are definite plans to return the parents to Texas by a determinable future date will [may] be considered in this connection. If minors [a minor] whose parents have moved their legal residence to another state or foreign country reside [resides] in Texas for 12 consecutive months following their [his or her] 18th birthday and intend [whose actions clearly indicate intention] to establish permanent residence in the state, the minors [minor] may be classified as [a] resident students [student] effective with the beginning of the term or semester following their [his or her] 19th birthday despite the fact that the minors' [minor's] entire periods [period] of residence in Texas have [has] been as students [a student]. When the parents of minors [a minor] who have established their legal residence in another state or foreign country return and reestablish their legal residence in Texas the minors [minor] must be classified as nonresidents [a nonresident] until the first registration after the parents have resided in the state for a 12-month period [following their return].

§21.22. Residence of Individuals Over 18.

(a) Establishment of residence. Individuals [Any individual] 18 years of age or over who move [moves] into the state and who are [is] gainfully employed within the state for a period of 12 months prior to enrolling in a public institution of higher education are [an] educational institution (defined as any institution of higher education, public or private, above the high school level), is entitled to classification as residents [a resident]. If such 12 months residence, however, can be shown not to have been for the purpose of establishing legal residence in the state but to have been for some other purpose, the individuals are [individual is] not entitled to be classified as residents [a resident]. Student enrolling [Any student registering] in an educational institution prior to having resided in the state for 12 months immediately preceding time of enrollment [registration] shall be classified as nonresidents [a nonresident] for tuition purposes.

(b) Dependents over 18. For dependents over 18, residency is determined by the parent who claims the student for federal income tax purposes both at the time of enrollment and for the tax year prior to enrollment. [Any individual 18 years of age or over who is claimed as a dependent for federal income tax purposes by the individual's parent or guardian at the time of registration and for the tax year preceding the year in which the individual registers shall be classified for tuition determination purposes as though the individual were a minor.]

(c) Re-establishment of residence. Persons [A person] who resided in Texas for at least five years prior to moving from the state, and who have [has] returned to the state for residence purposes before having resided out of the state for a year, shall be classified as residents [a resident]. The parent(s) of dependents must return to the state to live in order for the minor or the dependent to be considered a resident.

(d) Reclassification. Persons [A person] classified as [a] nonresident students [student] upon first enrollment in an institution of higher education are [is] presumed to be nonresidents [a nonresident] for the period during which they continue [he or she continues] as students [a student]. If such nonresident students [student] withdraw [withdraws] from school and reside [resides] in the state while gainfully employed for a period of 12 months, upon re-entry into an institution of higher education they [the student] will be entitled to be reclassified as residents [a resident] for tuition purposes. Accumulations of summer and other vacation periods do not satisfy this requirement. Reclassification to resident [residence] status after residing in the state for 12 months cannot be based solely upon the student's or the student's spouse's employment, registration to vote, registration of a motor vehicle and payment of personal property taxes thereon, or the securing of a Texas driver's license. The presumption of [a] nonresident is not a conclusive presumption, however, and other facts may be considered to determine if the presumption has been overcome. Material to this determination are business or personal facts or actions unequivocally indicative of a fixed intention to reside permanently in the state. Such facts may include, but are not limited to, the length of residence and full-time employment prior to enrolling [registering] in the institution, the fact of full-time employment and the nature of such employment [(regular type employment)] while a student, purchase of a homestead with substantial down payment, or dependency upon a parent or guardian who has resided in Texas for at least 12 months immediately preceding the student's enrollment [registration, and marriage to a resident of Texas]. All of these facts are weighed in the light of the fact that a student's residence while in school is primarily for the purpose of education and not to establish residence, and that decisions of an individual as to residence are

generally made after the completion of an education and not before.

(e) Loss of residence. Persons who have been attending Texas public institutions of higher education as residents and who move out of state will be classified as nonresidents immediately upon leaving the state, unless their move is temporary (generally less than five years) and residence has not been established elsewhere. Conclusive evidence must be provided by the individuals supporting their present intent to return to the state. Among other things, a certificate from the employer that the move outside the state is temporary and that a definite future date has been determined for return to Texas may qualify as proof of the temporary nature of the time spent out of state. Internship programs as part of the academic curriculum that require the student to return to the school may qualify as proof of the temporary nature of the time spent out of state.

§21.24. Military Personnel and Veterans.

(a) Certification of assignment to duty in Texas. Texas Education Code, 54.058(b), provides that military personnel assigned to duty within the State of Texas, their spouse [husband or wife as the case may be] and their dependent children, shall be entitled to pay the same tuition as a resident of Texas regardless of the length of their physical presence in the state. To be entitled to pay [the] resident tuition [fees], such military personnel shall submit at the time of each enrollment [registration] a statement from their commanding officer or personnel officer certifying that they are then assigned to duty in Texas and that same will be in effect at the time of such enrollment [registration] in a public [an] institution of higher education. This subsection [section] also provides that [a] nonresident members [member] of an out-of-state National Guard unit who are [is] temporarily training with a Texas National Guard unit will not be entitled to pay the resident tuition.

(b) Spouse and children of members of armed services. Texas Education Code, Article 54.058(c), provides that if they reside continuously in the State of Texas, the spouse and dependent children of members of the armed forces assigned to duty outside the State of Texas may pay resident tuition rates while the spouse or parent is on his/her first assignment subsequent to assignment in Texas. In order for the dependent child to qualify, a parent must also continuously reside in Texas. [The spouse and dependent children of a member of the armed forces assigned to duty outside the State of Texas immediately after assignment in Texas may be entitled to pay the resident tuition as long as they reside continuously in Texas.] Texas Education Code, Article 54.058(g), provides that the spouse and dependent children of members [a member] of the armed forces who are [is] assigned to duty outside the State of Texas may be entitled to pay the resident tuition if they reside in Texas and

file with the public institution of higher education at which a child or spouse plans to register a letter of intent, an affidavit or other evidence satisfactory to the institution stating they intend to become permanent residents of Texas. Texas Education Code, Article 54.058(f), provides that members [a member] of the immediate family (which includes [shall include] spouse or dependent children) of members [a member] of the armed forces who die [dies or is killed in action] while in military service may qualify to pay the resident tuition if they become residents of Texas within 60 days of the date of death. To qualify under this provision, the students [student] shall submit to the institution of higher education satisfactory evidence establishing the date of death and residence in Texas. The military personnel spouses [spouse] and dependent children enumerated in Texas Education Code, Article 54.058(b), (c), (f), and (g) are classified as nonresidents but shall be entitled to pay the resident tuition regardless of their length of residence in Texas if they comply with the provisions of the statute and this subchapter.

(c) Nonresidents attending college under federal benefits for veterans. Texas Education Code, 54.058(e), provides that the public institution of higher education may charge the nonresident tuition fee for [a] nonresident veterans [veteran] to the United States government under the provision of any federal law or regulation authorizing educational or training benefits for veterans.

(d) Legal residence of persons [person] in military service. Persons [A person] in military service are [is] presumed to maintain during their [his or her] entire period of active service the same legal residence which was in effect at the time of entering military service. Persons [A person] stationed in a state on military service are [is] presumed not to establish a legal residence in that state because their [his or her] presence is not voluntary but under military orders. It is possible for members [a member] of the military service to abandon the domicile of original entry into the service and to select another, but to show establishment of a new domicile during the term of active service, there must be clear and unequivocal proof of such intent. An extended period of service alone is not sufficient. The purchase of residential property is not conclusive evidence unless coupled with other facts indicating an intent to put down roots in the community and to reside there after termination of military service. Evidence which will be considered in determining this requisite intent includes, but is not limited to, a substantial investment in a residence and the claiming of a homestead exemption thereon, registration to vote, and voting in local elections, registration of an automobile in Texas and payment of personal property taxes thereon, obtaining a Texas driver's license, maintaining checking accounts, savings accounts, and safety deposit boxes in Texas banks, existence of wills

or other legal documents indicating residence in Texas, change of [home-of-record] permanent address with the military and designation of Texas as the place of legal residence for income tax purposes on military personnel records, business transactions or activities not normally engaged in by military personnel, and membership in professional or other state organizations[, and marriage to a resident of Texas]. Purchase of property during terminal years of military service preceding retirement generally is given greater weight than a similar purchase made prior to such terminal period. Additionally a terminal duty assignment in Texas in which an individual has engaged in personal, business and/or professional activities indicative of their intent to remain in the state will be given more consideration than most other evidence presented.

(e) Residence classification of veterans upon separation from military service.

(1) Persons [A person] who enroll [enrolls] in an institution of higher education following separation from military service must be classified as [a] nonresident students [student] unless:

(A) they were [the individual was a] legal residents [resident] of Texas at the time of entry into military service and have [has] not relinquished that residence;

(B) they [the individual] can prove that during military service they have [he or she has], in fact, established a bona fide legal residence in Texas at a time at least 12 months prior to enrollment [registration]; or

(C) they have [the individual has] resided in Texas other than as students [a student] for 12 months prior to enrollment [registration] and subsequent to discharge from service.

(2) The nonresident classification is a presumption, however, which can be overcome pursuant to the guidelines and standards for establishing Texas residence. (See §21.22 of this title (relating to Residence of Individuals Over 18).)

(f) Students enrolled in ROTC programs. A nonresident student who is a member of an ROTC unit will be required to pay nonresident tuition rates until such time the student has signed a contract which cannot be terminated by the student and which obligates the student to serve a period of active military duty.

§21.25. *Teachers, Professors, and Their Dependents [Employees of Institutions of Higher Education Other than Students].* Teachers and professors [A person] employed at least halftime on a regular monthly salary basis (not an hourly employee) by any public institution of higher education with an effective date of employment on the official census date of the relevant term(s), [12th class day of a regular semester or the fourth class day of a summer term] may pay the same tuition while attending the employing institution as a resident of Texas for them-

selves [self], their spouses, [husband, or wife as the case may be] and their dependent children, regardless of the length of residence in the state. To be entitled to pay the resident tuition fees, such employees [employee] must submit, prior to the time of each enrollment, [registration] a statement certifying employment from the director of personnel or a designated representative of the institution of higher education by which he or she is employed.

§21.26. *Teaching or Research Assistants [Student Employees].* Teaching or Research Assistants [A student] employed at least halftime by any public institution of higher education in a degree program-related position with an effective date of employment on or before the official census date of the relevant term(s), [12th class day of a regular semester or the fourth class day of a summer term] may pay the same tuition while attending the employing institution as a resident of Texas for themselves, their spouses, [him or herself, spouse] and their dependent children, regardless of the length of residence in the state. The institution which employs the students [student] shall determine whether or not the students' jobs relate [student's job relates] to their [his or her] degree programs [program]. [If a student is employed by an institution of higher education for consecutive fall and spring semesters and was further eligible to pay the tuition charged to Texas residents during those fall and spring semesters because of the provisions of this section, then the student may continue to pay the resident tuition rate during the summer session following the spring employment if the institution is unable to provide employment and if the student's employment was satisfactorily completed.]

§21.28. *Tuition Reciprocity with Bordering States [Reciprocity Clause Applicable to Junior Colleges].* Nonresidents [A nonresident,] who are residents [is a resident] of a state of the United States bordering Texas[,] are [is] entitled to pay Texas resident rates upon registering in any Texas public junior college if the district of such college includes any part of a county that is immediately adjacent to the state in which the nonresidents reside [nonresident resides], providing that Texas residents are entitled to pay in-state fees and charges at a similar school in the bordering state. Nonresident students [The nonresident student] described in this section shall be entitled to pay Texas resident rates at a Texas public senior upper level institution of higher education (those institutions offering only junior, senior, and graduate level programs) which is located within the Texas public junior college district from which the nonresident students have [student has] graduated or completed 45 semester credit hours, provided that [a] Texas residents are [resident is] entitled to pay in-state fees and charges at a similar institution in the bordering state. A foreign student is not eligible for waiver of the difference in non-

resident and resident rates due to residence in a bordering state.

§21.29. *Foreign Students [Citizens of Any Country Other than the United States of America].* Aliens living in the United States under a visa permitting permanent residence, [or have filed with the proper federal authorities a declaration of intention to become a citizen,] and aliens who are permitted by Congress to adopt the United States as their domicile while they are in this country, have the same privilege of qualifying for Texas resident status for tuition purposes as do citizens of the United States. Normally individuals who obtain permanent resident status while in Texas must wait a minimum of twelve months from the date of issue to request resident status for tuition purposes. At that time they must provide conclusive evidence to indicate that they are in this state to live and reside permanently.

§21.31. *Procedures for Reclassification [Official Change of Residence Status].*

(a) Application for reclassification. Students [Every student] classified as [a] nonresident students [student] shall be considered to retain that status until they make [he or she makes] written application for reclassification in the form prescribed by the institution and are [is] officially reclassified in writing as residents [a resident] of Texas by the proper administrative officers of the institution.

(b) Reclassification as a nonresident. Persons [Every person] who have [has] been classified as residents [a resident] of Texas shall be reclassified as [a] nonresident students [student] whenever they [he or she] shall report, or there is found to exist, circumstances indicating a change in legal residence to another state. If students [any student] who have [has] been classified as residents [a resident] of Texas are [shall be] found to have been erroneously [so] classified, those students [that student] shall be reclassified as nonresidents [a nonresident] and shall be required to pay the difference between the resident and nonresident fees for those semesters in which they were [he or she was] so erroneously classified. In addition, the students [student] shall be required to pay back all monies borrowed from the Hinson-Hazelwood college student loan program [Texas Opportunity Plan Fund].

(c) Reclassification as a resident. If students have [any student has] been erroneously classified as [a] nonresident students [student] and subsequently prove [proves] to the satisfaction of the appropriate officials of an institution of higher education that they [he or she] should have been classified as a resident student, they [that student] shall be reclassified as residents [a resident] of Texas and may [shall] be entitled to a refund of the difference between the resident and nonresident fees for the semesters in which they were [he or she was] so erroneously classified. Normally the refunds must be re-

quested and substantiated during the current term.

§21.32. *Penalties.* Each institution has been authorized by statute to assess and collect from [each] nonresident students [student] failing to comply with the provisions of the tuition statute and with these interpretations concerning nonresident fees a penalty not to exceed \$10 a semester. In addition, if students have [a student has] obtained residence classification by virtue of deliberate concealment of facts, or misrepresentation of fact, they [that student] may be subject to appropriate disciplinary action, in accordance with the rules and regulations that may be adopted by the governing boards of the respective institutions of higher education.

§21.33. *Junior College Tuition Waivers for Ad Valorem Taxpayers [Waiver of Nonresident Tuition by Junior Colleges].* The governing board of a public junior college district may waive the difference in the rate of tuition for nonresident and resident students for individuals, or their [a person, or his or her] dependents, who own [owns] property which is subject to *ad valorem* taxation by the junior college district. Persons, [The person] or their [his or her] dependents, applying for such waiver shall verify property ownership by presentation of an *ad valorem* tax statement or receipt issued by the tax office of the junior college district; or by presentation of a deed, property closing statement, or other appropriate evidence of ownership of property which is subject to *ad valorem* taxation by the junior college district. If a sworn affidavit is accepted at the time of enrollment [registration], verification of the student as an *ad valorem* taxpayer must be provided by the end of the semester of enrollment. A foreign student is not eligible for waiver of the nonresident tuition rate due to payment of *ad valorem* taxes.

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 February 17, 1986

TRD-8602116

James McWhorter
Assistant Commissioner
Coordinating Board,
Texas College and
University System

Earliest possible date of adoption:

April 25, 1986

For further information, please call
(512) 462-6420.

★ ★ ★

★ 19 TAC §§21.23, 21.27, 21.30

The Coordinating Board, Texas College and University System proposes the repeal of §§21.23, 21.27, and 21.30, concerning married students, competitive scholar-

ships, and student responsibilities. These sections are being repealed and rewritten to bring them into agreement with current law. The new language is being simultaneously filed as new sections.

Mack Adams, assistant commissioner for Student Services, has determined that for the first five-year period the proposed repeal will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal.

Mr. Adams also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be that by increasing institution tuition revenues the state can decrease the amount of direct subsidies to institutions. There is no anticipated economic cost to individuals who are required to comply with the proposed repeal.

Comments on the proposal may be submitted to Kenneth H. Ashworth, Coordinating Board, Texas College and University System, P.O. Box 12788, Austin, Texas 78711.

The repeal is proposed under Texas Civil Statutes, 54.053, which provides the coordinating board with the authority to adopt rules regarding married students, competitive scholarships, and student responsibilities.

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

Issued in Austin, Texas, on February 28, 1986.

TRD-8602114

James McWhorter
Assistant Commissioner
for Administration
Coordinating Board,
Texas College and
University System

Proposed date of adoption:

April 25, 1986

For further information, please call
(512) 462-6420.

★ ★ ★

★ 19 TAC §§21.23, 21.27, 21.30,
21.34, and 21.35

The Coordinating Board, Texas College and University System, proposes new §§21.23, 21.27, 21.30, 21.34, and 21.35 concerning married students, competitive scholarships, student responsibilities, responsibilities of the public institution of higher education and definitions. Senate House Bill 1147, 69th Legislature, 1985, amended statutes dealing with residency; the proposed new sections bring the Coordinating Board sections into agreement with current law.

Mack Adams, assistant commissioner for Student Services, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Mr. Adams 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 by increasing institution tuition revenues the state can decrease the amount of direct subsidies to institutions. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Kenneth H. Ashworth, Coordinating Board, Texas College and University System, P.O. Box 12788, Austin, Texas 78711.

The new sections are proposed under Texas Civil Statutes, Article 54.053, which provide the Coordinating Board with the authority to adopt rules regarding married students, competitive scholarships, student responsibilities, responsibilities of the public institutions of higher education and definitions regarding determining residence status.

§21.23. Married Students. Marriage of a Texas resident to a nonresident does not jeopardize the former's right to pay the resident tuition rate unless the resident has taken steps to claim the residence of his or her spouse. A nonresident who marries a resident must establish his or her own residency by meeting the standard requirements, see §21.22 of this title (relating to Residence of Individuals Over 18).

§21.27. Competitive Academic Scholarship Recipients. To qualify for exemption from paying out-of-state or foreign tuition rates, a student must be awarded a competitive academic scholarship in the amount of \$200 or more for the academic year, the summer session or both by an official scholarship committee or committees of a public institution of higher education. If nonresidents or foreign students in competition with other students, including Texas residents, obtain these competitive academic scholarships, the student may pay the same tuition as a resident of Texas during the registration period in which the competitive academic scholarship is in effect. A competitive academic scholarship that qualifies the holder for waiver of the difference between the tuition charged to resident and nonresident students shall be awarded for the purpose of encouraging academic excellence in the academic program in which the student is enrolled.

§21.30. Student Responsibilities. The student is responsible for registering under the proper residence classification and for providing documentation as required by the public institution of higher education. If there is any question as to right to classification as a resident of Texas it is the student's obligation, prior to or at the time of enrollment, to raise the question with the administrative officials of the institution in which they are enrolling for official determination. Students classified as Texas residents must affirm the correctness of that classification as a part of the admissions procedure. If the student's classification as a resident becomes inappropriate for any reason, it is the responsibility of the student to notify the proper administrative officials at the institution. Failure to notify the institution constitutes a violation of the oath of residence and will result in disciplinary action.

§21.34. Responsibilities of the Public Institutions of Higher Education.

(a) Review of enrollment and/or registration forms. Each public institution of higher education is responsible for reviewing enrollment and/or registration applications for errors, inconsistencies, or misclassifications of residency status. Institutions should obtain written documentation to resolve any problems noted during the review of forms.

(b) Oath of residency. Each public institution is responsible for incorporating an oath of residency into its student application for admission. Substantiating documentation may be required by the institution to affirm Texas residency.

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

Conclusive evidence—Proof which removes uncertainties. In the case of proving residency, conclusive evidence may include but is not limited to the purchase of a homestead with substantial down-payment, significant employment, dependency on parents who are residents of the state, and business or personal ties in the state which imply a fixed intent to remain in Texas.

Dependent child—An individual (minor or over 18 years of age) who is claimed as a dependent for federal income tax purposes by a parent or guardian the year of enrollment and the tax year prior to enrollment.

Foreign students—Aliens who are not permanent residents of the United States or have not been permitted by congress to adopt the United States as their domicile while they are in this country.

In-district student—A Texas resident who physically resides within the geographic

boundaries of the classifying public junior college district.

Minor—An individual who is 17 years of age or younger.

Nonresident-A citizen, national, or permanent resident of the United States or an alien who has been permitted by congress to adopt the United States as his or her domicile while in this country and who has not met the state requirements for establishing residency for tuition purposes.

Official census date—The official reporting date for enrollments; the date upon which the student (by virtue of having paid or obligated him/himself to pay requisite tuition and/or fees) is considered to be enrolled in the institution. (For 16-week semesters, the 12th class day; for 6-week summer sessions, the 4th class day. For other length programs, consult the "Reporting Procedures Manual", published by the Educational Data Center of the Coordinating Board.)

Out-of-district student—A Texas resident who does not physically reside within the geographic boundaries of the classifying public junior college district.

Prior to enrolling—Prior to or including the official census date.

Public institution of higher education—State-supported institutions of higher education, including public, junior and community colleges, public senior college and universities, public health science centers, and Texas state technical institutes.

Resident—A citizen, national, or permanent resident of the United States or an alien who has been permitted by congress to adopt the United States as his or her domicile while in this country and who has otherwise met the state requirements for establishing residence for tuition purposes.

Time of enrollment—Official census date for the semester or term for the institution (for specific dates, refer to the "Reporting and Procedures Manual" of the Educational Data Center of the Coordinating Board).

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 February 17, 1986

TRD-8602115

James McWhorter
Assistant Commissioner
for Administration
Coordinating Board,
Texas College and
University System
Student Services

Proposed date of adoption:
April 25, 1986
For further information, please call
(512) 462-6420.

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Withdrawn

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

**TITLE 16. ECONOMIC
REGULATION
Part I. Railroad Commission
of Texas
Chapter 7. Gas Utilities
Division
Substantive Rules**

★16 TAC §7.35

Pursuant to Texas Civil Statutes, Article 6252-13a, §5(b), and 1 TAC §91.24(b), the proposed amendments to §7.35, submitted by the Railroad Commission of Texas, have been automatically withdrawn, effective March 3, 1986. The amendment as proposed appeared in the September 3, 1985, issue of the *Texas Register* (10 TexReg 3297).

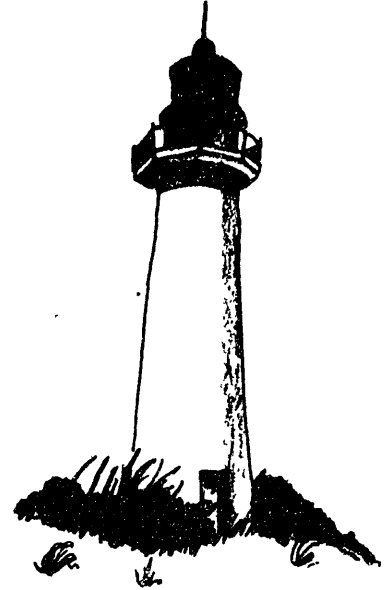
TRD-8602242
Filed: March 3, 1986

**TITLE 31. NATURAL
RESOURCES AND
CONSERVATION
Part V. Boards for Lease of
State-Owned Lands
Chapter 203. Exploration and
Development
Lease of Lands of State
Departments, Boards, and
Agencies**

★31 TAC §203.3

Pursuant to Texas Civil Statutes, Article 6252-13a, §5(b), and 1 TAC §91.24(b), the proposed new section to §203.3, submitted by the Boards for Lease of State-Owned Lands, has been automatically withdrawn, effective March 3, 1986. The new section as proposed appeared in the September 3, 1985, issue of the *Texas Register* (10 Tex-Reg 3305).

TRD-8602243
Filed: March 3, 1986



Adopted

Rules An agency may take final action on a rule 30 days after a proposal has been published in the *Texas Register*. The rule 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 rule 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 rule with changes to the proposed text, the proposal will be republished with the changes.

TITLE 4. AGRICULTURE Part I. Texas Department of Agriculture Chapter 11. Herbicide Regulations

★4 TAC §11.1 and §11.2

The Texas Department of Agriculture adopts amendments to §11.1 and §11.2. The amendment to §11.2 is adopted with changes to the proposed text published in the January 31, 1986, issues of the *Texas Register* (11 TexReg 583). The amendment to §11.1 is adopted without changes to the proposed text, and will not be republished.

The Texas Agriculture Code, §75.013(h) requires a commissioners court to notify the Texas Department of Agriculture of a change in the status of the regulation or exemption of a county or portion of a county which has been approved by the commissioners court through a public hearing process. In addition to the status of a county, the commissioners court may recommend that special provisions be adopted for a county. The Texas Department of Agriculture is then required to conduct a public hearing on proposed special provisions under the Texas Agriculture Code, §75.018.

Special county provisions adopted by the commissioners court as recommendation to the department are local standards established to meet the needs of each individual county, and best benefit the citizens of each individual county.

The amendment to §11.2(x), concerning Austin County, contains changes from the proposed text. The amended language provides cut-off dates for the use of 2,4-D formulations for that portion of Austin County lying south of IH 10, prohibits the aerial application of all 2,4-D formulations, and prohibits the use of ester formulations by air or by ground equipment. These changes were made because the majority of the complaints of damage due to 2,4-D exposure have been to cotton in Austin County and most cotton is grown south of IH 10 in Austin County. The new language does allow the use of amine formulations by ground rig for control of weeds by ranchers in Austin County. Cut-

off dates were established as requested by many of the comments received. March 15 has been set as the beginning of the restricted use period because, according to regulations already established for control of the Pink Bollworm, March 15 would be the earliest date cotton could be planted. July 31 is set as the end of the restricted period because by July 31 most cotton will have matured and would not be susceptible to damage due to 2,4-D exposure.

The new language of the amendment §11.2(x) is viewed by the department as the best solution for allowing ranchers and farmers in Austin County to treat for weeds as necessary, while at the same time protecting the cotton producers in Austin County from damage to their crops due to exposure to 2,4-D formulations.

The amendment to §11.1 adds Briscoe and Swisher Counties to those subject to provisions of the Texas Agriculture Code (1981), Chapter 75, unless specifically exempted by §11.2.

The amendment to §11.2(r) changes the date for beginning of the prohibition period for the use of regulated herbicides in Runnels County from May 28 to May 26 of each year, and adds new special provisions for Austin, Dickens, Swisher, and Briscoe Counties.

There were no comments received regarding §11.1.

The following comments were received regarding §11.2(x): there needs to be a cut-off date, preferably March 1, but no later than March 15, for all application of 2,4-D; the area should be bounded by IH 10 north and west and the Bernard River, south, where no application of 2,4-D should be allowed; there should be no 2,4-D, or 2,4,5-T put out by air after March 1, until after cotton crops and gardens have been harvested; weeds can be treated before March 1, so do not need to treat after that date; there has been misuse of 2,4-D in Austin County, and no one compensated for damage; two miles is not far enough away from a cotton field for safe application; ground application of the type of 2,4-D that does not drift is acceptable; aerial application of 2,4-D should be banned; weeds cannot be destroyed by treating before March 1; it is possible to

spray 2,4-D with ground equipment and not have a problem with drift; weeds can be controlled by shredding, so there is no need to treat with 2,4-D; the use of 2,4-D or 2,4,5-T should be banned from March 1-September 1; September is too late to try to control weeds, have to be able to treat with 2,4-D throughout the spring and summer; if chemicals are used properly, they are of no danger to crops; and almost all mixtures for killing weeds include 2,4-D and 2,4,5-T.

The only comments received were by individual farmers and ranchers.

Changes to the amendment were based upon comments received. The department however, disagrees that the cut-off dates for use of 2,4-D formulations should be from March 1-September 1. Existing regulations pertaining to control of the Pink Bollworm do not allow the planting of cotton until March 15 in Austin County, and there could be no possible damage to cotton before that date. Furthermore, cotton has generally matured to a point of not being susceptible to 2,4-D damage by July 31, eliminating the need for a prohibition to extend to September 1.

The amendments are adopted under the Texas Agriculture Code, §75.018, which provides the Texas Department of Agriculture with the authority to promulgate rules after notice and hearing for administration of the Texas Herbicide Law, and §75.023, which provides the commissioners court of an affected county with the authority to act to change the exemption status of a county after notice and public hearing.

§11.2. County Special Provisions.

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

(f) Dickens County.

(1) No permit is required during the period beginning October 1 and ending May 15 of each year.

(2) Permits are required for all phenoxy herbicides during the period beginning May 16 and ending June 10 of each year.

(3) The use of all phenoxy herbicides is prohibited during the period beginning June 11 and ending September 30 of each year.

(4) Any research conducted by the Texas Agriculture Experiment Station under

the auspices of brush control and research using phenoxy herbicides will be allowed. Aerial research must have a buffer zone of at least ¼ mile from any susceptible crops, and wind velocity must not exceed 10 mph during spraying period. Ground application must comply with the special provisions for ground application under the special provisions for dicamba. Research will be permitted during the period of May 15-September 30 under these conditions, and will be exempt from all fees. Notification shall be made to Texas Department of Agriculture before beginning research projects.

(g)-(q) (No change.)

(r) Runnels. That portion of Runnels County beginning on the west county line at the point of intersection with the Colorado River, east-southeasterly along the Colorado River to its intersection with U.S. Highway 83, thence north along U.S. Highway 83 to its intersection with the north county line, thence westerly along the north Runnels County line to the northwest corner of the county, thence southerly along the west county line to the Colorado River, the point of beginning, is regulated by the Texas Herbicide Law. In regulated areas, no permit is required from October 1-May 28 of the year following. Use of regulated herbicides is prohibited between May 26-October 1 of each year. And further, amine and other non-volatile formulation may be used in the regulated area between the dates of May 28-October 1 each year, provided that the user obtain a permit as prescribed by the law prior to such use.

(s)-(w) (No change.)

(x) Austin. That portion of Austin County lying east and south of the line described in paragraph (1) of this subsection is regulated by the Texas Agriculture Code, Chapter 75.

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

(3) Between the dates of March 15-July 31st, in that portion of Austin County lying south of Interstate Highway 10, the following restrictions on the use of 2,4-D formulations shall apply.

(A) The application by aircraft is hereby prohibited.

(B) The use of ester formulations by air or ground is prohibited.

(y)-(dd) (No change.)

(ee) Swisher.

(1) The use of 2,4-D ester is prohibited for the period beginning April 20 and ending September 20 of each year.

(2) The aerial application of all 2,4-D is prohibited for the period beginning April 20 and ending September 20 of each year.

(3) The application of 2,4-D amine by ground rig is allowed at any time throughout the year.

(4) A permit for application of a herbicide will not be required.

(ff) Briscoe.

(1) The aerial application of any regulated herbicide is prohibited in Briscoe

County from April 25-October 1, except in Precinct 2, where aerial application of regulated herbicides is prohibited for the period beginning May 10 and ending October 15 of each year.

(2) The aerial application for brush control may be permitted under the direct personal supervision of the Texas Department of Agriculture.

(3) The application of regulated herbicides by ground equipment is banned except for dicamba products. Permits must be obtained prior to the application of dicamba products by ground equipment.

(4) In Briscoe County, Precinct 2, the application of 2,4-DB will be permitted for ground application only.

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

Issued in Austin, Texas, on March 5, 1986.

TRD-8602184

Dolores Alvarado Hibbs
Director of Hearings
Texas Department of
Agriculture

Effective date: March 26, 1986

Proposal publication date: January 31, 1986

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

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TITLE 22. EXAMINING BOARDS

Part XXII. Texas State Board of Public Accountancy

Chapter 507. Employees of the Board

Confidentiality

★ 22 TAC §507.4

The Texas Board of Public Accountancy adopts amendments to §507.4, without changes to the proposed text published in the January 7, 1986, issue of the *Texas Register* (11 TexReg 89).

The amendment provides for the confidentiality of all information as required by the Public Accountancy Act of 1979, §25, as amended.

The amendment provides for full coverage confidentiality as required by the Public Accountancy Act of 1979, §25, as amended.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct relating to licensees and exam candidates.

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

Issued in Austin, Texas, on March 4, 1986.

TRD-8602174

Bob E. Bradley
Texas State Board of
Public Accountancy

Effective date: March 25, 1986

Proposal publication date: January 7, 1986

For further information, please call
(512) 451-0241.

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part IX. Texas Department on Aging

Chapter 273. Transportation Service Standards

Statutes and Regulations

★ 40 TAC §§273.1, 273.3, and 273.5

The Texas Department on Aging adopts new §§273.1, 273.3, and 273.5, with changes to the proposed text published in the October 15, 1985, issue of the *Texas Register* (10 TexReg 4009).

The sections are adopted to establish standards for area agencies, grantees, service providers, or applicants to follow and/or comply with when providing transportation services for authorized participants of Title III, Older Americans Act, programs.

The sections permit all activities providing transportation services funded under Title III of the Older Americans Act to follow standard procedures in delivery of these services and to upgrade these services to provide uniformity throughout the state. The sections apply to Title III purchased vehicles and/or those contractors that utilize Title IIIB funds for operation of a transportation program. The sections also provide that Title IIIB transportation service providers will be in full compliance by May 31, 1989.

Comments consisted of fiscal implications on the implementation of the standards, identification on the vehicle that identified the grantee agency, and housing or garaging of the vehicle at a driver's home. Questions were posed concerning physical examinations for driver and the responsibility for bearing this cost.

The following individuals comment for the adoption: Holly Anderson, planner, Deep East Texas; Russona Kaye Jones-Briscoe, Concerned Citizens of Jack County, Inc.; Norma Jean Crane, Beaumont Nutrition for the Elderly, Inc.; Victoria Klinzing, Tarrant County; Brad Helbert, West Central;

Don Newbury, Western Texas College; Antoinette Samuel, Houston.

The following individuals commented against the adoption: Dr. John E. Brooks, Wharton County Junior College; Beverly Cherney Pearson, Ark-Tex; Dorothy Duncan, Director, San Angelo Supportive Services; Marshal Bennett, Fisher County Judge; Gloria Shaw, Scurry County Senior Center; B.J. Foldenauer, Senior Services Division Director, San Angelo; Jerry D. Casstevens, South Plains.

As the budgeting agency of funds provided under Title III, grantees must adjust their annual budgets to accommodate these requirements. Identification of the funding source will serve to publicize state, federal, and local involvement in these programs. Physical examinations are legitimate requirements for employment to assure proper insurance coverage in anticipation of claims as a result of accidents to driver, passengers, and vehicles. Vehicle garaging requirements are necessary to minimize misuse or abuse of public property. Establishment of standards by the Texas Department on Aging is in accord with recommendations of the Sunset Commission.

The sections are adopted under the Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to adopt sections governing the function of the department.

§273.1. Title III Transportation Service Standards.

(a) Purpose. This publication give the policies, procedures, and standards that govern the provision of transportation services authorized under Title III of the Older Americans Act. This section, for use by the Texas Department on Aging, Area Agencies on Aging, and service providers, will be useful in establishing new services, reviewing current services, and upgrading these services throughout the state.

(1) Application. This section applies only to Title III funded services. Transportation services that are not provided with Title III funds are not subject to this rules.

(2) Deadline. It is the intent of the Texas Department on Aging that these standards will be fully implemented by May 31, 1989.

(b) Definition. Transportation service is defined as taking a person 60 years of age or older from one location to another.

(c) Scope of service. Transportation services to be provided by service providers will meet the following requirements.

(1) The service will be designed to transport eligible persons, including those physically impaired, to and from social services, medical and health care services, meal programs, senior centers, shopping and recreational activities, and other community facilities and resources in a way to insure that services are readily accessible to eligible individuals.

(2) Services will be coordinated with other state, local, federal, and private for profit agencies whenever possible to enhance cost effectiveness and to better serve the citizens of Texas.

(d) Eligibility criteria. To be eligible for transportation services, individuals must be 60 years of age or older, or the spouse of an eligible person. In instances where eligible persons provide their own Texas escort, the escort need not meet the 60 year-of-age criteria to accompany the eligible individual.

(e) Intake. Eligible individuals will provide name, address, telephone number, and date of birth prior to participating in this service.

(f) Expansion/maintenance of effort. Local financial commitments are vital to the success of any transportation program; therefore, any organization or community interested enough to seek a solution to a transportation problem will invest some of its own time and money toward a successful transportation program.

(g) Program contributions. The Older Americans Act contains provisions for participants in services to contribute to the provision of those services. The following guidelines will be followed in establishing a procedure to facilitate this provision.

(1) The procedure will be established in such a way that confidentiality is established.

(2) A suggested contribution schedule will be developed by the service provider.

(3) The contribution schedule will be posted in each vehicle in an obvious location.

(4) Eligible persons will not be denied service because they do not contribute to the cost of the service.

(h) Service priorities. Area agencies on aging will establish policies concerning priority service for ridership, destination, trip purpose, geographic area covered, routes, and schedules for providing services.

(i) Transportation outreach. Area agencies will develop a plan that will make eligible persons aware of available services.

§273.3. Qualifications of Vehicle Operators.

(a) Conditions for employment. The following qualifications and requirements are prerequisites which will be met by prospective drivers of vehicles used to provide transportation services to participants in Title III programs.

(1) Applicant will have a valid Texas drivers license with the appropriate classification based on the type and size of vehicle he/she will be operating (minimum Class A).

(2) Applicant will pass a road test in the type of vehicle he/she will be operating.

(3) A copy of the applicant's drivers license will be on file.

(4) Applicant will be in compliance with standards set by the insurance carrier

or the governing body.

(5) Applicant/employee will be required to pass a basic physical examination which includes at least blood pressure, hearing and vision test before transporting passengers. Applicant/ employee operating vehicles using lift equipment or transporting mobility impaired passengers will be required to pass a more extensive physical examination to determine physical ability to life and transfer passengers. Verification of the examination must be in the form of a written statement signed by a physician and placed in the personnel file.

(6) Drivers who have not been a resident of Texas three years prior to employment will obtain a driver record check from the state(s) of previous residence, and submit it to the employer before transporting passengers.

(b) Drivers training. A drivers training program will be established. The drivers training program will be written and include at least the following.

(1) New drivers will be fully briefed about the transportation program, report forms, vehicle operation, and the geographic area in which they will operate their vehicle.

(2) Drivers will be trained to use any special equipment installed on their vehicles, such as wheelchair lifts, oxygen equipment, and two-way radios before transporting passengers.

(3) Within the first six months of employment, drivers will complete an approved National Safety Council Defensive Driving Course. Drivers holding a current certification of the driver training course do not need to retake the course.

(4) Within the first 12 months of employment, drivers will successfully complete an approved course in passenger assistance techniques, if responsible for transporting mobility impaired passengers.

(5) Drivers will receive at least a semi-annual briefing which covers changes in the transportation program, reporting forms, and vehicle operations, including the operation of special equipment.

(6) Permanent records will be maintained for all drivers to verify that training has been received. Current certifications will be retained in a permanent file.

(c) Driver evaluations. Driver evaluations will be required to assure that the highest standards of performance are maintained in providing transportation services for older adults. Consequently, a regular and routine evaluation procedure, encompassing the following minimum requirements, will be implemented.

(1) Transportation service providers will provide written documentation of semi-annual evaluation of each driver.

(2) Semi-annual observation of each driver's on-the-job performance; the supervisor will ride with the driver on a regular route to observe his/her driving technique.

§273.5. Vehicle Operational Considerations.

(a) Safety. The transportation provider will assure that all vehicles and associated equipment are maintained to minimize breakdowns and decrease the chance of accidents. Each vehicle will have available the following workable safety equipment:

- (1) first aid kit;
- (2) approved fire extinguisher that is annually certified;
- (3) triangular reflective warning devices or flares;
- (4) operating flashlight;
- (5) working seat belts for front seat passengers;
- (6) accessory boarding devices including step and grab bar;
- (7) dual side mirrors with convex mirror attachment; and
- (8) back up lens;

(b) Parking. Vehicles will be parked in the safest areas available when loading and unloading passengers.

(c) Vehicle maintenance. An aggressive vehicle maintenance program will do much to assure that breakdowns are minimized. Providers will have in place an established preventive maintenance program. This program should encompass the following:

- (1) an informal daily check for operational readiness which is constructed in such a way to document any problems;
- (2) complete maintenance records on file for each vehicle; and
- (3) regular periodic maintenance services checklist based on time and/or mileage useage of the vehicle.

(d) Insurance classification. All vehicles utilizing Title III funds will be classified as a Social Services Agency Automobile, since they are used by government, civic, charitable, or social service organizations in Texas to provide transportation to clients incident to the social services sponsored by the organization, including special trips and outings. This classification includes, for example, automobiles used to transport senior citizens or other clients to congregate meal centers, medical facilities, social functions, shopping centers, and handicapped persons to work or to rehabilitative programs.

(1) The following automobiles are eligible for this classification:

(A) automobiles owned, or leased for one year or more, by the social service agency;

(B) automobiles donated to the social service agency, without a driver; and

(C) automobiles hired under contract by the social service agency.

(2) If an automobile has more than one use, use the highest rated classification unless 80% of the use is in a lower rated activity. In that case, use the lower rated classification.

(e) Insurance coverage. Vehicles classified as social services agency automobiles will have the following insurance coverage.

(1) Liability. Minimum liability rates are set at \$250,000 per person, \$500,000 single limit liability.

(2) Collision and comprehensive insurance. Collision and comprehensive coverage will be maintained unless the operator/subcontractor accepts responsibility in the contract with the Area Agency on

Aging for replacement or damage.

(3) Property damage. If single limit liability coverage is not provided as stated in paragraph (1) of this subsection, then coverage will be at \$100,000.

(f) Accident reporting. The following requirements are established for accident reporting.

(1) If involved in an accident, police reports and a standardized accident report form will be submitted to the Texas Department on Aging within 10 working days following the date of the accident.

(2) Accidents involving personal injury will be reported to the Texas Department on Aging within 24 hours.

(g) Private or personal use. Vehicles may not be used for personal business or pleasure.

(h) Vehicle identification. Vehicles will be suitably identified by an appropriate sign or logo. This sign will identify the service provider and the Texas Department on Aging. The Texas Department on Aging will provide decals which identify the character of the funding, its sources, and the funding agencies.

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

Issued in Austin, Texas, on March 3, 1986.

TRD-8602153

O. P. (Bob) Bobbit
Executive Director
Texas Department on
Aging

Effective date: March 25, 1985
Proposal publication date: October 15, 1986
For further information, please call
(512) 444-2727.

State Board of Insurance Exempt Filings

State Board of Insurance Notifications 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, and the final actions printed in this section have not been previously published as proposals.

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, 1110 San Jacinto Street, Austin.)

The State Board of Insurance considered a filing Northwestern National Insurance Company, of a request to withdraw the Contract Services Endorsement approved under Board Order 43655, dated September 27, 1983.

This program is withdrawn, as it is no longer being written. Withdrawn is: Form 31119 (4/83)-Contract Services Endorsement; rates: exception page, opposite ME-68, Ed. 4/83 Contract Service.

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 February 27, 1986.

TRD-8602117

Nichols Murphy
Chief Clerk
State Board of
Insurance

Effective date: March 27, 1986
For further information, please call
(512) 463-6327.

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(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, and the final actions printed in this section have not been previously published as proposals.

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, 1110 San Jacinto Street, Austin.)

The State Board of Insurance has approved Mortgage Guaranty Insurance Uniform Statistical Plan National Association of Independent Insurers. The statistical plan provides necessary instructions for coding and recording experience in detail required for reporting to statistical agents.

The Insurance Code, Article 5.05(a), authorizes the State Board of Insurance to collect data with the respect to the recording of its loss experience and such other data as may be required. The Insurance Code, Article 5.96, authorizes the State Board of Insurance to adopt amendments to the statistical plan under the procedure specified in that article.

This mortgage guaranty insurance uniform statistical plan will be effective at 12:01 a.m., April 1, 1986, and is applicable to all insurance companies reporting data under this plan.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

Issued in Austin, Texas, on February 27, 1986.

TRD-862118 Nicholas Murphy
Chief Clerk
State Board of
Insurance

Effective date: April 1, 1986
For further information, please call
(512) 463-6327.

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(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, and the final actions printed in this section have not been previously published as proposals.)

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, 1110 San Jacinto Street, Austin.)

The State Board of Insurance has approved amendments to the Texas Property Statistical Plan for residential and commercial risks. Major areas of this revision include codes for premiums written in excess of manual and year of construction of dwellings.

The Insurance Code, Article 5.05(a), authorizes the State Board of Insurance to collect data with the respect to the recording of its loss experience and such other data as may be required. The Insurance Code, Article 5.96, authorizes the State Board of Insurance to adopt amendments to the statistical plan under the procedure specified in that article.

This amended Texas property statistical plan for residential and commercial risks will be effective at 12:01 a.m., May 1, 1986, and is applicable to all property in-

sure companies reporting data under this plan.

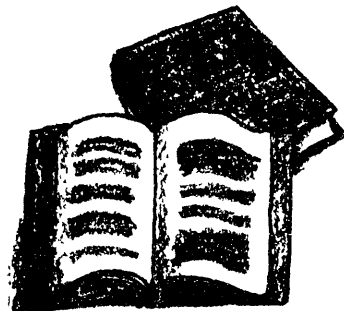
This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

Issued in Austin, Texas, on February 27, 1986.

TRD-8602119 Nicholas Murphy
Chief Clerk
State Board of
Insurance

Effective date: May 1, 1986
For further information, please call
(512) 463-6327.

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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 *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 agendas than what is published in the *Register*.

Texas Adult Probation Commission

Friday, March 14, 1986, 9 a.m. The Texas Adult Probation Commission will meet in Room 310, Old Supreme Court Room, Capitol Building, West Wing, Austin. According to the agenda, the commission will introduce guests; approve minutes; consider the Sunset Commission review; and the Governor's Executive Order 36.

Contact: Virginia Grote, 8100 Cameron Road, Suite 600, Building B, Austin, Texas 78753, (512) 834-8188.

Filed: March 5, 1986, 2:59 p.m.
TRD-8602202

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Texas Air Control Board

Friday, March 14, 1986, 10 a.m. The Clean Air Study Committee of the Texas Air Control Board will meet in the Lieutenant Governor's Committee Room, State Capitol, Austin. According to the agenda, the committee will discuss recommendations to the legislature regarding the regulation of emissions into the air from ships; a presentation of background information regarding renewable permits; a presentation of testimony by witnesses; questions; future meeting dates; and new business.

Contact: Paul M. Shinkawa, 6330 Highway 290 East, Austin, TX 78723 (512) 451-5711 ext. 354.

Filed: March 4, 1986, 1:41 p.m.
TRD-8602168

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Texas Board of Architectural Examiners

Friday, March 14, 1986, 9 a.m. The Texas Board of Architectural Examiners will meet in Suite 107, 8213 Shoal Creek Boulevard, Austin. According to the agenda, the board will approve minutes; consider rules and reg-

ulations; reinstatements; reciprocal licensing; examinations; alleged violations; the Intern Development Program; the Southern Conference/National Council of Architectural Registration Boards; legislation; renewals; and policy statements.

Contact: Robert H. Norris, Suite 107, 8213 Shoal Creek Boulevard, Austin, Texas 78758, (512) 458-1363.

Filed: March 4, 1986, 10:37 a.m.
TRD-8602161

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State Bar of Texas

Thursday, March 13, 1986, 9:30 a.m. The Executive Committee of the State Bar of Texas made an emergency addition to the agenda for the meeting to be held in Rooms 101 and 102 of the Texas Law Center, 1414 Colorado Street, Austin. The addition concerns a report from the Board PDP Committee. The emergency status is necessary because the necessity for attention to this matter only became apparent on March 6, 1986, and public necessity requires that the matter be dealt with at the March 13, 1986 meeting.

Contact: Paula Welch, 1414 Colorado Street, Austin, Texas 78701, (512) 463-1401.

Filed: March 6, 1986, 9:42 a.m.
TRD-8602236

Thursday, March 13, 1986, 9:30 a.m. The Executive Committee of the State Bar of Texas will meet in Rooms 101 and 102 of the Texas Law Center, 1414 Colorado Street, Austin. According to the agenda summary, the committee will discuss reports of the president, president-elect, executive director, supreme court liaison, chairman of the board, general counsel, the policy manual committee; the TDC committee; budgetary matters; and consider the request of the committee on immigration and nationality.

Contact: Paula Welch, 1414 Colorado Street, Austin, Texas 78701, (512) 463-1401.

Filed: March 5, 1986, 2:07 p.m.
TRD-8602199

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Texas Cosmetology Commission

Friday and Saturday, April 4 and 5, 1986, 9:30 a.m. daily. The Texas Cosmetology Commission (TCC) will meet at the Registry Hotel, 15201 Dallas Parkway, Dallas. According to the agenda, the commission will introduce the agreed orders; Johnson's Institute; the deviation to salon requirements; continuing education; TCC accessibility; Advocacy Incorporated; the rule and regulation revisions; consider initial adoption; committee appointments; the legislative, continuing education, operator examinations; committee reports; field trips; the licensee in medical offices; resolution; announcements; and staff reports; The commission will also meet in executive session.

Contact: Jo Ann Reeves, 1111 Rio Grande, Austin, Texas 78701, (512) 463-5542.

Filed: March 5, 1986, 1:02 p.m.
TRD-8602198

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Texas State Board of Dental Examiners

Thursday-Saturday, March 13-15, 1986, 8 a.m. daily. The Texas State Board of Dental Examiners made an addition to the agenda for the meeting to be held in the Castillian ABC meeting room, Shamrock Hilton Hotel, 6900 South Main Street, Houston. The addition concerns a motion for reinstatement from Dr. Joe C. Freeman; and registration of dental laboratories.

Contact: William S. Nail, 411 West 13th Street, Suite 503, Austin, Texas 78701, (512) 463-5536.

Filed: March 5, 1986, 3:36 p.m.
TRD-8602215

Texas Commission on Economy and Efficiency in State Government

Friday and Saturday, March 7 and 8, 1986, 9 a.m. daily. The Committee on Purchase, Supply, Inventory, and Housekeeping of the Texas Commission on Economy and Efficiency in State Government made an emergency revision to the agenda for the meeting held in Room 101, John H. Reagan Building, Austin. The revision concerned appearances by the comptroller's office, the State Aircraft Board, and the Energy Conservation Division of the Public Utility Commission of Texas on Friday morning. Friday afternoon the committee has considered appearances by the State Purchasing and General Services Commission and representatives of selected major state agencies. Saturday the committee continued consideration of presentations by major state agencies. The emergency status was necessary because the executive director of the State Purchasing and General Services Commission had a conflicting meeting on Friday morning.

Contact: Chris Kuykendall, P.O. Box 12128, Austin, Texas 78711, (512) 463-1155.

Filed: March 4, 1986, 3:41 p.m.
TRD-8602179

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Texas Education Agency

Thursday, March 6, 1986, 3 p.m. The Committee of the Whole of the Texas Education Agency of the State Board of Education made an emergency addition to the agenda for a meeting held in Room 1-104, William B. Travis Building, 1701 North Congress Avenue, Austin. The addition concerned proposed new 19 TAC Chapter 149, Subchapter C, Appraisal of Certified Personnel, and the proposed repeal of existing rules; approval of the teacher appraisal system instrument; scoring procedures; and forms. The emergency status was necessary because these items are already scheduled for discussion by the Committee for Personnel. They have been added also to the Committee of the Whole to ensure that all board members have adequate opportunity to review and discuss the teacher appraisal process.

Contact: W. N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: March 5, 1986, 10:07 a.m.
TRD-8602192

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Office of the Governor

Monday, March 10, 1986, 8 a.m. The Task Force on Border Economic Development of the Office of the Governor met in emergency session in Rooms 141 and 142, Universi-

ty Hall, Laredo State University, West End Washington Street, Laredo. According to the agenda, the task force held a public hearing; conducted a business meeting; and had a tour of Laredo Industrial Parks. The emergency status was necessary because there was a problem with the initial open meeting notice.

Contact: Tom Adams, Suite 412, Sam Houston Building, Austin, Texas 78701, (512) 463-1796.

Filed: March 4, 1986, 10:31 a.m.
TRD-8602160

Wednesday, March 19, 1986, 10 a.m. The Governor's Task Force on the Advancement of Labor-Management Relations of the Office of the Governor will meet at the Southwestern Bell offices, 1010 North St. Mary's Street, San Antonio. According to the agenda, the task force will introduce new members; consider a status report on the proposed conference on Jobs vs. Texas Trade; a report from the SPGSC on specific purchasing policies; old business; and new business.

Contact: David Potter, Room 412, 201 East 14th Street, Austin, Texas 78701, (512) 463-1796.

Filed: March 4, 1986, 10:24 a.m.
TRD-8602159

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Texas Department of Health

Friday, March 14, 1986, 9 a.m. The Municipal Solid Waste Management and Resource Recovery Advisory Council of the Texas Department of Health will meet in the Commissioner's Conference Room G-107, 1100 West 49th Street, Austin. According to the agenda summary, the council will approve minutes; discuss the potential impact of the Environmental Protection Agency's Nonhazardous Waste program requirements; the status of past and pending actions on fees for facility permitting and registration; facility operators; the registered transporters; the local review committee in the permitting process; the status of plans for Waste-to-Energy conference; the status of Austin's Waste-to-Energy plant and the dioxin emission issue; status of statewide workshop-toxic emissions from Waste-to-Energy plants; report of committee on legislation; requirements concerning attendance at meetings; and future agenda items.

Contact: L. Don Thurman, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7271.

Filed: March 5, 1986, 9:95 a.m.
TRD-8602186



Texas Statewide Health Coordinating Council

Monday and Tuesday, March 17 and 18, 1986, 8 a.m. daily. The State Health Plan Development Committee of the Texas Statewide Health Coordinating Council will meet in the Joe C. Thompson Conference Center, 26th and Red River Streets, Austin. According to the agenda summary, the committee will approve minutes; review the first draft of the Preliminary State Health Plan 1987, including the format, introduction, state characteristics related to health, ranking of priority issues, health protection, and health promotion-health education; prevention; detection and referral; diagnosis; treatment and maintenance; habilitation and rehabilitation; mental health and mental retardation; alcohol and drug abuse; support and special interest areas; national health planning guidelines (NHPPG) and facility bed projections; other specialized professional services and facilities; national health priorities; listing of annexes; and the index.

Contact: Mike Ezzell, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7261.

Filed: March 5, 1986, 9:06 a.m.
TRD-8602188

Tuesday, March 18, 1986, 8:30 a.m. The Health Cost Containment Committee of the Texas Statewide Health Coordinating Council will meet in the Joe C. Thompson Conference Center, 26th and Red River Streets, Austin. According to the agenda summary, the committee will approve minutes; discuss State Board of Insurance activities relating to preferred provider organizations; legislative activities relating to preferred provider organizations; and the next meeting date.

Contact: Mike Ezzell, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7261.

Filed: March 5, 1986, 9:05 a.m.
TRD-8602185

Tuesday, March 18, 1986, 10 a.m. The Data Management and Health Information Systems Committee of the Texas Statewide Health Coordinating Council will meet in the Joe C. Thompson Conference Center, 26th and Red River Streets, Austin. According to the agenda summary, the committee will approve minutes; review the status report on the Texas Department of Health population data system; and determine the next meeting date.

Contact: Mike Ezzell, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7261.

Filed: March 5, 1986, 9:07 a.m.
TRD-8602189

Tuesday, March 18, 1986, 10:30 a.m. The Health Legislation and Program Funding Review Committee of the Texas Statewide Health Coordinating Council will meet in the Joe C. Thompson Conference Center, 26th and Red River Streets, Austin. According to the agenda summary, the committee will ap-

prove minutes; review the first draft of the legislative packet; discuss health planning bills; review the state administrative program; and select the next meeting date.

Contact: Mike Ezzell, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7261.

Filed: March 5, 1986, 9:07 a.m.
TRD-8602187

Tuesday, March 18, 1986, 2 p.m. The Texas Statewide Health Coordinating Council will meet in Room 2.122, Joe C. Thompson Conference Center, 26th and Red River Streets, Austin. According to the agenda summary, the council will review the minutes; the Children's Defense Fund-The Coalition Approach; tort reform; the cancer plan; Texas Department of Mental Health and Mental Retardation strategic plan implementation; the bureau chief report; committee reports including state health plan development, health legislation and program funding review, data management and health information systems, regional health planning coordination, and health cost containment; and select the next meeting date.

Contact: Mike Ezzell, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7261.

Filed: March 5, 1986, 9:08 a.m.
TRD-8602191

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Texas Department of Human Services

Thursday, March 13, 1986, 9 a.m. The Vendor Drug Formulary Subcommittee of the Medical Care Advisory Committee of the Texas Department of Human Services will meet in the DHS Public Hearing Room, first floor, East Tower, 701 West 51st Street, Austin. According to the agenda summary, the subcommittee will approve minutes of the May 21, 1985, meeting; consider presentations from drug manufacturers on products submitted for inclusion in the Texas Vendor Drug Program including Du Pont Pharmaceuticals; Trexan, Genentech, Inc.; Protopin, Glaxo Inc.; Fortaz, Merck Sharp & Dohme; Indocin Oral Suspension; Primaxin, Merrell Dow; Seldane, Roche Laboratories; Rocephin, Smith Kline & French Labs; Cefizox; Monocid; and Ridaura. The subcommittee will also meet in executive session to discuss presentations made by the drug manufacturers.

Contact: Robert P. Harriss, P.O. Box 2960, Austin, Texas 78769, (512) 450-3188.

Filed: March 4, 1986, 3:17 p.m.
TRD-8602176

Thursday, March 13, 1986, 9:30 a.m. The Council on Child Abuse and Neglect Prevention Program Design and Implementation Subcommittee of the Texas Department of Human Services will meet in Room 2-E, second floor, East Tower, 701 West 51st Street,

Austin. According to the agenda summary, the subcommittee will discuss funding categories and priorities; and definitions and format of rules and management policy.

Contact: Susan Watkins, P.O. Box 2960, Austin, Texas 78769, (512) 450-3306.

Filed: March 4, 1986, 3:17 p.m.
TRD-8602175

Friday, March 14, 1986, 9 a.m. The Family Violence Advisory Committee of the Texas Department of Human Services will meet in Room 4-W, fourth floor, West Tower, 701 West 51st Street, Austin. According to the agenda summary, the committee will discuss use of summary statements; explanation of absences; speaking from the audience; regional information sharing; program status report; the Office of Families and Children report; the Texas Council on Family Violence report; the policy status report; the subcommittee report; old business including JTPA report, criminal justice objectives, the ad-hoc committee report, bylaws change, FVAC objectives; and new business including FVAC membership, and fiscal year 1987 officers.

Contact: James C. Marquart, P.O. Box 2960, Austin, Texas 78769, (512) 450-3365.

Filed: March 4, 1986, 3:17 p.m.
TRD-8602177

Friday, March 14, 1986, 9 a.m. The Medical Care Advisory Committee (MCAC) of the Texas Department of Human Services will meet in Classroom 1, second floor, West Tower, 701 West 51st Street, Austin. According to the agenda summary, the committee will discuss MCAC objectives; LAR alternatives; a cap on medicaid expenditures per recipient; reimbursement methodology for inpatient hospital services; the deletion of Rider 49 waiver group; the timing of increases in MAO special income limit; reporting TPR as a condition of eligibility; rule changes concerning fraud and abuse by medical providers; the goal directed therapy rate methodology; HMO pilot; reimbursement for outpatient surgery; payment for medical care provided outside the state; the reduction in the Texas Department of Health social work and clerical staff; transfer of Waiver V clients from primary home care to family care; and amendment to ICF/SNF standards for participation concerning patient's rights.

Contact: Larry Corley, P.O. Box 2960, Austin, Texas 78769, (512) 450-3020.

Filed: March 4, 1986, 3:17 p.m.
TRD-8602178

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Texas Industrial Accident Board

Monday, March 10, 1986, 1:30 p.m. The Texas Industrial Accident Board will meet in Room 107, Bevington A. Reed Building,

200 East Riverside Drive, Austin. According to the agenda, the board will discuss the review of board files. This portion of the meeting is closed pursuant to workers' compensation statute.

Contact: William Treacy, 200 East Riverside Drive, first floor, Austin, Texas 78704, (512) 448-7962.

Filed: March 5, 1986, 3:24 p.m.
TRD-8602210

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State Board of Insurance

Friday, March 14, 1986, 9 a.m. The Commissioner's Hearing Section of the State Board of Insurance will meet in Room 342, 1110 San Jacinto Street, Austin. According to the agenda, the section will consider Docket 9219—application of National Group Corporation, Waco; American Bankers Insurance Company, Waco; and National Lloyds Insurance Company, Waco, to acquire control of American Insurance Company of Texas, Fort Worth.

Contact: James W. Norman, 1110 San Jacinto Street, Austin, Texas 78701, (512) 463-6525.

Filed: March 4, 1986, 2:48 p.m.
TRD-8602171

Friday, March 14, 1986, 1:30 p.m. The Commissioner's Hearing Section of the State Board of Insurance will meet in Room 342, 1110 San Jacinto Street, Austin. According to the agenda, the section will consider Docket 9221—whether disciplinary action should be taken against James Patrick Daly, doing business as James P. Daly, Inc., Oradell, New Jersey, who holds a non-resident property and casualty agent's license issued by the State Board of Insurance.

Contact: J.C. Thomas, 1110 San Jacinto Street, Austin, Texas 78701, (512) 463-6524.

Filed: March 4, 1986, 2:48 p.m.
TRD-8602172

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Texas Department of Labor and Standards

Saturday, March 8, 1986, 5 p.m. The Boxing Advisory Committee of the Texas Department of Labor and Standards met in emergency session in the Mardi Gras Room, Fort Worth Hilton, 1701 Commerce Street, Fort Worth. According to the agenda, the committee considered opening remarks; old business including Texas titles, the boxer/promoter show contracts, and officials opinion; new business including kickboxing rules, and the department enforcement policy. The emergency status was necessary in order to discuss budget cuts.

Contact: Larry E. Kosta, P.O. Box 12157, Austin, Texas 78711, (512) 463-5520.

Filed: March 4, 1986, 10:24 a.m.
TRD-8602158

Monday, March 10, 1986, 1 p.m. The Manufactured Housing Division of the Texas Department of Labor and Standards met in emergency session in Room 105, 920 Colorado Street, E.O. Thompson Building, Austin. According to the agenda, the division will discuss license and registrations; and suspensions and alleged violations of various rules and regulations of the department concerning Siesta Village. The emergency status was necessary because the hearing is to consider the possible violation of Texas Civil Statutes, Article 5221f rules which jeopardize individual safety and the public's welfare.

Contact: Orlando S. Mata, P.O. Box 12157, Austin, Texas 78711, (512) 463-3127.

Filed: March 6, 1986, 9:48 a.m.
TRD-8602237

Wednesday, March 19, 1986, 1:30 p.m. The Manufactured Housing Division of the Texas Department of Labor and Standards will meet in Suite 3322-B, Commerce Square, South Southwest Loop 323, Tyler. According to the agenda, the division will discuss license and registration; and suspensions and alleged violations of various rules and regulations of the department.

Contact: Craig Sandling, P.O. Box 12157, Austin, Texas 78711, (512) 463-7348.

Filed: March 6, 1986, 9:46 a.m.
TRD-8602238

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Lamar University

Monday, March 10, 1986. Committees of the Board of Regents of Lamar University (LU) met in the Lamar Room, Gray Library, Lamar University, Beaumont. Times, committees, and agendas follow.

1:15 p.m. The Academic Affairs Committee considered approval of the mission statement for Lamar-Port Arthur.

1:30 p.m. The Finance/Audit Committee considered approval of the January 1986 monthly financial operation report for LU-Beaumont, Port Arthur, Orange, Gray Institute, and the Chancellor's office; retaining InterFirst Bank Dallas and law firm of McCall, Parkhurst & Horton to represent LU-Beaumont in housing bond issue; the resolution regarding bond issue; approval of request to appoint an agency to assist in collection of unpaid student loans and installment payments for LU-Port Arthur; and approval of guidelines for Texas Public Educational Grants Program (TPEG) for LU-Beaumont, Port Arthur, and Orange. The committee also met in executive session.

1:45 p.m. The Buildings and Grounds Committee considered bids and awarding a contract on the Education Services Building (Baby Red Bird) for LU-Beaumont; and bids and awarding a contract to re-roof Gates Memorial Library and to complete the rehabilitation of the A.J.M. Vuylsteke home. The committee also met in executive session.

2 p.m. The Personnel Committee considered approval of summer development leaves for LU-Beaumont. The committee also met in executive session.

2:15 p.m. The Development/Public Relations Committee met in executive session to consider pending gift, real estate gifts, and personnel matters.

Contact: Dr. George McLaughlin, Lamar System, P.O. Box 11915, Beaumont, Texas 77710, (409) 880-2304.

Filed: March 5, 1986, 12:06 p.m.
TRD-8602205-8602209

Thursday, March 13, 1986, 1:15 p.m. The Board of Regents of Lamar University will meet in the Spindletop Room, Gray Library, Beaumont. According to the agenda, the board will consider the chancellor's reports and announcements; approval of minutes of the February 13, 1986, meeting; approval of academic affairs committee recommendations; finance/audit committee recommendations; buildings and grounds committee recommendations; personnel committee recommendations; and development/public relations committee recommendations. The board will also meet in executive session.

Contact: Dr. George McLaughlin, Lamar System, P.O. Box 11915, Beaumont, Texas 77710, (409) 880-2304.

Filed: March 5, 1986, 12:07 p.m.
TRD-8602204

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Texas Board of Land Surveying

Thursday and Friday, April 3 and 4, 1 p.m. and 8 a.m., respectively. The Texas Board of Land Surveying will meet in Suite 304, 7703 North Lamar Boulevard, Austin. According to the agenda, the board will approve minutes of the previous meetings; hear committee reports; discuss the examination process; rules of the board; and any other business to come before the board.

Contact: Betty J. Pope, Suite 304, 7703 North Lamar Boulevard, Austin, Texas 78752, (512) 452-9427.

Filed: March 4, 1986, 11:41 a.m.
TRD-8602167



Texas Parks and Wildlife Department

Wednesday, March 12, 1986, 7 p.m. The Texas Parks and Wildlife Commission of the Texas Parks and Wildlife Department will meet at 400 West 15th Street, Austin. According to the agenda summary, the commission will have dinner at 7 p.m. Although this function is primarily a social event and no formal action is planned, the commission may discuss items on the public hearing agenda scheduled for 9 a.m., March 13, 1986.

Contact: Charles D. Travis, 4200 Smith School Road, Austin, Texas 78744 (512) 479-4802.

Filed: March 4, 1986, 4:51 p.m.
TRD-8602184

Thursday, March 13, 1986, 9 a.m. The Texas Parks and Wildlife Commission of the Texas Parks and Wildlife Department will meet in Complex Building B, 4200 Smith School Road, Austin. According to the agenda, the commission will approve minutes from the January 23, 1986, public hearing and February 20, 1986, emergency meeting court reporter minutes; review the presentation of retirement certificates and service awards; the rules for scientific breeder's permit; the rules relating to sale, purchase, and possession after purchase of deer antlers; artwork for saltwater fishing print/stamp; the emergency amendment to the 1985-1986 statewide hunting and fishing proclamation; offshore artificial reefs; a request for renewal of miscellaneous easement ME-3205 to Texas Power and Light Company on the Gus Engeling Wildlife Management Area; Queen Isabella State Fishing Pier; and other business.

Contact: Charles D. Travis, 4200 Smith School Road, Austin, Texas 78744 (512) 479-4802.

Filed: March 4, 1986, 4:52 p.m.
TRD-8602181

Thursday, March 13, 1986, 9 a.m. The Texas Parks and Wildlife Commission of the Texas Parks and Wildlife Department will meet in Complex Building B, 4200 Smith School Road, Austin. According to the agenda, the commission will discuss proposed statewide hunting and fishing regulations for 1986-1987; the statewide fur-bearing animal and trapping proclamation for 1986-1987; and the alligator proclamation.

Contact: Charles D. Travis, 4200 Smith School Road, Austin, Texas 78744 (512) 479-4802.

Filed: March 4, 1986, 4:52 p.m.
TRD-8602182

Thursday, March 13, 1986, Noon. The Texas Parks and Wildlife Commission of the Texas Parks and Wildlife Department will meet in Complex Building B, 4200 Smith School Road, Austin. According to the agen-

da, the commission will discuss potential acquisitions; settlement of pending litigation matters; and personnel matters.

Contact: Charles D. Travis, 4200 Smith School Road, Austin, Texas 78744 (512) 479-4802.

Filed: March 4, 1986, 4:52 p.m.
TRD-8602183

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Texas State Board of Examiners of Psychologists

Thursday-Saturday, March 13-15, 1986, 8:30 a.m. daily. The Texas State Board of Examiners of Psychologists will meet in Suite C-270, 1300 East Anderson Lane, Austin. According to the agenda, the board will consider minutes; the oral examination committee report; AASPB executive committee report; the application files; opinion letters; proposed rules; the committee for new jurisprudence items; AASPB mid-winter conference report; interviews; hearings; complaints; the meeting with Texas Psychological Association executive committee; the FARB report; school supervision guidelines; new board appointments; and budget revisions.

Contact: Patti Bizzell, Suite C-270, 1300 East Anderson Lane, Austin, Texas 78752, (512) 835-2036.

Filed: March 4, 1986, 2:01 p.m.
TRD-8602170

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Texas Department of Public Safety

Thursday, March 13, 1986, 9 a.m. The Public Safety Commission of the Texas Department of Public Safety will meet in the Commission Room, 5805 North Lamar Boulevard, Austin. According to the agenda, the commission will approve minutes; consider appeal hearings of discharged employees; budget matters; personnel matters; and other unfinished business.

Contact: James B. Adams, 5805 North Lamar Boulevard, Austin, Texas 78773, (512) 465-2000 ext. 3700.

Filed: March 5, 1986, 10:11 a.m.
TRD-8602190

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Public Utility Commission of Texas

Thursday, March 13, 1986, 9 a.m. The Administrative Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda summary, the division will approve the minutes from the meeting of February 27, 1986; consider re-

ports; discuss and act on the fiscal year 1986 budget, the South Texas Nuclear Project prudency review; and set the time and place for the next meeting. The division also will meet in executive session to consider personnel and litigation matters.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: March 5, 1986, 2:47 p.m.
TRD-8602214

Friday, March 14, 1986, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the division will conduct a prehearing conference in Docket 6740—application of Southwest Texas Telephone Company for a rate increase.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: March 4, 1986, 2:59 p.m.
TRD-8602174

Monday, May 12, 1986, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the division will conduct a hearing on the merits in Docket 6565—application of Continental Telephone Company of Texas for customer owned pay telephone service.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: March 5, 1986, 2:47 p.m.
TRD-8602213

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Sunset Advisory Commission

Friday and Saturday, March 14 and 15, 1986, 10 a.m. daily. The Sunset Advisory Commission will meet in the Senate Chamber, State Capitol, Austin. According to the agenda summary, the commission will consider presentations of staff reports and public testimony on the Texas Youth Commission; the Board of Pardons and Paroles; the Texas Juvenile Probation Commission; and the Texas Adult Probation Commission.

Contact: Jeri Kramer, Room 305, John H. Reagan Building, Austin, Texas 78701, (512) 463-1300.

Filed: March 4, 1986, 4:05 p.m.
TRD-8602180

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Teacher Retirement System of Texas

Friday, March 21, 1986, 9 a.m. The Retirees Advisory Committee of the Teacher Retirement System of Texas (TRS) will meet in the TRS Board Room, 1001 Trinity, Austin. According to the agenda, the committee will discuss a report on the bidding process and awarding of contracts; an overview of insurance program elements; a report on the future implementation of a program timetable; and announcements.

Contact: Lanny Hall, 1001 Trinity, Austin, Texas 78701, (512) 397-6400.

Filed: March 5, 1986, 2:31 p.m.
TRD-8602212

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The Texas A&M University System

Wednesday, March 5, 1986, 2:45 p.m. The Board of Regents of the Texas A&M University System met in emergency session in the MSC Annex, Texas A&M University, College Station. According to the agenda summary, the board considered guidelines for the 1986-1987 budgets and evaluated current budgets for possible reductions in expenditure for the current year. The emergency status was necessary because the state's financial crisis required immediate action.

Contact: Vickie Burt, Texas A&M University System, College Station, Texas 77843, (409) 845-9603.

Filed: March 4, 1986, 12:15 p.m.
TRD-8602165

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Texas Water Commission

Wednesday, March 26, 1986, 10 a.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will consider application of the City of Austin, P.O. Box 1088, Austin, Texas 78767-8828 for an order to authorize the construction of additional treatment facilities at the Onion Creek Wastewater Treatment Plant which is located south of Falwell Lane between the Colorado River and Onion Creek, approximately ½ mile west of their confluence in Travis County. The proposed order, if issued, would authorize the city to commence construction, immediately, of the necessary facilities at the Onion Creek Plant to allow that plant to treat and discharge wastewater at an ultimate flow of 40,000,000 gallons per day. The city requests such authorization now, before the commission renders a decision on the application to amend Permit 10543-12, so that the expanded capacities and improved treatment limits can be achieved at the earliest possible date.

Contact: Ramon Dasch, P.O. Box 13087, Austin, Texas 78711, (512) 463-8069.

Filed: March 5, 1986, 2:18 p.m.
TRD-8602211



Regional Agencies Meetings Filed March 4

The Tax Appraisal District of Bell County, Board of Directors, will meet at 100 South Main Street, Belton, on March 19, 1986, at noon. Information may be obtained from Tolly Moore, P.O. Box 390, Belton, Texas 76513-0390, (817) 939-3521, ext. 410.

The Brazos Valley Development Council, Board of Directors, will meet in Room 102, Brazos Center, 3232 Briarcrest, Bryan, on March 13, 1986, at 7 p.m. Information may be obtained from Mary Stephens, P.O. Drawer 4128, Bryan, Texas 77805, (409) 776-2277.

The Brown County Appraisal District, Board of Directors, will meet at 403 Fisk Avenue, Brownwood, on March 11, 1986, at 7 p.m. Information may be obtained from Alvis Sewalt, 403 Fisk Avenue, Brownwood, Texas 76801, (915) 643-5676.

The Education Service Center Region III, Board of Directors, will meet at 1905 Leary Lane, Victoria, on March 13, 1986, at 1 p.m. Information may be obtained from Dennis Grizzle, 1905 Leary Lane, Victoria, Texas 77901

The Gillespie County Appraisal District, Board of Directors, will meet in the Assembly Room, City Hall, Fredericksburg, on March 11, 1986, at 9 a.m. Information may be obtained from Guenther Maenius, P.O. Box 429, Fredericksburg, Texas 78624.

The Guadalupe-Blanco River Authority, Board of Directors, met for an emergency revised agenda, at the Driskill Hotel, Sixth and Brazos Streets, Austin, on March 6, 1986, at 2 p.m. Information may be obtained from John H. Specht, P.O. Box 271, Sequin, Texas 78156, (512) 379-5822.

The Hansford County Appraisal District, Regular Board, will meet at 709 West Seventh, Spearman, on March 12, 1986, at 9 a.m. Information may be obtained from Alice Peddy, P.O. Box 567, Spearman, Texas 79081, (806) 659-5575.

The Upshur County Appraisal District, Board of Directors, met at Warren and Trinity Streets, Gilmer, on March 10, 1986, at 7:30 p.m. Information may be obtained from Louise Stracener, (214) 843-3041.

TRD-8602150

Meetings Filed March 5

The Blanco County Appraisal District, Board of Directors, will meet at the Courthouse Annex, Johnson City, on March 11, 1986, at 6 p.m. Information may be obtained from Hollis Petri, P.O. Box 338, Johnson City, Texas 78636.

The Burnet County Appraisal District, will meet at 215 South Pierce Street, Burnet, on March 13, 1986, at 6:30 p.m. Information may be obtained from Alvin C. Williams, P.O. Drawer E, Burnet, Texas 78611, (512) 756-8291.

The Central Appraisal District of Erath County, Board of Directors, will meet at 1390 Harbin Drive, Stephenville, on March 12, 1986, at 10 a.m. Information may be obtained from Trecia Perales, 1390 Harbin Drive, Stephenville, Texas 76401, (817) 965-5434.

The Comal Appraisal District, Board of Directors, will meet at 644 North Loop 337, New Braunfels, on March 11, 1986, at 7:30 p.m. Information may be obtained from Glenn L. Brucks, P.O. Box 1222, New Braunfels, Texas 78131.

The Edwards Underground Water District, Board of Directors, will meet at 1615 North St. Mary's, San Antonio, on March 11, 1986, at 10 a.m. Information may be obtained from Thomas P. Fox, 1615 North St. Mary's, San Antonio, Texas 78212, (512) 222-2204.

The Garza County Appraisal District, Board of Directors, will meet at the Courthouse, Post, on March 13, 1986, at 9 a.m. Information may be obtained from Jean M. Westfall, P.O. Drawer F, Post, Texas 79356, (806) 495-3518

The Gregg Appraisal District, Board of Directors, will meet at 2010 Gilmer Road, Longview, on March 11, 1986, at noon. Information may be obtained from William T. Carroll, P.O. Box 6700, Longview, Texas 75608, (214) 759-0015.

The Hays County Appraisal District, Appraisal Review Board, will meet on the first floor, Courthouse Annex, on March 19, 1986, at 9:30 a.m. Information may be obtained from Lynnell Sedler, 102 LBJ Courthouse Annex, Third Floor, San Marcos, Texas 78666

The High Plains Underground Water Conservation District 1, Board of Directors, will meet in the conference room, 2930 Avenue Q, Lubbock, on March 11, 1986, at 10 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, (806) 762-0181.

The Panhandle Ground Water Conservation District 3, Board of Directors, will meet

at 300 South Omohundro, White Deer, on March 11, 1986, at 7 p.m. Information may be obtained from Richard S. Bowers, P.O. Box 637, White Deer, Texas 79097, (806) 883-2501.

The Wise County Appraisal District, Board of Directors, will meet at 206 South State Street, Decatur, on March 13, 1986, at 9 a.m. Information may be obtained from Brenda Jones, P.O. Box 509, Decatur, Texas 76234, (817) 627-3081.

TRD-8602193

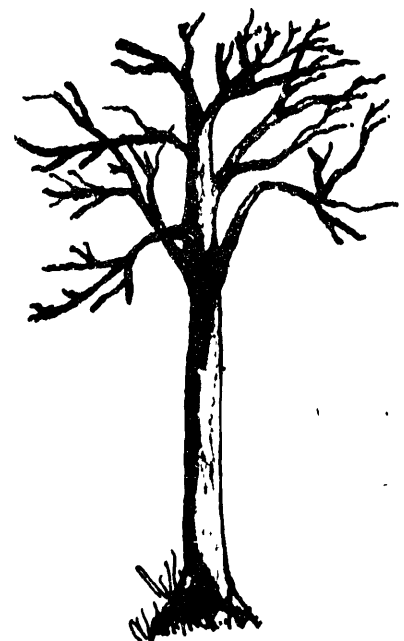
Meetings Filed March 6

The Hunt County Tax Appraisal District, Board of Directors, will meet in the boardroom, 4815-B King Street, Greenville, on March 13, 1986, at 3 p.m. and 6 p.m. Information may be obtained from Terry G. Bryan, P.O. Box 1339, Greenville, Texas 75401, (214) 454-3510.

The Permian Basin Regional Planning Commission, Board of Directors, will meet at PBRPC Offices, Midland Air Terminal, Midland, on March 12, 1986, at 1:30 p.m. Information may be obtained from Pam K. Weatherby, (915) 563-1061.

The West Central Council of Government, Ombudsman Task Force, will meet at 1025 East North 10th Street, Abilene, on March 14, 1986, at 2 p.m. Information may be obtained from Jimmy Walls, 1025 East North 10th Street, Abilene, Texas 79604, (915) 672-8544.

TRD-8602239



In **Addition**

The *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 Air Control Board Applications for Construction Permits

The Texas Air Control Board gives notice of applications for construction permits received during the period of February 24-28, 1986.

Information relative to the following applications, including projected emissions and the opportunity to comment or to request a hearing, may be obtained by contacting the office of the executive director at the central office of the Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

A copy of all material submitted by the applicant is available for public inspection at the central office of the Texas Air Control Board at the previously mentioned address, and at the regional office for the air quality control region within which the proposed facility will be located.

Listed are the names of the applicants and the cities in which the facilities are located; type of facilities; location of the facilities (if available); permit numbers; and type of application—new source or modification.

Amoco Production Company, Houston; gas sweetening plant; Anton, Hale County; 17022; new source

Mobile Producing Texas and New Mexico, Jayton; I-C engine water pump station; Jayton, Kent County; 17033; new source

Crain Texas, Inc, San Antonio; flexible slab foam manufacturing facility; San Antonio, Bexar County; 17034; new source

Owens Company, Quinlan; amine gas treating unit; Quinlan, Hunt County; 17036; new source

Rio Bravo Oil Company, Evadale; gas processing facilities; Evadale, Jasper County; 17037; new source

Mobile Producing Texas and New Mexico, Cayanosa; IC compressor engines; Cayanosa, Pecos County; 17039; new source

Charlie Phillips Trucking, Inc., Cleburne; rock crusher; Cleburne, Johnson County; 7668C; new source

Gifford-Hill and Company, Inc, Frisco; ready mix concrete batch plant; 8800 John W. Elliott Road, Collin County; 7965B; modification

International Business Machines, Austin; surface mounted components; 11400 Burnet Road, Travis County; 17051; new source

Southern Copy Industries, Inc., Bellaire; paper coating and slitting facilities; 4970 Terminal Street, Harris County; 17053; new source

United States Department of Energy, Panhandle; explosive test fire facility; Panhandle, Carson County; 17067; new source

Issued in Austin, Texas, on March 4, 1986

TRD-8602169 Paul M Shinkawa
Director of Hearings
Texas Air Control Board

Filed: March 4, 1986
For further information, please call (512) 451-5711, ext. 354.

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Coordinating Board, Texas College and University System Correction of Error

An emergency section submitted by the Coordinating Board, Texas College and University System contained an error as published in the February 25, 1986, issue of the *Texas Register* (11 TexReg 976).

Section 9.151(a) should read: "This subchapter provides rules and procedures for the review, approval, or disapproval of postsecondary technical and vocational programs for state appropriations to community and junior colleges and Texas State Technical Institute."

Texas Department of Health Licensing Actions for Radioactive Materials

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Austin	3M Com- pany/Health Physics Services	06-3843	Saint Paul, MN	0	02/11/86

Baytown	Baytown Technical School	11-3878	Baytown	0	02/10/86
Dallas	Avacare Inc.	05-3842	Dallas	0	02/04/86
Galena Park	United States Gypsum Company	11-3896	Galena Park	0	02/10/86
Houston	J F Barton Contracting Company	11-3881	Houston	0	02/12/86
Throughout Texas	Scallon Controls, Inc	10-3847	Beaumont	0	02/10/86

Throughout Texas	Weldtest, Inc.	10-3560	Port Arthur	12	02/10/86
Throughout Texas	D-Arrow Inspection, Inc.	11-3816	Houston	2	02/10/86
Throughout Texas	Independent Testing Laboratories	11-3795	Searcy, AR	1	02/10/86
Throughout Texas	Rone Engineering, Inc.	05-1688	Fort Worth	10	02/12/86
Throughout Texas	Mississippi X-Ray Services of Texas, Inc	11-3246	Baytown	13	02/10/86
Wharton	Gulf Coast Medical Center	11-1390	Wharton	11	02/07/86

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Austin	City of Austin	06-2251	Austin	4	02/04/86
Austin	Texas Instruments Inc.	06-3838	Austin	1	02/12/86
Corpus Christi	Intec	08-3739	Corpus Christi	3	02/12/86
Dallas	North Dallas Diagnostic Center	05-3125	Dallas	15	02/04/86
Dallas	Medical City Dallas Hospital	05-2199	Dallas	6	02/07/86
Freeport	Badische Corporation	11-1021	Freeport	29	02/04/86
Houston	Southwest Fabricating and Welding Co. Inc.	11-437	Houston	33	02/10/86
Jefferson County	Texaco, Inc	10-67	Port Arthur	19	02/04/86
La Porte	The Dow Chemical Company	11-510	La Porte	35	02/10/86
Odessa	City of Odessa	12-2183	Odessa	5	02/03/86
Paris	Babcock and Wilcox	07-157	Paris	29	02/10/86
Pasadena/Deer Park	HIMONT, U.S.A., Inc.	11-1854	Pasadena	14	02/10/86
Texas City	Amoco Oil Company	11-254	Texas City	32	02/11/86
Throughout Texas	Gearhart Industries, Inc.	05-3284	Alvarado	10	02/04/86
Throughout Texas	Temperature Evaluation Logging Company, Inc	12-2219	Odessa	8	02/04/86
Throughout Texas	IRC Logging & Perforating	07-3174	Flint	2	02/04/86
Throughout Texas	Metals, Inc	11-928	Houston	83	02/04/86
Throughout Texas	Metals, Inc	08-2924	Houston	6	02/04/86
Throughout Texas	Petroleum Measurement Corporation	11-3060	Houston	7	02/04/86
Throughout Texas	American Casedhole Specialists, Inc.	05-3131	Fort Worth	2	02/03/86
Throughout Texas	Guardian Inspection Services, Inc	11-2945	The Highlands	5	02/04/86
Throughout Texas	Asoma Instruments, Inc	06-2788G	Austin	15	02/04/86
Throughout Texas	Mid-Jefferson County Hospital	10-1756	Nederland	14	02/04/86
Throughout Texas	Trinity Testing and Inspection Company	08-3628	Victoria	1	02/10/86
Throughout Texas	AMF Tuboscope, Inc	11-287	Houston	60	02/03/86
Throughout Texas	BJ Titan Services Company	11-2684	Houston	12	02/03/86
Throughout Texas	H and G Inspection Company, Inc	11-2181	Houston	26	02/10/86

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Atlanta, GA	Colonial Pipeline Company	99-2482	Atlanta, GA	8	02/10/86
Beaumont	Voisical Chemical Corporation	10-2016	Beaumont	5	02/10/86

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Houston	KVM Laboratories	11-3357	Houston	2	02/10/86
Houston	Triton Biosciences Inc.	11-3640	Houston	2	02/12/86
Throughout Texas	Roofing Survey Service	09-3375	San Antonio	1	02/04/86
Throughout Texas	Clearwater Constructors, Inc.	11-2368	Austin	4	02/10/86

NEW LICENSES DENIED:

Location	Name	License #	City	Amendment #	Date of Action
Irving	Multilayer Technology	4-9	Irving	0	01/15/86

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with Texas Regulations for Control of Radiation in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable special requirements in the Texas Regulations for Control of Radiation.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or person affected may request a hearing by writing David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189.

Any request for a hearing must contain the name and address of the person who considers himself affected by agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, 1212 East Anderson Lane, Austin, Texas, from 8 a.m. to 5 p.m. Monday-Friday (except holidays).

Issued in Austin, Texas, on February 27, 1986.

TRD-8602034 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Filed: February 27, 1986
For further information, please call (512) 835-7000.

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Texas Department of Human Services Consultant Contract Awards

In accordance with Texas Civil Statutes, Article 6252-11c, the Texas Department of Human Services (DHS) furnishes this notice of contract awards. The notice for request for proposals was published in the August 16, 1985, issue of the *Texas Register* (10 TexReg 3147).

Description of Services. The contractors selected will provide one or more of the following services: training for child-care providers in remote/rural areas to promote the prevention of abuse and neglect in out-of-home care; training in child-care, child development, and child-care facility management.

Name of Contractor and Value of Contract. Dr. Douglas Godwin, 4405 Robinhood, Bryan, Texas 77803—\$31,504.50.

Effective Date of Contract. The contract began January 30, 1986 and ends September 30, 1986.

Name of Contractor and Value of Contract. Sul Ross State University, Division of Teacher Education, Box C-115, Alpine, Texas 79832—\$12,997.

Effective Date of Contract. The contract began February 1, 1986, and ends September 30, 1986.

Name of Contractor and Value of Contract. Mary Helen Mays, Ph.D., RD/LD and Associates, 5401 14th Street, Lubbock, Texas 79416—\$39,112.

Effective Date of Contract. The contract began February 3, 1986, and ends September 30, 1986.

Due Date of Reports. All documents, films, recordings, or reports are due by September 30, 1986.

Issued in Austin, Texas, on March 3, 1986.

TRD-8602143 Martin W. Johnston
Commissioner
Texas Department of Human Services

Filed: March 3, 1986
For further information, please call (512) 45-3766.



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 incorporation of United Texas Dental, Inc., to be a domestic health maintenance organization. The home office is to be in Houston.

(2) Application for a name change by Public Employees Insurance Company, a foreign fire and casualty insurance company. The home office is in Los Angeles, California. The proposed name is Allegiance Insurance Company.

(3) Application for a name change by Educators Life Insurance Company of America, a foreign life insurance company. The home office is in Los Angeles, California.

(4) Application for incorporation of Healthwin, Inc., to be a domestic health maintenance organization. The home office is to be in Houston.

(5) Application for incorporation of Directors' Dental Services, Inc., to be a domestic health maintenance organization. The home office is to be in Houston.

(6) Application for incorporation of Gulf Coast Independent Practice Association, Inc., to be a domestic

health maintenance organization. The home office is to be in Houston.

(7) Application for admission to do business in Texas of The New Zealand Reinsurance Company of America, a foreign fire and casualty insurance company. The home office is in San Francisco California.

(8) Application for incorporation of Producers Reinsurance Company, to be a domestic fire insurance company. The home office is to be in Amarillo.

(9) Application for incorporation of EMCare Insurance Exchange, to be a domestic reciprocal insurance company. The home office is in Austin.

(10) Application for admission to do business in Texas of Middle Atlantic Life Insurance Company, a foreign life insurance company. The home office is in Wayne, Pennsylvania.

(11) Application for a name change by Ticor Mortgage Insurance Company, a foreign casualty insurance company. The home office is in Los Angeles, California. The proposed new name is TMIC Insurance Company, Inc.

(12) Application for admission to do business in Texas of American Idea Life Insurance Company (assumed name in Texas for IdeaLife Insurance Company), a foreign life insurance company. The home office is in Wilmington, Delaware.

(13) Application for admission to do business in Texas of Patriot Life Insurance Company, a foreign life insurance company. The home office is in Tampa, Florida.

(14) Application for incorporation of Gulf Coast IPA, Inc., to be a domestic health maintenance organization. The home office is to be in Houston.

Issued in Austin, Texas, on February 28, 1986.

TRD-8602151 Nicholas Murphy
Chief Clerk
State Board of Insurance

Filed: March 4, 1986
For further information, please call (512) 463-6327.



Texas Department of Mental Health and Mental Retardation Consultant Proposal Request

Pursuant to Texas Civil Statutes, Article 6252-11c, the Texas Department of Mental Health and Mental Retardation is requesting proposals for consultant services.

Description of Services. The consultant would be required to provide:

(1) an analysis of current collection and eligibility assessment procedures to maximize direct and third party revenue;

(2) the identification of new sources of revenue;

(3) the identification of the enactment, modification, or deletion of policies or legislation to enhance revenue collection;

(4) the design, implementation, and staff training of any new systems or procedures that are put in place to maximize revenue;

(5) collections of revenues (both ongoing and retroactively), the extent of which will depend upon bidder's analysis.

Contact Person. Persons wishing to submit proposals or obtain more information should contact Mike Laritz, P.O. Box 12668, Austin, Texas 78711, (512) 465-4570.

Due Date. Proposals are due by 1 p.m. on April 14, 1986.

Selection Process. The process that the department shall use to select the consultant is as follows. Since there are a variety of approaches to enhancing revenue, initially the department is requesting that proposals from each bidder be submitted for its review. Interested persons should contact Mike Laritz at the previously noted address or telephone number to obtain copies of the request for proposals (RFP). From the responses to these proposals, the department shall develop a draft request for quotation (RFQ). This draft RFQ will be sent to bidders selected by the department who had submitted a response to the RFP. The department will notify each of these selected bidders of a time and place for a bidder's conference. Following the bidder's conference, the department shall develop a final RFQ which will be mailed to each bidder who had received a draft RFQ. The department shall make a final award based upon the responses to the final RFQ.

Criteria for selection of the consultant from the bidders who receive the draft RFQ and the final RFQ shall include the following:

- (1) experience and qualifications of bidder and individuals that may be assigned by bidder in conducting similar projects;
- (2) bidder's reputation with previous customers;
- (3) timelessness of proposed work;
- (4) suitability of work plan;
- (5) project cost.

Issued in Austin, Texas, on March 3, 1986.

TRD-8602144 Gary E. Miller
Commissioner
Texas Department of Mental Health
and Mental Retardation

Filed: March 3, 1986
For further information, please call (512) 465-4591.

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Texas State Treasury Department Amendment to Existing Consulting Contract

On July 12, 1985, the contract between the Texas State Treasury and Price-Waterhouse was amended. The original contract was dated April 1, 1985 (See 10 TexReg 1377). The amendment increases Price-Waterhouse personnel, and increases Price-Waterhouse compensation by \$50,600.

Issued in Austin, Texas, on March 4, 1986.

TRD-8602162 J. Stephen Ravel
General Counsel
Texas State Treasury Department

Filed: March 4, 1986
For further information, please call (512) 463-5971.

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Notice of Award of Consulting Contract

This notice of award of consulting service contract is filed pursuant to Texas Civil Statutes, Article 6252-11c (6)(b). The request for consultant proposals was first published in the June 10, 1985, issue of the *Texas Register* (10 Tex-Reg 2046).

The consultant will be designing and installing an unclaimed property system. The name and address of consultant is Price-Waterhouse, Suite 2000, One American Center, Austin, Texas 78701. The total value of the contract is \$59,575. The beginning date is November 1, 1985, and the ending date is August 31, 1986. The due date for completion of system installation is August 31, 1986.

Issued in Austin, Texas, on March 4, 1986.

TRD-8602166 J. Stephen Ravel
General Counsel
Texas State Treasury Department

Filed: March 4, 1986
For further information, please call (512) 463-5971.

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Texas Water Commission Applications for Waste Disposal Permits

Notice is given by the Texas Water Commission of public notices of waste disposal permit applications issued during the period of February 24-28, 1986.

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) 475-2678.

Listed is the name of the applicant and the city in which each facility is located; type of facility; location of the facility; permit number; and type of application—new permit, amendment, or renewal.

Period of February 24-28, 1986

Forest Cove Municipal Utility District, Humble; wastewater treatment plant; approximately 200 feet north of the intersection of Hamblen Road and Trail Tree Lane, northeast of the City of Humble in Harris County; 10807-01; amendment

Texas Department of Highways and Public Transportation, Houston; wastewater treatment plant; at the north end of the Baytown-La Port Tunnel between the City of Baytown and the City of La Port on State Highway 146 in Harris County; 01786; renewal

Matagorda Waste Disposal and Water Supply Corporation, Matagorda; wastewater treatment plant; in Matagorda, on the northwest corner of the intersection of Matagorda and Barnard Street, approximately ½ mile southeast of the intersection of FM Road 2031 and State Highway 60 in Matagorda County, 10913-01; amendment

City of Meridian, Meridian; wastewater treatment facilities; north of the North Bosque River, approximately 2900 feet east north-east of the intersection of State Highway 6 and State Highway 22 in Bosque County; 10113-01; renewal

City Public Service of San Antonio, San Antonio; steam electric power station; adjacent to Calaveras Reservoir at 13090 U.S. Highway 181 South in Bexar County; 01514; amendment

U.S. Department of the Army, Lone Star Army Ammunition Plant, Texarkana; explosives blending and mixing facility and an ammunition loading, assembling and packing plant; adjacent to U.S. Highway 82 approximately 12 miles west of the City of Texarkana in Bowie County; 02263; amendment

Air Products Manufacturing Corporation, Pasadena; plant manufacturing dinitrotoluene, toluene diamine and nitric acid; at 412 Jackson Road, just north of State Highway 225 and Northeast of Red Bluff Road in the City of Pasadena in Harris County; 02382; renewal

The City of Winnsboro, Winnsboro; wastewater treatment facilities; approximately one mile south of Winnsboro, approximately 1900 feet east of Old State Highway 37 and 1400 feet west of FM Road 312 in Wood County; 10319-02; amendment

American Plating Company of Texas, Inc., Houston; nickel plating plant; at 14910 Market Street (Jacintoport Industrial Park) in the City of Houston, Harris County; 01995; renewal

Bell County Water Control and Improvement District No. 3, Nolanville; wastewater treatment facilities; approximately ¼ mile southeast of Nolanville, on South Nolan Creek in Bell County; 10797-01; renewal

The Goodyear Tire & Rubber Company, Houston; chemical plant; on the southside of La Porte Road (State Highway 225) approximately ½ mile east of the intersection of La Porte Road, and Interstate 610 South Loop East in the City of Houston, Harris County; 00520; amendment

City of Blanco, Blanco; water treatment plant; northeast of the City of Blanco and 100 feet north of the Blanco River in Blanco County; 10549-01; renewal

City of Gregory, Gregory; wastewater treatment facilities; at the intersection of Sunset Road and Black Welder Street, approximately ½ mile northwest of the convergence of U.S. Highway 181 and State Highway 35 just southwest of the City of Gregory in San Patricio County, 10092-01; renewal

City of Raymondville, Raymondville; surface water treatment plant; adjacent to San Francisco Street between Fourth and Fifth Streets in Raymondville in Wilbacy County; 10365-02; renewal

City of Farmersville, Farmersville; wastewater treatment facilities; approximately 1,600 feet south of the intersection of State Highway 89 and U.S. Highway 380 in the southwest corner of the City of Farmersville in Collin County; 10442-01; renewal

City of Van, Van; wastewater treatment facilities; on the west side of Big Sandy Creek immediately north of the intersection of Big Sandy Creek and Interstate Highway 20 in the southern portion of the City of Van in Van Zandt County; 10376-01; renewal

City of San Angelo, San Angelo; water treatment plant; at Avenue I and Metcalfe Street in the City of San Angelo in Tom Green County; 10641-01; renewal

Klein United Methodist Church, Spring; wastewater treatment facilities; at the intersection of FM Road 2920 and Kuykendahl Road in Harris County; 12155-01; renewal

Willow Chase Municipal Utility District, Houston; Municipal Utility District Plant; approximately 2,800 feet south and 800 feet west of the intersection of Grant Road and RM Road 149 in Harris County; 12243-01; renewal

City of Port Neches, Port Neches; surface water treatment plant; at City Park and the Neches River in Jefferson County; 10477-01; renewal

City of West Tawakoni, Quinlan; wastewater treatment facilities; near the west shore of Lake Tawakoni approximately 1½ miles south of FM Road 35 and seven miles east of the City of Quinlan in Hunt County; 11331-01; renewal

U.S. Department of the Army, Fort Sam Houston; wastewater treatment plant; approximately 1000 feet east of Military Highway and ½ mile southeast of the Headquarter Building at Camp Bullis in Bexar County; 12080-01; amendment

Texas State Technical Institute, Waco; sewage treatment plant; immediately southwest of the intersection of 15th Street and Airline Drive on the campus of the Texas State Technical Institute, James Connally Campus in McLennan County; 11050-01; renewal

Harris County Municipal Utility District No. 50, Crosby; sewage treatment plant; approximately one mile south of U.S. Highway 90 and ½ mile west of the end of Magnolia Street in Barrett Station in Harris County; 11770-01; renewal

City of Blossom, Blossom; wastewater treatment facilities; immediately south of the intersection of U.S. Highway 82 and Bois D'Arc Street in the City of Blossom in Lamar County; 10715-01; renewal

City of Laredo, Laredo; water treatment plant; at the west end of Jefferson Street adjacent to the Rio Grande in Laredo in Webb County; 10681-01; renewal

City of Cushing, Cushing; wastewater treatment facilities; near the intersection of Fourth Street and Maple Avenue in the City of Cushing, Nacogdoches County; 10437-01; renewal

City of Mount Vernon, Mount Vernon; surface water treatment plant; between State Highways 37 and 115, approximately ½ mile south of IH 30 and just below the Mount Vernon City Dam in Franklin County; 11122-01; renewal

Holly Farms of Texas, Inc., Center; chicken processing plant; at 1019 Shelbyville Street in the City of Center, Shelby County; 02064; renewal

Athens Municipal Water Authority, Athens; water treatment plant; east of Athens, about five miles of State Highway 19 and east of the intersection of FM

Roads 2495 and 2892, adjacent to Lake Athens in Henderson County; 10954-01; renewal

City of Dawson, Dawson; water treatment plant; at Liberty Park approximately 5.5 miles north of Dawson in Navarro County; 10026-04; renewal

City of Dublin, Dublin; wastewater treatment plant; approximately ¼ mile southwest of the intersection of FM Road 219 and FM Road 1702 and about one mile southeast of the City of Dublin in Erath County; 10405-01; renewal

Paktank Corporation-Deer Park Terminal, Houston; bulk liquid storage and transhipment terminal; at 2759 Battleground Road (FM Road 134) in the City of Deer Park, Harris County; 02383; renewal

City of Austin, Austin; water treatment plant; near the junction of West 35th Street and Hucks Slough in the City of Austin in Travis County; 10543-01; renewal

Hungerford Water Supply Corporation, Hungerford; wastewater treatment plant; approximately 250 feet northwest of the intersection of West Live Oak Road and Habermacher Street, approximately ½ mile north-northwest of the intersection of State Highway 60 and FM Road 1161 in Wharton County; 13240-01; new permit

City of Corpus Christi, Corpus Christi; wastewater treatment plant; near the intersection of North Staples and Board Streets in Corpus Christi, Nueces County; 10401-05; renewal

City of Point, Point; wastewater treatment plant; approximately 2100 feet east of the intersection of FM Road 47 and U.S. Highway 69 in Point, Rains County; 10964-01; renewal

City of Denison, Denison; wastewater treatment facilities; on the east side of Grayson County Airport approximately 100 feet due north of the intersection of Warehouse Road and Anderson Street Extension in Grayson County; 10079-05; renewal

City of Olney, Olney; wastewater treatment facilities; approximately 1500 feet southeast of the intersection of FM Road 210 (Spring Creek Road) and State Highway 80 in Young County; 10050-01; renewal

Jasper County Water Control and Improvement District No. 1, Buna; wastewater treatment plant; approximately 2000 feet due south of the intersection of U.S. Highway 95 and State Highway 62 in Jasper County; '0808-01; renewal

Witco Corporation, Marshall; organic peroxide plant; on company property, three miles north of the City of Marshall, Harrison County; new permit, amendment

Issued in Austin, Texas, on February 28, 1986.

TRD-8602145 Mary Ann Hefner
Chief Clerk
Texas Water Commission

Filed: March 3, 1986
For further information, please call (512) 463-7898.

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